

Below is the Order of the Court.



Karen A. Overstreet

Karen A. Overstreet
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

West Seattle Fitness,

Trustee.

NO. 12-18818

ORDER (1) APPROVING SALE OF ASSETS
FREE AND CLEAR OF LIENS PURSUANT
TO SECTION 363; AND (2) AUTHORIZING
THE ASSUMPTION AND ASSIGNMENT,
AND REJECTION, OF CERTAIN
EXECUTORY CONTRACTS PURSUANT
TO SECTION 365

Richard A. Hooper (the “Trustee”), the duly appointed Chapter 11 Trustee in the
bankruptcy of West Seattle Fitness, LLC (the “Debtor”), has moved the Court for entry of an
order (the “Sale Order”) (1) approving the sale of assets free and clear of liens pursuant to
Section 363; and (2) authorizing the assumption and assignment, and rejection, of certain
executory contracts pursuant to Section 365 (the “Motion”).

The Court having considered the Trustee’s Motion and deeming itself advised of all of
the relevant facts and circumstances pertaining to the Motion, AND

FINDING THAT:

ORDER (1) APPROVING SALE OF ASSETS FREE AND CLEAR OF
LIENS PURSUANT TO SECTION 363; AND (2) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT, AND REJECTION, OF
CERTAIN EXECUTORY CONTRACTS PURSUANT TO SECTION
365 - 1

CAIRNCROSS & HEMPELMANN,
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

1 1. Notice of the Motion was appropriate and was properly served in accordance with
2 applicable Bankruptcy Code provisions, the Bankruptcy Rules, and orders of this Court;

3 2. The proposed sale of the Transferred Assets (as that term is defined in the Asset
4 Purchase Agreement attached hereto as Exhibit A) is in the best interests of the Debtor and its
5 estate and creditors;

6 3. The sale of the Transferred Assets shall be free and clear of all liens, claims,
7 interests, charges and encumbrances, pursuant to Bankruptcy Code Section 363 and subject to
8 the terms of the Agreement (as that term is defined below) and the Sale Order;

9 4. The proposed assumption and assignment of certain Month-to-Month Contracts
10 and Post-Petition Member Contracts (as those terms are defined below) pursuant to Bankruptcy
11 Code Section 365 is in the best interests of the Debtor and its estate and creditors;

12 5. The proposed rejection of certain Excluded Contracts (as that term is defined
13 below) pursuant to Bankruptcy Code Section 365 is in the best interests of the Debtor and its
14 estate and creditors;

15 6. West Seattle Fitness Club, LLC (“**Buyer**”) is not an insider or an affiliate of the
16 Debtor.

17 IT IS HEREBY ORDERED that the Trustee’s motion is GRANTED.

18 IT IS FURTHER ORDERED that:

19 1. The Asset Purchase Agreement, as amended (the “**Agreement**”), is approved.

20 2. The sale of the Transferred Assets (as that term defined in the Agreement) to
21 Buyer, free and clear of all liens, claims, interests, charges and encumbrances, pursuant to
22 Bankruptcy Code Section 363, and subject to the terms of the Agreement and the Sale Order is
23 approved.

24 3. The Trustee is authorized to consummate all transactions related to the
25 Agreement.

1 4. The Trustee is authorized to assume and assign to Buyer the following executory
2 contracts pursuant to Bankruptcy Code Section 365:

3 a. All current month-to-month member contracts (the “**Month-to-Month**
4 **Contracts**”); and

5 b. All membership and personal training contracts and agreements entered
6 into and paid for on or after August 27, 2012 (the “**Post-Petition Member Contracts**”).

7 5. The Trustee is authorized to reject the following executory contracts the
8 (“**Excluded Contracts**”) pursuant to Bankruptcy Code Section 365 and such Excluded Contracts
9 shall not be assigned to the Buyer: All contracts and agreements to which the Debtor is a party
10 and existing in connection with the operation of the health club business conducted at 2629 SW
11 Andover Street, Seattle, WA 98126 (the “**Club**” or “**Premises**”) which are not expressly being
12 assigned to Buyer.

13 6. The Excluded Contracts being rejected include, but are not limited to:

14 a. That certain real property lease for the Premises (the “**Lease**”) by and
15 between the Debtor and H-P Properties/All Star, LLC (“**Landlord**”); and

16 b. All Club membership and personal training contracts and agreements
17 entered into and paid for prior to August 27, 2012 (the “**Pre-Petition Member**
18 **Contracts**”).

19 7. Upon entry of this Order, the Lease shall be deemed terminated and Tenant shall
20 be deemed to have vacated the Premises that are the subject of the Lease and surrendered
21 possession of the Premises to Landlord. The Landlord shall be deemed to have accepted the
22 Premises in an “as-is, where-is” condition.

23 8. The Trustee is authorized to use sale proceeds to pay the ordinary and necessary
24 closing costs associated with the sale, including any U.S. Trustee fees.

25 9. The Trustee shall deposit all remaining net sale proceeds into the estate’s interest-
26 bearing deposit account, to be disbursed upon further order of this Court.

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10. The fourteen-day stay provided for in Bankruptcy Rule 6004(h) shall not be in effect and thus this order shall be effective and enforceable immediately upon entry.

///End of Order///

Presented By:

CAIRNCROSS & HEMPELMANN, P.S.

/s/ Yousef Arefi-Afshar
Yousef Arefi-Afshar WSBA No. 40754
Attorneys for Chapter 11 Trustee Richard A. Hooper

Approved as to Form; Notice of Presentation Waived

OSERAN HAHN SPRING STRAIGHT & WATTS, P.S.

/s/ David Tall
David Tall, WSBA No. 12849
Attorney for H-P Properties/All Star, LLC

KAPLAN LAW, PLLC

/s/ Michelle C. Kaplan
Michelle C. Kaplan, WSBA No. 27286
Attorney for West Seattle Fitness Club, LLC

FOSTER PEPPER PLLC

/s/ Christopher M. Alston
Christopher M. Alston, WSBA No. 18823
Attorney for GRE 509, LLC

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of March 1, 2013, by and among West Seattle Athletic Club, LLC, a Washington limited liability company (“**Buyer**”) and West Seattle Fitness, LLC, a Washington limited liability company (“**WSF**” or “**Seller**”) by and through its Court appointed Chapter 11 Trustee, Richard A. Hooper (the “**Trustee**”).

BACKGROUND

A. WSF owns certain assets that are utilized in the Business operated by Seller. “**Business**” means the health club business conducted at 2629 SW Andover Street, Seattle, WA 98126 (the “**Club**”).

B. On August 27, 2012, WSF filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

C. On January 14, 2013, the Trustee was appointed for WSF pursuant to an Order Approving Appointment of Trustee (the “**Appointment Order**”) entered by the United States Bankruptcy Court for the Western District of Washington in Case No. 12-18818 (the “**Court**”).

D. Buyer desires to: (a) purchase from Seller, and Seller desires to sell to Buyer, all of Seller's right, title and interest in and to certain assets utilized in the operation of the Business (defined below), as set forth in this Agreement; and (b) assume and honor the terms and the conditions of certain liabilities, as set forth in this Agreement.

E. The purchase and sale of the assets pursuant to the terms of this Agreement requires an order of the Court approving such sale under Section 363 of the Bankruptcy Code and the assumption and assignment of the Assigned Contracts (as defined below) under Section 365 of the Bankruptcy Code, if any (the “**Sale Order**”).

NOW THEREFORE, upon the terms and subject to the conditions herein stated, and in reliance upon the recitals, representations, warranties and covenants contained or provided for herein, the parties hereto, intending to be legally bound, agree as follows:

AGREEMENT

1. Purchase and Sale of Assets; Purchase Price; Closing.

1.1. “AS-IS” Sale of Assets. On the terms and subject to the conditions and provisions set forth in this Agreement, at the Closing (as defined below), Seller will sell, assign, transfer, convey, and deliver to Buyer, free and clear of Encumbrances other than Permitted Encumbrances (as defined below), on an “AS IS,” WHERE IS” and “WITH ALL FAULTS” basis, all of Seller's right, title and interest in and to the tangible and intangible assets listed below used by Seller in the Business, to the extent such assets are in the possession and control of the Trustee, other than the Excluded Assets defined in Section 1.2 (the foregoing collectively, the “**Transferred Assets**”). Except as expressly set forth herein, the Transferred Assets are sold

“AS IS,” WHERE IS” and “WITH ALL FAULTS,” and, except for the representations and warranties set forth in Section 2, Seller does not make or imply any other representations or warranties by this Agreement, including, without limitation, any warranty of fitness for a particular purpose, warranty of merchantability, or otherwise. Subject to Section 1.2, the Transferred Assets shall consist of the following:

(a) **Month-to-Month Contracts.** All current month-to-month member contracts for the Club (the “**Month-to-Month Contracts**”), with any dues paid for the month that the Closing takes place to be prorated over the number of days of such month and then allocated accordingly to Buyer, for the days of such month prior to the Closing Date, and to Seller for the days of such month from and after the Closing Date, and expressly excluding all other long-term and/or prepaid member contracts not specifically identified in Section 1.1(b) below;

(b) **Post-Petition Member Contracts.** All rights and obligations of Seller under those contracts listed on Schedule 1.1(b) (the “**Post-Petition Member Contracts**”);

(c) **Tangible Personal Property.** Those items of tangible personal property listed on Schedule 1.1(c); and

(d) **Intangible Personal Property.** The following items of intangible personal property owned by Seller and used in the Business:

(i) **Communication Addresses.** All telephone numbers and facsimile numbers;

(ii) **Rights Arising under Assumed Obligations.** Those rights of Seller arising under or relating to those obligations expressly assumed by Buyer at the Closing pursuant to Section 1.3;

(iii) **Business Records.** Original or duplicate copies of all accounting records, financial records, operations records, customer records, customer lists, vendor lists, price lists, operations manuals, and personnel records relating to the Business; and

(iv) **Goodwill.** All rights of Seller in the favorable consideration that the Club has in the minds of the public, the reasonable expectation that the Club will be preferred by existing and potential customers and clients, and the advantage and benefit that existing and potential customers and clients will patronize the Business.

For the purposes of this Agreement, “**Encumbrance**” means any lien, pledge, hypothecation, charge, mortgage, or security interest, except for Permitted Encumbrances. “**Permitted Encumbrances**” include (i) Encumbrances for current taxes not yet due and payable, (ii) Encumbrances, assessments, governmental charges or levies or the Encumbrances of materialmen, carriers, landlords and like persons, all of which are in relation to sums that are not yet due and payable, and (iii) Encumbrances that will be released and discharged at or prior to the Closing.

1.2. Excluded Assets. Notwithstanding the foregoing, the Transferred Assets do not and will not include the following assets of Seller (the “**Excluded Assets**”):

(a) **Cash.** All cash or cash equivalents, securities, or short-term investments held by Seller;

(b) **Excluded Contracts.** All rights and obligations of Seller under those contracts listed on Schedule 1.2(b);

(c) **Intellectual Property.** All “ALLSTAR FITNESS” trademarks used in connection with the Club and Business, the name and any and all rights to use the name “ALLSTAR FITNESS “ and the domain name “allstarfitness.com”;

(d) **Bank Accounts.** All bank accounts of Seller;

(e) **Receivables.** All of Seller's receivables, except that any dues paid for the month that the Closing takes place shall be prorated over the number of days of such month, and then allocated accordingly to Buyer, for the days of such month prior to the Closing Date, and to Seller for the days of such month from and after the Closing Date;

(f) **Tax Claims.** Any rights to any of Seller's claims for federal, state, local, or foreign refunds related to any tax in connection with or arising out of the Business prior to the Closing Date;

(g) **Government Permits.** All permits, licenses, franchises, consents, or authorizations issued by, and filings with, any governmental agency;

(h) **Excluded Tangible Assets.** All tangible assets of Seller listed on Schedule 1.2(h); and

(i) **Books and Records.** All books, records, files, and data of Seller unrelated to the Transferred Assets, including without limitation Seller's corporate books and records, historical financial statements and tax records.

1.3. Assumed Liabilities. As of the Closing Date, Buyer will assume the following (collectively, the “**Assumed Liabilities**”):

(a) **Assigned Contract Liabilities.** All obligations and liabilities arising out of the Month-to-Month Contracts and Post-Petition Member Contracts;

(b) **Tax Liabilities.** All liabilities for any taxes relating to the ownership, possession, operation, or use of the Transferred Assets attributable to the period commencing as of the Closing Date and thereafter;

(c) **Employment Liabilities.** All liabilities first arising on or after the Closing Date relating to or arising from the employment by Buyer of any Business employee who commences employment with Buyer as of or after the Closing; and

(d) **Transferred Assets Liabilities.** All obligations and liabilities relating to Buyer's ownership, possession, operation, or use of the Transferred Assets first arising on or after the Closing Date.

1.4. Excluded Liabilities. Other than the Assumed Liabilities, Buyer will not assume, perform, or discharge any obligation or liability of Seller, including but not limited to:

(a) that certain real property lease for the Club (the "**Lease**") by and between Seller and H-P Properties/All Star, LLC ("**Landlord**"); and

(b) All membership contracts not identified in Sections 1.1(a) or (b) above.

1.5. Purchase Price. In consideration for the Transferred Assets, and subject to the other terms and conditions set forth herein, Buyer agrees to pay to Seller a total of Seventy Five Thousand and No/100 Dollars (\$75,000.00) (the "**Purchase Price**") in immediately available funds at Closing.

1.6. Allocation. The Purchase Price, and any other consideration paid to or deemed paid to Seller for federal income tax purposes, will be allocated among the Transferred Assets as set forth in Schedule 1.6. Buyer and Seller agree to be bound by such allocations for all purposes and to account for and report this transaction for all federal and state tax purposes in accordance with such allocation and not to take any position which is inconsistent with such allocation without the prior written consent of the other parties, except to the extent such consistency is prohibited by any applicable legal requirement. Buyer and Seller shall file such allocations on, and in accordance with, IRS Form 8594. Buyer and Seller acknowledge that failure to comply with the requirements of this Section may result in the other party incurring additional taxes, penalties, interest and attorneys' and accountants' fees as a result of such failure, all of which costs and expenses shall be recoverable by the non-breaching party in addition to other amounts it may be entitled to under this Agreement for such breach.

1.7. Closing. Subject to the satisfaction or waiver of the conditions set forth in this Agreement, the closing of the sale of the Transferred Assets and all transactions contemplated by this Agreement (the "**Closing**") will take place at the offices of Cairncross & Hempelmann, P.S. in Seattle, Washington on the fifth (5th) business day following the satisfaction of the conditions listed in Section 4 and Section 5 of this Agreement (the "**Closing Date**"), but in no event later than April 15, 2013. Each of the parties to this Agreement hereby agrees to use its or his best efforts in satisfying all of the Section 4 and Section 5 conditions as soon as reasonably practicable. For purposes of this Agreement "business day" shall mean any day that a nationally chartered bank is open for business in Seattle, Washington.

(a) **Buyer's Obligations at Closing.** At or prior to Closing, Buyer shall:

(i) deliver or cause to be delivered a wire transfer in the amount of the Purchase Price to an account designated in writing by Seller; and

(ii) deliver or cause to be delivered all Acquisition Documents duly authorized and executed by Buyer.

(b) **Seller's Obligations at Closing.** At Closing, Seller shall:

(i) execute and deliver or cause to be executed and delivered a Bill of Sale, Assignment and Assumption of Obligations Agreement, in the form attached hereto as *Exhibit A*, to assign, convey, transfer, and deliver to Buyer good and valid title to the Transferred Assets free of any Encumbrances other than Permitted Encumbrances; and

(ii) deliver or cause to be delivered all Acquisition Documents duly authorized and executed by Seller.

2. Representations and Warranties of Seller. Seller represents and warrants to Buyer:

2.1. Authorization. As of the Closing Date, subject to approval by the Court, this Agreement and the agreements referenced herein (the “**Acquisition Agreements**”) to which Seller is a party will be duly and validly executed and delivered by Seller, and Seller shall have the power to do the same, and to perform this Agreement and the Acquisition Agreements, and to consummate the transactions contemplated hereby and thereby. This Agreement and the Acquisition Agreements to which Seller is a party constitute valid and binding obligations of the Seller, enforceable in accordance with their terms (except to the extent that enforcement may be affected by applicable bankruptcy, reorganization, insolvency, and similar laws affecting creditors’ rights and remedies and by general principles of equity (regardless of whether enforcement is sought at law or in equity)).

2.2. Title to the Transferred Assets. On the Closing Date, Seller shall have good title to, and lawful ownership of, all of the Transferred Assets. Ownership of the Transferred Assets shall pass to Buyer free and clear of all Encumbrances except for Permitted Encumbrances.

2.3. Brokers. There are no claims, or any basis for any claims, for brokerage commissions, finders’ fees or similar commissions in connection with the transaction contemplated by this Agreement, including the execution of this Agreement, resulting from any action taken by Seller.

3. Representations and Warranties of Buyer. Buyer represents and warrants to Seller that, as of the date hereof and as of the Closing Date:

3.1. Organization of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Washington. Buyer has the full power and authority to own its properties and to carry on its business as presently conducted.

3.2. Authorization. The execution, delivery and performance by Buyer of this Agreement and the Acquisition Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action of Buyer. This Agreement and each of such Acquisition Agreements will, as of the Closing Date, be duly and validly executed and delivered by Buyer, and Buyer has the power to do the same, and to perform this Agreement and such Acquisition Agreements, and to consummate the transactions contemplated hereby and thereby. This Agreement and each of

such Acquisition Agreements constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, and are effective to accept the assignment, assumption, transfer and conveyance to Buyer on the Closing Date of the Transferred Assets.

3.3. Violation of Other Instruments. Neither the execution or delivery of this Agreement or the Acquisition Agreements by Buyer nor the consummation of the transactions contemplated hereby or thereby by Buyer will (with or without notice or the passage of time, or both) result in (i) a conflict with the articles of organization or operating agreement of Buyer, or (ii) a breach of, or liability under, any of the terms, or constitute a default pursuant to, any covenant or agreement to which Buyer is a party, or any judgment or order or any law, rule, regulation or ordinance, to which Buyer is subject.

3.4. Brokers. There are no claims, or any basis for any claims, for brokerage commissions, finders' fees or similar commissions in connection with the transactions contemplated by this Agreement, including the execution of this Agreement, resulting from any action taken by Buyer or by any of its agents, officers, employees or representatives.

4. Conditions to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction, at or before the Closing, of all the conditions set forth in this Section 4. Buyer may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Buyer of any of its other rights or remedies, at law or in equity, if Seller shall be in default of any of the representations or covenants under this Agreement.

4.1. Accuracy of Representations. Except as otherwise permitted by this Agreement, all representations by Seller in this Agreement shall be true in all material respects on and as of the Closing as though made at that time.

4.2. Performance. Seller shall have performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Seller on or before the Closing.

4.3. Court Approval. Trustee shall have obtained from the Court the Sale Order approving this Agreement and the sale contemplated thereby.

4.4. Lease. Buyer shall have executed a new real property lease for the Club with the Landlord.

4.5. Additional Deliveries. Seller shall have delivered to Buyer all other agreements, consents and instruments required to be delivered to Buyer under this Agreement, including all Buyer member and manager consents approving the transactions contemplated by this Agreement.

5. Conditions to Obligations of Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction, at or before the

Closing, of all the conditions set forth in this Section 5. Seller may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Seller of any of its other rights or remedies, at law or in equity, if Buyer shall be in default of any of the representations or covenants under this Agreement.

5.1. Accuracy of Representations. Except as otherwise permitted by this Agreement, all representations by Buyer in this Agreement shall be true in all material respects on and as of the Closing as though made at that time.

5.2. Performance. Buyer shall have performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Buyer on or before the Closing.

5.3. Court Approval. Trustee shall have obtained from the Court the Sale Order.

5.4. Additional Deliveries. Buyer shall have delivered to Seller all other agreements, consents and instruments required to be delivered to Seller under this Agreement, including all Buyer member and manager consents approving the transactions contemplated by this Agreement.

6. Other Agreements.

6.1. Confidentiality; Publicity. Each of the parties to this Agreement will hold in strict confidence and will not use or disclose, and each such party will cause its agents, consultants, legal counsel, accountants, investors, prospective investors and other persons affiliated with such party (“**Representatives**”) to hold in strict confidence and not to use or disclose, (i) the specific details of the transaction contemplated under this Agreement, including, without limitation, the terms and conditions of this Agreement not revealed to the public pursuant to this section, (ii) non-public information regarding the Business, including, without limitation, the customer lists and customer leads, and (iii) all non-public documents and information concerning the other party furnished by such other party in connection with the transactions contemplated by this Agreement (collectively, the “**Confidential Information**”), except as required to obtain Court Approval. Neither party to this Agreement (including their Representatives) will release or disclose any Confidential Information to any other person or entity without the written consent of the other parties, except that a party may disclose such information as required by applicable law, regulation or legal process, or as reasonably necessary in connection with pursuing or defending any claim that may arise between the parties out of this Agreement or the Acquisition Agreements. All notices to third parties and all other publicity concerning the transactions contemplated by this Agreement shall be jointly planned and coordinated by and between Buyer and Seller. Neither Buyer nor Seller shall act unilaterally in this regard without the prior written approval of the other party; however, this approval shall not be unreasonably withheld.

6.2. Non-Disparagement. Each party to this Agreement agrees that it will not disparage or encourage or induce others to disparage any other party to this Agreement, or such

party's affiliates, owners, members, management or employees.

6.3. Further Assurances; Cooperation. The Parties to this Agreement each agree to execute, acknowledge and deliver all such further conveyances, assumptions, and such other instruments, timely deliver financial and other information pursuant to this Agreement, work together in a spirit of cooperation, and take such further action as may be necessary or appropriate, to carry out the provisions and purposes hereof.

6.4. Termination of Seller's Employees. Seller shall terminate all employees on or prior to the Closing Date. Buyer may, at Buyer's discretion, hire employees of Seller who were employed at the Club effective as of the Closing Date.

7. Indemnification by Buyer. Buyer shall indemnify and defend Seller, Trustee and their respective managers, members, officers, employees, affiliates, consultants, financial advisors, attorneys, representatives and other agents (collectively, the "**Seller Indemnitees**") against, and shall hold each of them harmless from and against, any and all claims, demands, complaints, damages, losses, liabilities payments, actions, suits, proceedings, judgments, awards, settlements, assessments, deficiencies, amounts paid in settlement, obligations, fines, penalties, expenses and costs of whatever kind (including fees and expenses of attorneys and other experts, all litigation and/or arbitration costs, any costs of enforcing any right to indemnification hereunder and any costs in pursuing any insurance claims), whether known or unknown, fixed, accrued, absolute or contingent, liquidated or unliquidated, due or to become due, regardless of when asserted or incurred (collectively, "**Losses**") incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to, or by reason of:

7.1. Breach of Representations and Warranties. Any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

7.2. Breach of Covenants. Any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;

7.3. Assumed Liabilities and Transferred Assets. Any of the Assumed Liabilities or any of the Transferred Assets; and

7.4. Third Party Claims. Any claim by a third party based upon, resulting from, in connection with, or arising out of the Transferred Assets, the Club, the Business, the Club's operations, properties and other assets.

8. General Provisions.

8.1. Notices. Any notice, consent or other communications required or permitted

under this Agreement shall be in writing and delivered by personal delivery, certified mail, return receipt requested or by a recognized overnight courier, addressed as follows:

To Seller:

Richard A. Hooper
Chapter 11 Trustee for West Seattle Fitness, LLC
451 SW 10th Street, Suite 107
Renton, WA 98057

with a copy (which shall not constitute notice) to:

Yousef Arefi-Afshar
Cairncross & Hempelmann
524 Second Ave., Suite 500
Seattle, WA 98104-2323

To Buyer:

Sam Adams
West Seattle Athletic Club, LLC
218 Main Street, Suite 514
Kirkland, WA 98034

with a copy (which shall not constitute notice) to:

Notices shall be deemed given (i) when received, if delivered by personal delivery, (ii) three (3) Business Days after being deposited in the United States mail, if delivered by certified mail, return receipt requested, and (iii) the next Business Day, if delivered by overnight courier.

8.2. Assignment. This Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assignees.

8.3. Entire Agreement. This Agreement, together with the exhibits, schedules, Acquisition Agreements and other writings referred to in this Agreement, embodies or reflects the entire agreement among the parties relating to both the subject matter of this Agreement and the transactions contemplated hereby, and supersedes and replaces any and all other agreements, written or oral, by or between Buyer and Seller.

8.4. Headings. The section and other headings of this Agreement are for reference

purposes only and shall not effect in any way the meaning or interpretation of this Agreement.

8.5. Section References. All references in this Agreement to Sections refer to sections of this Agreement.

8.6. Amendment and Waiver. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by Seller and Buyer. The failure of Seller or Buyer at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later date to enforce the same. No waiver by any party of any condition or the breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

8.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington without regard to conflicts of law principles, and shall be construed without the aid of any canon, custom or rule of law requiring construction against the draftsman.

8.8. Jurisdiction and Venue. The parties hereby absolutely and irrevocably consent and submit to the non-exclusive jurisdiction of the courts of the State of Washington and of any federal court located in said State in connection with any actions or proceedings brought against any party hereto arising out of or relating to this Agreement. In any such action or proceeding, the parties hereby absolutely and irrevocably waive personal service of any summons, complaint, declaration or other process and hereby absolutely and irrevocably agree that the service thereof may be made by certified or registered first-class mail directed to such parties at their respective addresses in accordance with this Agreement. Each of the parties also agrees that any final and unappealable judgment against a party hereto in connection with any action, suit or other proceeding shall be conclusive and binding on such party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. A certified or exemplified copy of such award or judgment shall be conclusive evidence of the fact and amount of such award or judgment.

8.9. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Seller and Buyer and their respective heirs, legal representatives, successors and assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

8.10. Severability. Each term, covenant, condition or provision of this Agreement shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

8.11. Time of Essence. Time is of the essence in the performance of all obligations under this Agreement.

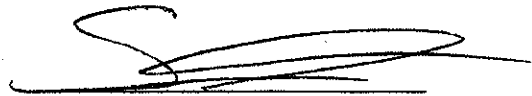
8.12. Counterparts. This Agreement may be executed in one or more counterparts, each of, which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties may execute and electronically deliver copies of this Agreement and/or counterpart signature pages, which electronic copies shall be equally as effective as delivery of originally executed counterparts.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized representatives, as of the date first above written.

Buyer:

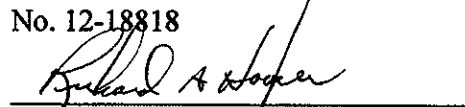
WEST SEATTLE ATHLETIC CLUB, LLC,
a Washington limited liability company



By: Sam Adams
Its: Manager

Seller:

WEST SEATTLE FITNESS, LLC,
a Washington limited liability company, by and
through its court-appointed Chapter 11 trustee,
RICHARD A. HOOPER, pursuant to that certain
Order Approving Appointment of Trustee, dated
January 14, 2013, by the United States Bankruptcy
Court for the Western District of Washington in Case
No. 12-18818


Richard A. Hooper

LIST OF SCHEDULES AND EXHIBIT

Schedules:

Schedule 1.1	Encumbered Assets
Schedule 1.1(b)	Other Assigned Contracts
Schedule 1.1(c)	Tangible Personal Property
Schedule 1.2(b)	Excluded Contracts
Schedule 1.2(h)	Excluded Tangible Assets
Schedule 1.6	Purchase Price Allocation

Exhibit:

Exhibit A	Bill of Sale, Assignment and Assumption of Obligations Agreement
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**Schedule 1.1
Encumbered Assets**

None.

Schedule 1.1(b)
Other Assigned Contracts

ALFANO, CAROLYN	CARLSON, NOAH	GUSTAFSON, WALT
ALMO, FAY	CARNEY, LORI	HADLEY, HANNAH
ANDERSON, ALLISA	CARNEY, SEAN	HAGENSON, PAUL
AQUINO, TASHA	CHATEL, LUTHER	HAGENSON, RACHEL
ARRINGTON, ELENA	CONNOLLEY, TAMI	HALE, JAIME
ATIC, ESAD	CONNOLLY, BRIAN	HALL, JEFF
AYLOTT, BOAZ	CONNOLLY-CRUZ, JONAH	HANLEY, CECILIA
AYLOTT, DEBBIE	CRUMB, SARA	HARMENING, BARBARA
BAILEY, KARALEY	CUNNINGHAM, THOMAS	HESSELGRAVE, SUSAN
BALETO-FERGUSON, REGINA	DANIELS, JON	HEYL, KRISTINA
BALLARD, AMY	DEAKINS, DESIRAE	HOFFMAN, MATT
BARON, ADRIANA	DEBOER, LESLIE	HOLLISTER, PATRICK
BARTHOLOMEW, AMY	DI GEORGE, JAMIE	HOLT, MICHAELA
BEARD, JENNIFER	DI GEORGE, SEAN	HOOVER, SHARON
BERARD, JL	DIAZ, STEPHANIE	HOUGHLAND, CAROLINE
BERGMANN, KATHRYN	DILES, ROBERTA	HOUGHLAND, ERIC
BIGSBY, MARK	DUNCAN, BONNIE	HOWE, CHRIS
BILLINGS, DAVID	ELLIS, CATE	HUISMAN, SEAN
BINDER, GABRIELA	ELLIS, DEBBY-LEE	INSKIP, ORION
BISHOP, JEFF	ESSERS, ALICIA	JACKIE LITTLE
BISHOP, RHONDA	ESSERS, JONAH	JASPERSON, CHRIS
BLAIR JR, JASON	FENSTERMACHER, EARL	JASPERSON, MELISSA
BLAIR, JAMIE	FIELDS, JEFFREY	JENSEN-GREY, SEAN
BLAIR, JASON	FLEMING, MICHELLE	JERGENS, DYLAN
BLAZY, KELLY	FOSTER, CHRIS	JOE NEAL
BOEK, LACEY	FREY, ADAM	JOHANSON, CARISA
BOENDER, JOSH	FRY, CHRIS	JONES, JEFF
BORGETTA, JEFF	GARCIA, VERONICA	KILGORE, YUSUF
BRIM, ELLIE	GASCOYNE, JOHANNA	KINZLER, CATHERINE
BRINSTER, JEANETTE	GASCOYNE, TROY	KIPLING, ANDREW
BRUNO, CHRISTINE	GAYLORD, DEVIN	KLINKA, TODD
BRYDEN, WESLEY	GEORGAS, PHILIP	KUHN, NICOLE
BUCKLEY, JENNA	GOLDBERG, JENNIE	KUHN, RODNEY
BURGOYNE, BRENDA	GOREY, ELIZABETH	LACANLALE, JOANNA
BURGOYNE, TERRY	GRIFFITH, ROBERT	LACANLALE, JOSEPH
BURNS, JASON	GUERRA, JUAN	LACOTTA, MARK
BURWELL, CHERYL	GUSTAFSON, SHEILA	LAM, DIANE

LAUTMAN, BRIEN	NGUYEN, QUANG	STARK, MELISSA
LEGAULT, JEANNE	NORTON, KELSEY	STARLING, MICHAEL
LEHN, JOEL	OLSON, JEN	STEERS, NANCY
LENKE, AMANDA	OVERELL, ALEXIS	STEINKE, TIMOTHY
LENKE, DAVID	OWENS, TIMOTHY	STRAUB, KATHY
LEONARD, SAM	PARKER, MATT	STRAUSS, COLE
LI, LILIN	PARKER, MICHELE	STREVEY, EMMA
LIGUDZINSKI, LUKE	PETRIE, KATHLEEN	STRONG, MOLLY
LITTLEFIELD, LUCIROLA	PHAN, ANH	TANEV, VOIKO
LOGAN, MARTHA	PHILLIPS, RANDY	TESSMER, JEFF
LY, BILL	PITTARI, SELINA	THOMAS, MARSHALL
LY, THANH	PLATTE, STEPHANIE	TIPPER, JON
LYLE, COURTNEY	POPOVA, IRINA	TORRES, SCOTT
MAAS, NOAH	QUACH, HELEN	TOYAMA, MITSKO
MADRID, ANGELA	RAMIREZ, DAVID	TRAN, THAI
MAPES, LAUREN	RICHARDS, STEVEN	TVERSKOY, IGOR
MARTA ACEDO	RICHTER, JESSICA	TVERSKOY, ULYANA
MAXWELL, JESSE	RITTENHOUSE, CARRIE	VALENTE, NAO
MCBRIDE, KELLY	ROBERTSON, KRISTI	VESEY, SUZANNE
MCCULLOM, ANDREW	ROTH, SUSAN	VIRNIK, SLAVA
MCDUGAL, ROBERT	RUBINSTEIN, SHMUEL	WANJON, DANI
MCGLOTHLIN, SCOTT	SAVAGE, JENNIFER	WASHBURN, FAYE
MCKENDRY, BETSY	SCANLON, KIM	WASYLIK, GINGER
MCKINSTRY, SHERRIE	SCHAUB, SARAH	WEITZ, KATHERINE
MELCHOR, OZZY	SCHWEIHOFFER, ALICE	WELCH, CAROL
METTLER, JASMINE	SCHWEINFURTH, MONIKA	WIECHMAN, SHELLEY
MILAZZO, TODD	SECRIST, CASSIDY	WILLIAMS, LASHANNA
MILLER, SARAH	SECRIST, KATHERINE	WILLIAMSON, JESSICA
MINA, MIRIAM	SEEFELD, TRACY	WILLIAMSON, STEVE
MIZE, TRAVIS	SEMINARA, JEN	WILLIAMSON, TODD
MOHAMMADIAN, AHMAD	SHEPHERD, MIKE	WILSON, EVAN
MORENO, ALEXANDER	SHIROYAMA, SAM	WILSON, REBECCA
MOSS, JESSICA	SMITH, AARON	WOODARD, KURT
MOSS, RYAN	SOIKE, SHELBY	ZAVERTNIK, JAKE
NARDELLA, JOHN	SOPHOS, CHRISTINE	ZUREK, SUSAN
NARDELLA, MINDI	STANDIFORD, KRISTIN	ZWERLING, SHELDON
NELSON, TOM	STARK, JAMES	

Schedule 1.1(c)
Tangible Personal Property

All furniture, fixtures, fitness equipment, inventory, supplies, furnishings, business records, and equipment operation manuals owned by Seller which are located in the Club or used in connection with the Business, including, but not limited to the following:

CARDIO

LIFE FITNESS TREADMILLS (33)	95Ti
LIFE FITNESS TOTAL BODY TRAINERS (37)	91Xi
LIFE FITNESS UPRIGHT BIKE (7)	93Ci
LIFE FITNESS RECUMBENT BIKE (12)	93Ri
LIFE FITNESS SUMMIT TRAINERS (4)	
CYBEX ARC TRAINER (2)	600A
CYBEX ARC TRAINER (2)	610A
STAIRMASTER STEPMILLS (6)	PT7000
STAIRMASTER CLIMBERS (2)	PT4000
CONCEPT 2 ROWERS (2)	
LEMOND REVMASTER CYCLING BIKES (56)	15200-5

EXERCISE

NAUTILUS 20 PIECE CIRCUIT: ABDOMINAL; ROTARY TORSO; LOWER BACK; COMPOUND ROW; SUPER PULL OVER; WEIGHT ASSISTED CHIN / DIP; TRICEPS PRESS; PREACHER CURL; HIP ADDUCTION; SUPER LEG PRESS; LEG EXTENSION; SEATED LEG CURL; SEATED CALF; HIP ABDUCTION; OVERHEAD PRESS; LATERAL RAISE; PEC FLY; BENCH PRESS; VERTICAL CHEST; PRONE LEG CURL

HAMMER STRENGTH:

SEATED BICEP	ISO LAT SHOULDER PRESS
LATERAL RAISE	ISO LAT LEG EXT
ISO LATERAL ROWING	ISO LATERAL LEG
SEATED DIP	SEATED CALF
MTS SHOULDER PRESS	SQUAT PLATE RACK
MTS DECLINE PRESS	LEG EXT
MTS INCLINE PRESS	LEG CURL BENCH PRESS
MTS HIGH ROW	FLAT BENCH (2)
MTS FRONT PULL DOWN	ADJ. BENCH (2)
MTS ROW	LEG PRESS
ISO LAT INCLINE PEC	INVERTED LEG PRESS
ISO LAT FRONT LAT PULL DOWN	SEATED INCLINE BENCH
INCLINE BENCH W- BAR & RACK	ADJ. FLAT BENCH (2)
AB BENCH	SEATED INCLINE BENCH
FLAT BENCH W- BAR & RACK (2)	UPRIGHT BENCH (2)
ABDOMINAL WORK STATION	SQUAT RACK
CHIN DIP	DECLINE BENCH (2)
ISO LAT D. Y. ROW	INCLINE BENCH (4)
ISO LAT HI ROW	AB BENCH
ISO LAT BENCH PRESS	AB RACKS (2)
ISO LAT WIDE CHEST PRESS	10 PR DUMBBELLS & RACK
ISO LAT INCLINE PRESS	

LIFE FITNESS:

HIP ABDUCTOR
HIP ADDUCTOR
HORIZONTAL LEG PRESS
PEC FLY / REAR DELTOID
PECTORAL FLY
CHEST PRESS (3)
SEATED LEG PRESS (2)
GLUTE (2)
ABDOMINAL (2)
LOW BACK EXTENSION
LEG EXTENSION (2)
INCLINE PRESS
SHOULDER PRESS (2)
SEATED LEG CURL (3)
SEATED ROW (2)
PULL OVER

LATERAL RAISE
SEATED DIP
DIP / CHIN ASSIST
STANDING CALF
LAT PULL DOWN (2)
ARM EXTENSION
ARM CURL (3)
BACK EXTENSION
TRICEP EXTENSION
FLAT BENCH (2)
ADJ. FLAT BENCH (2)
HIGH / LOW CABLE CROSS OVER (3)
LOW ROW
8 STATION
SMITH MACHINE (2)

AB BENCH AB100 (5)

IGX

5 CURL / 5 STRAIGHT BARBELLS WITH RACK
10 STRAIGHT BARBELLS WITH RACK
3 – 10 PAIR DUMBBELL RACKS & WEIGHTS
LARGE NUMBER OF VARIOUS SIZE WEIGHT PLATES FOR PLATE LOADED EQUIPMENT

JADE

10 CURL BARBELLS WITH RACK
2 – 10 PAIRS DUMBBELL RACKS WITH WEIGHTS

Schedule 1.2(b)
Excluded Contracts

All contracts and agreements to which the Seller is a party and existing in connection with the operation of the Club and/or Business, which are not expressly being assumed and assigned by Buyer, including, without limitation, the Lease and any Club membership contracts not identified in Sections 1.1(a) or (b) above.

**Schedule 1.2(h)
Excluded Tangible Assets**

None.

**Schedule 1.6
Purchase Price Allocation**

Tangible Personal Property	\$50,000
<u>Intangible Personal Property</u>	<u>\$25,000</u>
TOTAL	\$75,000

Exhibit A
Bill of Sale, Assignment and Assumption of Obligations Agreement

(See attached)

**BILL OF SALE, ASSIGNMENT AND
ASSUMPTION OF OBLIGATIONS AGREEMENT**

WEST SEATTLE FITNESS, LLC, a Washington limited liability company (“**Seller**”), by and through RICHARD A. HOOPER, solely in his capacity as court-appointed Chapter 11 trustee for Seller (“**Trustee**”) pursuant to that certain Order of the United States Bankruptcy Court for the Western District of Washington dated January 14, 2013 in Case No. 12-18818, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells, assigns and transfers to WEST SEATTLE ATHLETIC CLUB, LLC, a Washington limited liability company (“**Buyer**”), pursuant to and in furtherance of that certain Asset Purchase Agreement, dated March 1, 2013, by and among Seller, Trustee and Buyer (the “**Asset Purchase Agreement**”), free and clear of all Encumbrances except the Permitted Encumbrances, all right, title and interest of Seller in and to the Transferred Assets, TO HAVE AND TO HOLD the same unto Buyer, and its successors and assigns, forever, and Buyer hereby accepts such sale, assignment and transfer and hereby assumes all of the Assumed Liabilities set for in the Asset Purchase Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Asset Purchase Agreement.

This instrument and all of its terms shall inure to the benefit of Buyer, and its successors and assigns, and shall bind Seller, and its successors and assigns.

Seller delivers this instrument subject to the terms, conditions, restrictions and limitations of the Asset Purchase Agreement, and nothing herein shall be deemed to alter or amend the Asset Purchase Agreement in any way. In the event of any conflict between the terms hereof and of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall control.

Seller has caused this Bill of Sale to be executed and delivered as of this ____ day of March 2013.

WEST SEATTLE FITNESS, LLC,
a Washington limited liability company, by and
through its court-appointed Chapter 11 trustee,
RICHARD A. HOOPER, pursuant to that certain
Order Approving Appointment of Trustee, dated
January 14, 2013, by the United States Bankruptcy
Court for the Western District of Washington in
Case No. 12-18818

Richard A. Hooper

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This First Amendment to Asset Purchase Agreement (this "**Amendment**"), dated as of March 21, 2013, is entered into by and between West Seattle Athletic Club, LLC, a Washington limited liability company ("**Buyer**") and West Seattle Fitness, LLC, a Washington limited liability company ("**WSF**" or "**Seller**") by and through its Court appointed Chapter 11 Trustee, Richard A. Hooper (the "**Trustee**").

RECITALS:

A. Buyer and Seller are parties to that certain Asset Purchase Agreement, dated March 1, 2013 (the "**Purchase Agreement**"), Sellers agreed to sell to Buyer and Buyer agreed to purchase from Seller certain assets (the "**Transferred Assets**") utilized in the Business operated by Seller. "**Business**" means the health club business conducted at 2629 SW Andover Street, Seattle, WA 98126 (the "**Club**").

B. Buyer and Seller would like to amend the Purchase Agreement on the terms and conditions set forth herein.

AMENDMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Section 1.1(b) and Schedule 1.1(b) – Post-Petition Member Contracts.** Section 1.1(b) is hereby deleted in its entirety and replaced with the following language.

All rights and obligations of Seller under all Club membership and personal training contracts and agreements entered into by the Seller on or after August 27, 2012 and prior to the Closing Date (the "Post-Petition Member Contracts");

Schedule 1.1(b) is deleted in its entirety.

2. **Schedule 1.2(b) – Excluded Contracts.** The text of Schedule 1.2(b) is hereby deleted in its entirety and replaced with the following language.

All contracts and agreements to which the Seller is a party and existing in connection with the operation of the Club and/or Business, which are not expressly being assumed and assigned by Buyer, including, without limitation, the Lease and any Club membership contracts not identified in Sections 1.1(a) or (b) above. For the avoidance of doubt, the "Excluded Contracts" shall include all Club membership and personal training contracts and agreements entered into by the Seller prior to August 27, 2012.

3. **Ratification.** Except as expressly modified by this Amendment, the Purchase Agreement is hereby ratified and affirmed, and remains in full force and effect as originally executed and thereafter amended from time to time. In the event of any conflict between the

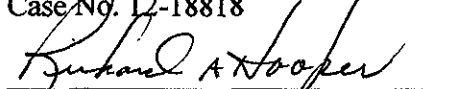
Purchase Agreement and this Amendment, this Amendment shall control over the Purchase Agreement to the extent necessary to give effect the intent of the parties hereunder.

4. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original, and when taken together shall constitute a single integrated agreement. Signed counterparts of this Amendment may be delivered by facsimile or other electronic transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.


Seller:

WEST SEATTLE FITNESS, LLC,
a Washington limited liability company, by and
through its court-appointed Chapter 11 trustee,
RICHARD A. HOOPER, pursuant to that certain
Order Approving Appointment of Trustee, dated
January 14, 2013, by the United States Bankruptcy
Court for the Western District of Washington in
Case No. 12-18818


Richard A. Hooper

Buyer:

WEST SEATTLE ATHLETIC CLUB, LLC,
a Washington limited liability company


By: Sam Adams
Its: Manager