

08-03-2000



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Docket No.:

2782/79605

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To the Honorable Commissioner of Patents and Trademarks, attached original documents or copy thereof.

1. Name of conveying party(ies):

Nautilus Plus of Oregon, Inc.
9403 S.W. Nimbus Avenue
Beaverton, Oregon 97008

- Individual(s)
- General Partnership
- Corporation-State **Oregon**
- Other
- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other **Stock Purchase**
- Merger
- Change of Name

Execution Date: **November 29, 1999**

2. Name and address of receiving party(ies):

Name: **Bally Total Fitness Holding Corporation**

Internal Address: _____

Street Address: **8700 W. Bryn Mawr, 2nd Floor**

City: **Chicago** State: **IL** ZIP: **60631**

Individual(s) citizenship _____

Association _____

General Partnership _____

Limited Partnership _____

Corporation-State **Delaware**

Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,300,075

Additional numbers

Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Julie A. Katz, Esq., Welsh & Katz, Ltd.**

Internal Address: _____

Street Address: **120 South Riverside Plaza, 22nd Floor**

City: **Chicago** State: **IL** ZIP: **60606**

6. Total number of applications and registrations involved:.....

1

7. Total fee (37 CFR 3.41):.....\$ **\$40.00**

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

23-0920

DO NOT USE THIS SPACE

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Julie A. Katz, Esq.

Name of Person Signing

Signature

July 10, 2000

Date

74

Total number of pages including cover sheet, attachments, and

TRADEMARK

REEL: 002114 FRAME: 0563

STOCK PURCHASE AGREEMENT

by and among

**JACK GARRISON
DEANE GARRISON**

and

**NAUTILUS PLUS OF OREGON
EMPLOYEE STOCK
OWNERSHIP TRUST**

and

CLASS B SHAREHOLDERS

as "Sellers"

THE SELLER REPRESENTATIVE

NAUTILUS PLUS OF OREGON, INC.

as "Company"

BALLY TOTAL FITNESS CORPORATION

as "Purchaser"

and

BALLY TOTAL FITNESS HOLDING CORPORATION

as "Parent"

Dated as of November 29, 1999

LIST OF SCHEDULES

Share Ownership Schedule
Capitalization Schedule
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Financing Statements Schedule
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Employee Plans Schedule
Accounts Receivable Schedule
Insurance Schedule
Accounts and Attorneys Schedule
Non-Arm's Length Transactions Schedule

LIST OF EXHIBITS

- Exhibit A** Gold's License Agreements
- Exhibit B** Form of Registration Rights Agreement
- Exhibit C** Form of Opinion of Parent's Internal Counsel
- Exhibit D** Releases of the Purchaser of the Personal Guarantees and Security Interests
- Exhibit E** Form of Opinion of Bittner & Hahs
- Exhibit F** Form of Opinion of McDermott Will & Emery

STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "Agreement"), dated as of November 29, 1999, is by and among Jack Garrison and Deane Garrison (the "Garrisons"), Nautilus Plus of Oregon Employee Stock Ownership Trust (the "ESOP"), the individuals who have executed this Agreement as provided in Section 5.13 hereof as Class B Shareholders on the signature pages hereto (the "Class B Shareholders"; the Garrisons, ESOP and the Class B Shareholders are collectively referred to as "Sellers," and each individually a "Seller"), the Seller Representative (as defined herein), Nautilus Plus of Oregon, Inc., an Oregon corporation (the "Company"), Bally Total Fitness Holding Corporation, a Delaware corporation ("Parent"), and Bally Total Fitness Corporation, a Delaware corporation and subsidiary of Parent ("Purchaser").

RECITALS

WHEREAS, each Seller owns the shares of common stock of the Company set forth opposite such Seller's name on the *Share Ownership Schedule* (the "Shares");

WHEREAS, the Sellers desire to sell, and Purchaser desires to purchase, all of the Sellers' right, title and interest in and to the Shares on the terms and conditions contained herein (the "Share Purchase"); and

WHEREAS, for federal income tax purposes, it is essential that the Share Purchase shall qualify as a reorganization within the meaning of Section 368(a)(1)(B) of the Code or that the Sellers receive consideration for their shares of equivalent value to what they would receive if the Share Purchase were so qualified.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I. PURCHASE AND SALE

1.01. Purchase and Sale of Shares. Upon the terms and conditions of this Agreement, at the Closing, Sellers shall sell, transfer, convey, assign and deliver to Purchaser, free and clear of any Liens, and Purchaser shall purchase, acquire and accept from Sellers, all of Sellers' right, title and interest in and to the Shares.

1.02. Purchase Price.

1.04. Closing. The closing of the Share Purchase (the "Closing") will take place on the fifth business day after satisfaction or waiver (as permitted by this Agreement and applicable law) of the conditions (excluding conditions that, by their terms, cannot be satisfied until the Closing Date) set forth in Article VI (the "Closing Date"), unless another time or date is agreed to in writing by the parties hereto. The Closing shall be held at the offices of Bittner & Hahs, P.C., 1800 Benj. Franklin Plaza, One S.W. Columbia Street, Portland, Oregon 97258, unless another place is agreed to in writing by the parties hereto.

1.05. Deliveries. At the Closing:

(a) each Seller shall deliver, or cause to be delivered, to Purchaser, the certificates evidencing Shares owned by such Seller as set forth on the *Share Ownership Schedule*;

(c) Notwithstanding any other provision of this Agreement, including but not limited to any provision stating that remedies shall be cumulative and not exclusive, and as a condition of the receipt of the Purchase Price, any dispute that may arise between or among the parties, or their representatives (including the Seller Representative and the Trustee) with respect to the calculation of the Adjustment Amount shall be governed and resolved solely and exclusively by this Section 1.06. All parties hereto and their representatives hereby irrevocably waive, relinquish and surrender all rights to, and agree that they will not attempt to, resolve any such dispute or disputes in any manner other than as set forth in this Section 1.06, including but not limited to through litigation. All parties hereto further agree and shall likewise instruct their representatives that if one or more of them should initiate any attempt to resolve any such dispute or disputes in any manner other than the sole and exclusive manner set forth in this Section 1.06, the party who initiates, or whose representatives initiate, such a different dispute resolution shall pay and reimburse all fees, costs and expenses incurred by anyone else as a result of, in connection with or related to said attempt or attempts.

(d) Within five (5) Business Days after the Adjustment Amount shall have been finally determined:

1.07. Seller Representative. Each of the Garrisons and each Class B Shareholder hereby irrevocably appoints Jack Garrison, as its designated agent and representative (“Seller Representative”) and as such Seller’s irrevocable attorney-in-fact to act exclusively on such

Seller's behalf and to exclusively take any and all actions required or permitted to be taken by the Sellers under this Agreement and the Registration Rights Agreement. The Garrisons and the Class B Shareholders shall have the right, at any time and from time to time, to appoint, by written notice to the Purchaser signed by a majority in interest of such Sellers, a replacement Seller Representative, in which event such replacement shall be considered the Seller Representative from and after the date of Purchaser's receipt of notice of such appointment. Seller Representative shall take, and the Garrisons and the Class B Shareholders agree that Seller Representative shall take, any and all actions which Seller Representative believes are necessary or appropriate under this Agreement and the Registration Rights Agreement for and on behalf of Sellers, as fully as if such Sellers were acting on their own behalf. Purchaser shall be entitled to rely upon such appointment without qualification until it receives a written order from a court of competent jurisdiction otherwise. Each of the Garrisons and each Class B Shareholder hereby acknowledges that Purchaser shall be entitled to rely upon as being binding upon each of the Garrisons and each Class B Shareholder any document or other paper believed by it to be genuine and correct and to have been signed or sent by Seller Representative, and Purchaser shall not be liable to any such Seller for any action taken or omitted to be taken by it in such reliance. All fees and expenses of Seller Representative shall be paid by the Garrisons and the Class B Shareholders. Purchaser shall not in any event incur any liability for (i) any such fees or expenses or (ii) any losses, damages or expenses incurred by either of the Garrisons or any Class B Shareholder arising from or related to any action (or failure to act) by Seller Representative, and the Garrisons and the Class B Shareholders agree jointly and severally to indemnify Purchaser for any losses, damages or other expenses suffered by Purchaser due to its reliance on the actions or inactions of the Seller Representative.

ARTICLE II. REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed in the disclosure schedule (the "Disclosure Schedule") delivered in accordance with Section 3.24 of this Agreement, each of the Garrisons, jointly and severally, and the ESOP and each Class B Shareholder, severally and not jointly, represents and warrants to Purchaser as of the date of this Agreement and as of the Closing Date, the following:

2.01. Ownership of Shares. Such Seller is the owner, beneficially and of record, of the Shares set forth opposite its name on the *Share Ownership Schedule*, free and clear of any Liens, except as set forth on the *Share Ownership Schedule*. At the Closing, such Seller will transfer title to all Shares which it owns beneficially and of record as of the Closing Date to Purchaser free and clear of any Liens.

2.02. Authority, Binding Effect. Such Seller is either a natural person or a trust and has the full authority and legal capacity to execute and deliver this Agreement and all other certificates, agreements or other documents to be executed and delivered by such Seller and to consummate the transactions contemplated hereby and thereby. The Trustee has the requisite corporate trust powers under the terms of the ESOP to execute and deliver this Agreement on behalf of the ESOP. This Agreement has been duly executed and delivered by such Seller and this Agreement is a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting

creditors' rights generally and to general principles of equity. Such Seller is a "United States person" within the meaning of the Code.

2.03. No Violations. The execution and delivery by such Seller of this Agreement do not, and the performance and consummation of the transactions contemplated by this Agreement will not, (i) except as set forth on the *No Violations Schedule* with respect to the ESOP Loan, conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation or acceleration (whether after the giving of notice or the lapse of time or both) of any right or obligation of such Seller under, any contract or agreement to which such Seller is a party or to which any of its assets is subject, including without limitation, the ESOP plan and the trust documents or (ii) violate or result in a breach of, or constitute a default under, any Law or Judgment applicable to such Seller or by which such Seller or any of its assets are bound or affected, except, in the cases of clauses (i) and (ii), for any conflict, breach, default, termination, cancellation, acceleration or violation which, individually or in the aggregate, would not reasonably be expected to materially impair Seller's ability to effect the Closing.

2.04. No Other Agreements to Purchase. No Person (other than the Purchaser hereunder) has any written or oral agreement or option or any right or privilege, whether by law, pre-emptive or contractual, capable of becoming an agreement or option for the purchase or acquisition from any of the Sellers of any of the Shares hereunder.

2.05. Brokers and Finders. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of such Seller, or any Affiliate of such Seller, who might be entitled to any fee or commission from such Seller, or any Affiliate of such Seller, in connection with the transactions contemplated by this Agreement.

2.06. Investment Intent. Such Seller hereby acknowledges that any Bally Stock to be delivered to such Seller pursuant to this Agreement is not registered under the Securities Act or registered or qualified for sale under any state securities law and cannot be resold without registration thereunder or exemption therefrom. Such Seller is acquiring such Bally Stock for its own account for investment and not with a view toward the sale or distribution thereof. Such Seller, either alone or together with such Seller's Purchaser Representative (as defined below), has sufficient knowledge and experience in financial and business matters to enable such Seller to evaluate the risks of investment in such Bally Stock and has the ability to bear the economic risks of such investment. Such Seller acknowledges that each certificate representing any or all of the shares of Bally Stock to be issued to such Seller hereunder will bear the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS PURSUANT TO A STOCK PURCHASE AGREEMENT DATED NOVEMBER 29, 1999 AND A REGISTRATION RIGHTS AGREEMENT DATED DECEMBER ___, 1999 AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED UNLESS SUCH RESTRICTIONS ARE COMPLIED WITH AND SUCH SECURITIES ARE REGISTERED PURSUANT TO THE PROVISIONS OF THE ACT AND APPLICABLE

STATE SECURITIES LAWS OR THE HOLDER HEREOF HAS DELIVERED
TO THE ISSUER AN OPINION OF COUNSEL STATING THAT AN
EXEMPTION FROM REGISTRATION IS AVAILABLE.

Each Class B Shareholder hereby irrevocably appoints Daniel F. Barnes, C.P.A., the Company's outside accountant, as such Seller's purchaser representative (the "Purchaser Representative") to assist such Seller in evaluating the merits and risks of an investment in the Bally Stock. All fees and expenses of the Purchaser Representative shall be paid by the Garrisons or the Class B Shareholders.

2.07. Sales Restrictions. Such Seller acknowledges and agrees that such Seller will comply with the restrictions set forth in the Registration Rights Agreement on the sale or disposition of any Bally Stock to be delivered to such Seller pursuant to this Agreement.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF
SELLERS RELATING TO THE COMPANY

Except as disclosed in the Disclosure Schedule delivered in accordance with Section 3.24 of this Agreement, the Garrisons and the Class B Shareholders, jointly and severally (except as otherwise provided in Section 3.09), and the ESOP, severally and only to the extent of its knowledge, represent, warrant and covenant to Purchaser and Parent as of the date of this Agreement and as of the Closing Date, the following:

3.01. Organization. The Company is duly organized, validly existing and in good standing under the Laws of Oregon and has all requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. The Company is duly licensed or qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the nature of its business and ownership of its properties makes such qualification necessary. True and complete copies of the articles of incorporation, by-laws and other organization documents of the Company, each as amended to date, have been delivered to Purchaser.

3.02. Capitalization. The authorized and issued capital of the Company is set forth on the *Capitalization Schedule*. All of the Shares are owned as set forth on the *Share Ownership Schedule*. Except for the Shares and those shares of common stock of the Company owned by shareholders of the Company who are not a party to this Agreement ("Other Securities"), all as set forth on the *Share Ownership Schedule*, there are no other securities of the Company outstanding, other than the Shares. All of the issued and outstanding Shares and Other Securities have been duly authorized, validly issued and are fully paid, nonassessable and free of preemptive rights. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Company to issue, sell, or otherwise cause to become outstanding any common stock or other securities of the Company. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to the Company. All offers and sales of Company common stock, and any other securities issued by the Company,

were at all relevant times exempt from the registration requirements of the Securities Act and were duly registered or the subject of an available exemption from the registration requirements of applicable state securities or "blue sky" laws.

3.03. Subsidiaries. The Company has no Subsidiaries.

3.04. No Violations. The execution, delivery and performance by the Sellers of this Agreement, and the consummation of the transactions contemplated by this Agreement, do not and will not (i) conflict with or violate any provision of the articles of incorporation, by-laws or other organizational documents of the Company, (ii) except as set forth on the *No Violations Schedule*, and subject to obtaining the Required Consents, conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation or acceleration (whether after the giving of notice or the lapse of time or both) of any right or obligation of any of the Company under, any Contract, or (iii) subject to obtaining the Required Consents, violate or result in a breach of or constitute a default under, any Law or Judgment, (iv) create or impose any Lien on any of the Shares or any of the property or assets of the Company or (v) conflict with or violate any of the terms of the ESOP, or (vi) trigger any excise or other Taxes in connection with the ESOP, except, in the cases of clauses (ii) and (iii), for any conflict, breach, default, termination, cancellation or acceleration which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

3.05. Consents and Approvals. Except for the Consent required under the HSR Act and as set forth on the Company *Consents and Approvals Schedule* (the "Required Consents"), no other Consent is required to be obtained by the Company (or by any Affiliate) or the ESOP from, and no notice or filing is required to be given by the Company (or by any Affiliate) or the ESOP to or made by the Company (or by any Affiliate) with, any other Governmental Authority or other Person in connection with the execution, delivery and performance by Sellers of this Agreement, nor are any Consents required under any Contracts to which the Company or any Seller is a party or by which it is bound to give any notice to, or obtain the Consent or approval of, any party to such Contract relating to the consummation of the transactions contemplated by this Agreement.

3.06. Financial Statements.

(a) Set forth on the *Financial Statements Schedule* are the following financial statements (collectively the "Financial Statements"): (i) the Company's consolidated balance sheets and statements of income, changes in owners' equity, and cash flow as of and for the fiscal years ended September 30, 1998 and 1999 and the notes related thereto (the "Reviewed Financial Statements"); and (ii) the Company's consolidated balance sheets and statements of income, changes in owners' equity, and cash flow as of and for the one-month period ended October 31, 1999 (the "Most Recent Fiscal Period") (the "Most Recent Financial Statements") and, together with the Reviewed Financial Statements, the "Financial Statements"). The Financial Statements (including the notes thereto) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except as may be indicated in the notes to such Financial Statements) and present fairly the financial condition of the Company as of such dates and the results of operations of the Company as of the dates and for periods indicated;

provided, however, that the Most Recent Financial Statements are subject to normal and recurring year-end adjustments which will not be material in amount. The Company shall provide Purchaser with copies of the consolidated balance sheets, statements of income, changes in owners' equity and cash flow for each month ending subsequent to the Most Recent Financial Period within twenty (20) days after the end of such month (the "Supplemental Financial Statements"). The Supplemental Financial Statements, when provided to Purchaser, will be prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except as may be indicated in the notes to such Supplemental Financial Statements) and will present fairly the financial condition of the Company as of such date and the results of operations of the Company as of the date and for the period indicated, provided, however, that the Supplemental Financial Statements may be subject to normal and recurring year-end adjustments which will not be material in amount.

(b) Except to the extent reflected or reserved against in the Most Recent Financial Statements, the Company has no Liabilities, except for (i) Liabilities under Contracts which in the aggregate do not materially exceed the aggregate value of the benefits anticipated to be received under such Contracts, and (ii) Liabilities which have arisen after the Most Recent Financial Statements in the ordinary course of business.

(c) The books and records of the Company fairly set out and disclose in accordance with GAAP the financial position of the Company as at the date hereof and all financial transactions of the Company have been accurately recorded in such books and records.

(d) All accruals for premiums for unemployment insurance, health premiums, accrued wages, salaries and commissions and employee benefit plan payments have been reflected in the books and records of the Company.

3.07. Absence of Changes. Except as disclosed on the *Certain Changes Schedule*, since September 30, 1999, the Company has carried on the Business and conducted its operations and affairs only in the ordinary and normal course consistent with past practice and there has not been:

(a) any material adverse change in the condition (financial or otherwise), assets, liabilities, operations, earnings or business of the Company;

(b) any damage, destruction or loss (whether or not covered by insurance) affecting the property or assets of the Company in amounts exceeding \$5,000 in each instance or \$50,000 in the aggregate;

(c) any obligation or liability (whether absolute, accrued, contingent or otherwise, and whether due or to become due) incurred by the Company, other than those incurred in the ordinary and normal course and consistent with past practice or those having a value or a stated or claimed value (whichever is greater) that does not exceed \$10,000 individually or \$20,000 in the aggregate;

(d) any payment, discharge or satisfaction of any Lien, liability or obligation of the Company (whether absolute, accrued, contingent or otherwise, and whether due or to become due) other than payment of accounts payable and tax liabilities incurred in the ordinary course of business consistent with past practice;

(e) any declaration, setting aside or payment of any dividend or other distribution with respect to any shares in the capital of the Company or any direct or indirect redemption, purchase or other acquisition of any such shares;

(f) any issuance or sale by the Company, or any Contract entered into by the Corporation, for the issuance or sale by the Company, of any shares in the capital of or securities convertible into or exercisable for shares in the capital of the Company;

(g) any labor trouble adversely affecting the Company;

(h) any license, sale, assignment, transfer, disposition, pledge, mortgage or granting of a security interest or other Encumbrance on or over any property or assets of the Company, other than sales of inventory to customers in the ordinary and normal course of the Business;

(i) any write-down of the value of any inventory or any write-off as uncollectible of any accounts or notes receivable or any portion thereof of the Company in amounts exceeding \$1,000 in each instance or \$40,000 in the aggregate;

(j) any cancellation of any debts or claims or any amendment, termination or waiver of any rights of value to the Company in amounts exceeding \$1,000 in each instance or \$40,000 in the aggregate;

(k) any general increase in the compensation of employees of the Company (including, without limitation, any increase pursuant to any Employee Plan or commitment), or any increase in any such compensation or bonus payable to any officer, employee, consultant or agent thereof (having an annual salary or remuneration in excess of \$60,000) or the execution of any employment contract with any officer or employee, or the making of any loan to, or engagement in any transaction with, any employee, officer or director of the Company;

(l) any capital expenditures or commitments of the Company in excess of \$10,000 in the aggregate;

(m) any forward purchase commitments in excess of the requirements of the Company for normal operating inventories or at prices higher than the current market prices;

(n) any forward sales commitments other than in the ordinary and normal course of the Business or any failure to satisfy any accepted order for goods or services;

(o) any change in the accounting or tax practices followed by the Company;

(p) any decrease in the amount charged by the Company to new and existing members of the Business for membership fees, except as provided in Membership Contracts already in existence, or

(q) any change in the credit terms offered to customers of, or by suppliers to, the Company.

3.08. Title to Assets, Real Property and Related Matters

(a) Except as indicated on the properties listed on the *Assets Schedules* and the assets reflected on the Most Recent Financial Statements or acquired by the Company since the Most Recent Fiscal Period (other than properties and assets disposed of in the ordinary course of business since the Most Recent Fiscal Period), are owned beneficially by the Company with good and marketable title thereto, free and clear of Liens, except for Permitted Liens.

(b) The *Assets Schedule* lists each lease or agreement to which the Company is a party under which it is a lessee of any material personal property (the "Personal Property Leases"). Except as set forth on the *Assets Schedule*, each Personal Property Lease is a valid agreement, duly authorized and entered into, without any default of the Company thereunder and, to the knowledge of the Sellers, without any default thereunder of any other party thereto. To the knowledge of the Sellers, the Company has not received or given a written notice of default under the Personal Property Leases other than notices with respect to defaults which have either been cured or waived.

(c) The *Assets Schedule* lists all real property leases to which the Company is a party (the "Leased Real Property") and includes, without limitation, any pending audits or disputes known to Sellers related to common area management, taxes or any other fees or charges related to the Leased Real Property. The Company does not own any real property.

(d) With respect to the Leased Real Property and the Facilities:

(i) The Facilities have received all approvals of Governmental Authorities (including permits) required in connection with the ownership or operation thereof and have been operated and maintained in all material respects in accordance with all applicable Laws.

(ii) Except for those rights of use or occupancy specifically identified on the *Assets Schedule*, there are no Contracts granting to any party or parties (other than utilities serving the Facilities) the right of use or occupancy of any portion of the Leased Real Property or the Facilities.

(iii) The Company has no outstanding options or rights of first refusal to purchase any Leased Real Property or any portion thereof or interest therein.

(iv) The Leased Real Property and the present operation, location and configuration of the improvements on the land (including, the Facilities, the side lots, set backs and any parking requirements and other occupancy ratios) (a) do not constitute a

non-conforming use under any zoning or land use Laws or regulations, and (b) are not the subject of any variance or permit pursuant to any zoning or land use Laws or regulations.

(v) The Sellers have no knowledge of any pending or contemplated proceedings to modify or amend any building code or zoning or land use Laws or regulations which affects the present use of the Leased Real Property.

(vi) Each lease related to each of the Leased Real Properties is valid, binding and enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity. The Company has fulfilled, or taken all action necessary to enable it to fulfill when due, all of its material obligations under each such lease and, to the knowledge of the Sellers, all other parties to each such lease have complied in all material respects with the provisions thereof and no party is in default under any such lease. No notice of any claim of default has been given to the Company under any such lease.

(vii) The improvements to, or which constitute a portion of, the Leased Real Property are in good condition and repair, ordinary wear and tear excepted; to the knowledge of Sellers, all building systems located on or which constitute a portion of the Leased Real Property are in good operating condition, including the plumbing, electrical, fire-life-safety and HVAC systems, ordinary wear and tear excepted; and to the knowledge of the Sellers, there are no latent or patent defects in the structural elements of such improvements.

(viii) Except as specifically identified on the *Assets Schedule*, there are no written or oral Contracts, subleases, assignments or commitments of any kind whatsoever with respect to the Company's interest in the Leased Real Property.

(ix) Except for the facility located at 110 S.W. Yamhill Street, Portland, Oregon (the "Yamhill Facility"), none of the Leased Real Property is located in any area designated by any Governmental Authority as an historical or similar area wherein such designation would restrict the ability to rehabilitate, construct or otherwise make changes to the interior or exterior of the Leased Real Property nor do any restrictions of any Governmental Authority exist with respect to the Leased Real Property other than normal zoning regulations or codes of a general nature applicable to all properties within the purview of such general regulations and codes. The historical designation of the Yamhill Facility will not adversely affect Purchaser's ability to operate its health club business at the Yamhill Facility, provided that Purchaser operates its business in a way that is not materially different from the Sellers' current business at the Yamhill Facility.

(x) The Company has obtained all applicable certifications or confirmations of occupancy for each of the Leased Real Properties, and on or before the Closing Date has delivered copies of such certificates to Purchasers.

(xi) The *Assets Schedule* sets forth the number of parking spaces included in the Lease for each Facility (the "Parking Facilities"). Other than restrictions contained in the applicable lease, a copy of which has been provided to Purchaser, there are no restrictions

on the Parking Facilities (other than those that would be disclosed on a title report obtainable by Purchaser), and the Company has sufficient rights of ingress to and egress from the Parking Facilities. The Parking Facilities have received all approvals of Governmental Authorities (including permits) required in connection with the ownership or operation thereof and have been operated and maintained in all material respects in accordance with all applicable Laws.

3.09. Litigation.

(a) Except as set forth on the *Litigation Schedule*, Sellers jointly and severally represent and warrant that there is no action, suit or proceeding, claim, arbitration or investigation ("Action") pending or, to the knowledge of the Sellers, threatened or anticipated, whether by or before any Governmental Authority, private arbitration tribunal, or otherwise, against the Company or any of the Sellers which relates to or affects the Company, any ERISA Affiliate, any Employee Plan or the transactions contemplated hereby.

(b) Except as set forth on the *Litigation Schedule*, the Garrisons, jointly and severally, and the ESOP and the Class B Shareholders, severally and not jointly, represent and warrant that (i) neither such Seller nor, to the knowledge of such Seller, any affiliate, officer, director or employee or any corporate partner or joint venture with such Seller, has been permanently or temporarily enjoined or barred by order, judgment or decree of any Governmental Authority or private arbitration tribunal from engaging in or continuing any conduct or practice in connection with the Company, any ERISA Affiliate or any Employee Plan, (ii) there is not in existence any order, judgment or decree of any private arbitration tribunal requiring such Seller to take any action of any kind which is not required generally of other entities in businesses similar to the Business with respect to the Company, any ERISA Affiliate or any Employee Plan or to which such Seller, any ERISA Affiliate or any Employee Plan are subject or by which such Seller is bound with respect to the Company, any ERISA Affiliate or any Employee Plan and (iii) neither such Seller nor any Employee Plan or any ERISA Affiliate is in default with respect to any judgment, order, writ, injunction or decree of any Governmental Authority, and there are no unsatisfied judgments against the Company, any Employee Plan or any ERISA Affiliate.

3.10. Compliance With Applicable Law.

(a) None of the Sellers has received any notice of any claimed violation of any Laws or Permits relating to or affecting the Company, any ERISA Affiliate or any Employee Plan and, to the knowledge of the Sellers, there is no basis for the allegation of any such violation; and to the knowledge of Sellers, there is no investigation by any person or a Governmental Authority of any claimed violation of Laws pending or, to the knowledge of the Sellers, threatened or anticipated or any basis therefor relating to or affecting the Company, any ERISA Affiliate or any Employee Plan.

(b) The Company has been operated in compliance with all Laws and Permits. Without limiting the foregoing, the operation of the Company and all Membership Contracts are in compliance with the federal Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, the

rules and regulations promulgated thereunder, and the state Laws listed on the *Consumer Laws Schedule*, as applicable to the Company or the Membership Contracts.

3.11. **Permits**. *The Permits Schedule* sets forth each Permit affecting, or relating to, the business and operations of the Company. All such Permits are valid and in full force and effect and none of such Permits will, assuming the related Required Consents have been obtained, be terminated or impaired or become terminable as a result of the transactions contemplated by this Agreement. The Company has all Permits required to conduct its business as currently conducted, and the Company has operated its business in compliance with the terms of all such Permits.

3.12. **Environmental Matters**

(a) The Facilities are, and at all times during the Company's tenancy have been, owned or leased and operated in material compliance with all Environmental Laws and in a manner that will not give rise to any Liability under any Environmental Laws. Without limiting the foregoing, except as used in the ordinary course of business and in compliance with all Environmental Laws, (i) there is not and has not been any Hazardous Substance used, generated, treated, stored, transported, disposed of, handled or otherwise existing on, under, about or emanating from any Facility and (ii) there is not now and has not been at any time during the Company's tenancy any underground or above-ground storage tank or pipeline at any Facility where the installation, use, maintenance, repair, testing, closure or removal of such tank or pipeline was not in compliance with all Environmental Laws and there has been no Release from or rupture of any such tank or pipeline, including, without limitation, any Release from or in connection with the filling or emptying of such tank.

(b) The Company has all Environmental Permits relating to its business required under any Environmental Law or the provisions of any Environmental Law relating to its business and each Facility is in material compliance with all such Environmental Permits.

(c) The Company has not received any notice of alleged, actual or potential responsibility for (i) any Release or threatened Release of any Hazardous Substance at any location, whether at the Facilities or otherwise or (ii) an alleged violation of or non-compliance with the conditions of any Environmental Permit or the provisions of any Environmental Law. The Company has received no notice of any other Proceeding by any Person alleging any actual or threatened injury or damage to any Person, property, natural resource or the environment, arising from or relating to any Release or threatened Release of any Hazardous Substances at, on, under, in, to or from any Facilities or in connection with any operations or activities of the Company.

(d) There is not now pending or, to the Sellers' knowledge, threatened any Proceeding against the Company under any Environmental Law or otherwise with respect to any Release or mishandling of any Hazardous Substance.

(e) There are no consent decrees, judgments, directives judicial or administrative orders or agreements with, or liens by, any Governmental Authority or quasi-

governmental entity relating to any Environmental Law which regulate, obligate or bind the Company.

(f) There are, to the Sellers' knowledge, no present or past Environmental Conditions that would give rise to Liability for the Company.

(g) True, complete and correct copies of the written reports, and all parts thereof, of all environmental audits, investigations and/or assessments which have been conducted at any Facility or former Facility within the past 5 years, either by any Governmental Authority (a copy of which was provided to Sellers or the Company or which Sellers or the Company otherwise had knowledge) or by the Company or any attorney, environmental consultant or engineer engaged by the Company for such purpose, have been made available to Purchaser, and a list of all such reports, audits, investigations and assessments and any other similar report, audit, investigation or assessment is included in the Disclosure Schedule.

(h) The Company is not a party, whether as a direct signatory or as successor, assign or third party beneficiary, or otherwise bound, to any Lease or other Contract (excluding insurance policies and Facility leases specifically identified on the *Environmental Matters Schedule*) under which the Company is obligated by or entitled to the benefits of, directly or indirectly, any representation, warranty, indemnification, covenant, restriction or other undertaking concerning Environmental Conditions.

(i) Except for releases contained in Facility Leases specifically identified on the *Environmental Matters Schedule*, the Company has not released any Person from any claim under any Environmental Law or waived any rights concerning any Environmental Condition.

(j) The Company has given all notices and warnings, made all reports, and has kept and maintained all records required by and in compliance with all Environmental Laws.

3.13. Brokers and Finders. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of any of the Sellers or the Company who might be entitled to any fee or commission from the Company or any Affiliate of the Company in connection with the transactions contemplated by this Agreement.

3.14. Contracts; Membership Contracts.

(a) The *Contracts Schedule* is a true and correct list of each Contract (excluding Membership Contracts) to which the Company is a party or by which any of the assets of any Company are bound or affected. A true, correct and complete copy of all Contracts and each written, and a description of each oral, Contract so listed have been delivered or made available to Purchaser or its counsel. Each Contract is legal, valid, binding, enforceable (except as such enforceability may be limited by (a) bankruptcy, insolvency, moratorium, reorganization and other similar Laws affecting creditors' rights generally and (b) the general principles of equity, regardless of whether asserted in a proceeding in equity or at Law) and in full force and effect.

Neither the Company nor to Sellers' knowledge, any other party, is in material breach or default, and no event has occurred which with notice or lapse of time could constitute a material breach or default or permit termination, modification or acceleration, under any Contract. No party has repudiated any term of any Contract, and there are no renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to the Company under current or completed Contracts with any Person, and no such Person has made written demand for such renegotiation.

(b) The *Membership Contracts Schedule* sets forth (i) a true, correct and complete list of members and Membership Contracts, together with detailed true, current and complete information relating to renewals and aging schedules of membership tenure, including specific information with respect to additions and deletions for each month, and membership dues and initiation fees or the equivalent thereof for the Company and (ii) a detailed schedule of the Company's pre-paid membership months showing the aggregate number of pre-paid membership months for each month in the one year period prior to the date of this Agreement and including specific information with respect to additions and deletions for each month. The *Membership Contracts Schedule* contains a true, correct and complete set of forms of Membership Contracts used by the Company, and all such Membership Contracts comply with applicable Laws. Except as set forth on the *Complementary Memberships and Trade-Outs Schedule*, the Company has not accepted membership applications or entered into Membership Contracts that do not provide for payment of periodic dues or annual fees at normal and customary rates, and the Company has not entered into any other arrangement under which any Person may use the Business without cost (e.g. complementary memberships), at a reduced cost, or in exchange for goods or services (e.g., trade-outs). All Membership Contracts entered into by the Company arose from valid sales in the ordinary course of business in accordance with all Laws, and those listed on the *Membership Contracts Schedule* (the "Existing Membership Contracts") are valid and binding Contracts, enforceable by the Company in accordance with their terms, subject to bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity. Any allowances for cancellations and doubtful accounts on the Existing Membership Contracts are reflected in the Most Recent Financial Statements, or have been incurred in the ordinary course of business since such date. The establishment of allowances for cancellations and doubtful accounts on the Existing Membership Contracts on the books of the Company have been effected in a manner and method in accordance with GAAP and consistent with past practices. Since the Latest Financial Statements, the Company has not engaged in or offered any special promotion programs or discount programs for membership, or otherwise discounted outside the ordinary course of business. Except as set forth on the *Membership Contracts Schedule*, no member has prepaid dues or membership fees or otherwise paid dues or membership fees in respect of periods after the date of this Agreement.

3.15. Intellectual Property. The *Intellectual Property Schedule* lists all patents, registered trademarks, registered business names, registered service marks, trade names and registered copyrights and all applications for registration for any of the foregoing owned by the Company as of the date of this Agreement or exclusively licensed for use in the conduct of the Business as of the date of this Agreement (collectively, the "Intellectual Property"). Except as set forth on the *Intellectual Property Schedule* and subject to obtaining the Required Consents associated with licenses of any of the foregoing held by the Company which are in effect as of the

date of this Agreement, (i) the Company possesses the right to conduct its business, as regards such patents, registered trademarks, registered business names, registered service marks, trade names, registered copyrights or equivalent rights of exclusion or limitation possessed by third parties under the various laws of the jurisdictions in which these businesses are now conducted, and (ii) there is no material claim by any Person or any Proceeding pending or, to the knowledge of Sellers, threatened which relates to the use of any of the Intellectual Property by the Company, or the validity or enforceability of the Intellectual Property or the rights of the Company. Sellers have no knowledge of any infringement or improper use by any third party of the Intellectual Property. To Seller's knowledge, the Company has not taken or omitted to take any action which action or omission to act would have the effect of waiving any material rights to the Intellectual Property.

3.16. Tax Matters.

(a) The Company has timely filed with the appropriate taxing or other governmental authorities all Tax Returns required to be filed through the date hereof. The Tax Returns and information filed are complete, correct and accurate in all respects. Except as set forth in the *Tax Schedule*, the Company has not requested any extension of time within which to file any such Tax Returns. Sellers have delivered to Parent complete and accurate copies of the Company's federal, state and local Tax Returns for its last five fiscal years.

(b) All Taxes for which the Company is or may be liable, in respect of periods or portions thereof ending on or before the Closing Date, shall have been paid, or an adequate reserve (in conformity with GAAP) has been established therefor, and the Company has no liability for Taxes in excess of the amounts so paid or reserves so established. All Taxes that the Company has been required to collect or withhold have been duly collected or withheld and, to the extent required when due, have been or will be duly paid to the proper taxing or other governmental authority.

(c) Except as set forth in the *Tax Schedule*, no deficiencies for Taxes of the Company have been claimed, proposed or assessed by any taxing or other governmental authority. There are no pending or, to the best of the Sellers' knowledge, threatened audits, suits, proceedings, actions, investigations or claims for or relating to any liability in respect of Taxes of the Company, and there are no matters under discussion with any taxing or other governmental authority with respect to Taxes of the Company. Audits of federal, state, local and foreign Tax Returns by the relevant taxing or other governmental authorities have been completed for the periods set forth in the *Tax Schedule*. The Company has not been notified that any taxing or other governmental authority intends to audit a Company Tax Return for any other period. No extension of a statute of limitations relating to Taxes is in effect with respect to the Company. To the knowledge of Sellers, no claim has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation in that jurisdiction.

(d) All elections of a material nature with respect to Taxes affecting the Company as of the date hereof are set forth in the *Tax Schedule*. The Company has not made an election, and is not required, to treat any asset of the Company as owned by another person or as tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168

of the Code or under any comparable provision of state or local Tax law. The Company has not filed a consent pursuant to the collapsible corporation provisions of Section 341(f) of the Code (or any corresponding provision of state or local law) or agreed to have Section 341(f)(2) of the Code (or any corresponding provision of state or local law) apply to any disposition of any asset owned by it.

(e) There are no liens for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company. The Company has not agreed to make, nor is required to make, any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise for any taxable year. The Company is not and has not been a party to any joint venture, partnership or other arrangement or contract that could be treated as a partnership for federal, state, local or foreign Tax purposes.

(f) The Company has never been a member of an affiliated group of corporations, within the meaning of Section 1504 of the Code or any comparable provision of state, local or foreign Tax law, nor has the Company or any present or former Subsidiary, or any predecessor or affiliate of any of them, become liable (whether by contract, as transferee or successor, by law or otherwise) for the Taxes of any other person or entity under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign law. The Company is not a party to or bound by any binding tax sharing, tax indemnity or tax allocation agreement or other similar arrangement with any other party.

(g) The Company has not been a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. The transactions contemplated herein are not subject to the Tax withholding provisions of Section 3406 or of Subchapter A of Chapter 3 of the Code or of any other provisions of federal, state, local or foreign law.

(h) The Company has properly requested, received and retained all necessary exemption certificates and other documentation supporting any claimed exemption or waiver of Taxes on sales or other transactions as to which the Company would have been obligated to collect or withhold Taxes.

3.17.1 Employment Matters - Personnel Information

(a) Neither the Company nor any Affiliate of the Company is a party to or bound by any written employment or consulting agreement, any individual severance or other compensation agreement, any collective bargaining agreement or other labor agreement, or any stock option, Share Purchase, profit sharing, deferred compensation, bonus or other incentive compensation contract, plan or arrangement relating to the Business (collectively, "Employee Arrangements") nor to Sellers' knowledge any such oral Employee Arrangements except as set forth on the *Personnel Information Schedule*.

(b) The *Personnel Information Schedule* contains a true and complete list of all persons employed by the Company in connection with the operation of the business, including date of hire, a description of material compensation arrangements (other than employee

benefit plans set forth on the *Employee Plans Schedule*) and a list of other terms of any and all agreements affecting such persons. Sellers will promptly advise Purchaser upon obtaining knowledge that any employee material to the Company intends to terminate his or her employment with the Company.

(c) Except as set forth on the *Personnel Information Schedule*, the Company has not agreed to recognize any union or other collective bargaining unit, nor has any union or other collective bargaining unit been certified as representing any of the Company's employees in the business. Sellers have no knowledge of any organizational effort currently being made or threatened by or on behalf of any labor union with respect to employees of the Company. There is no labor strike, slowdown, work stoppage or lockout actually pending or threatened against the Company.

(d) Except as listed or described on the *Personnel Information Schedule*, the Company (i) has no written personnel policy, (ii) is and has been in substantial compliance in all material respects with all applicable Laws regarding employment and employment practices and those laws relating to terms and conditions of employment, wages and hours, occupational safety and health and workers' compensation and is not engaged in any unfair labor practices, (iii) has no unfair labor practice charges or complaints pending or, to the knowledge of Sellers, threatened against it before any Governmental Authority or arbitrators, (iv) has no grievances pending or, to the knowledge of Sellers, threatened against it, and (v) has no charges pending before agencies of any province or locality responsible for the prevention of unlawful employment practices.

3.17.2 Employment Matters - Employee Plans

(a) The *Employee Plans Schedule* lists each employee benefit plan (as defined in Section 3(3) of ERISA and all plans, programs, policies or arrangements, including, but not limited to, pension, bonus, deferred compensation, incentive compensation, Share Purchase, supplemental retirement, severance or termination pay, thrift, savings, stock option, salary continuation, vacation, supplemental unemployment benefit, profit-sharing, or retirement plan, maintained, or contributed to (or required to be contributed to), by the Company or by any ERISA Affiliate whether or not is funded, formal or informal, or legally binding or not (collectively, the "Benefit Plans"). The Company has made available to Purchaser (i) true and complete copies of all Benefit Plans (or in the case of unwritten Benefit Plans, descriptions thereof), including, without limitation, with respect to each Benefit Plan, all amendments to the Benefit Plans, and any trust or other funding arrangement, (ii) Form 5500s for each Benefit Plan for the two most recent plan years, (iii) the most recently completed actuarial valuation for each Benefit Plan for which an actuarial report is required by ERISA or for financial reporting purposes, and (iv) the most recent summary plan description for each Benefit Plan for which a summary plan description is required by ERISA.

(b) None of the Benefit Plans which is a "pension plan" within the meaning of Section 3(2) of ERISA (a "Pension Plan") is a "multiemployer plan" as defined in Section 3(37) of ERISA, or is subject to the requirements of Title IV of ERISA, Section 302 of ERISA or Section 412 of the Code. Neither the Company nor any ERISA Affiliate has any

material liability to under Title IV of ERISA. Each Pension Plan that is intended to be “qualified with in the meaning of Section 401(a) of the Code has received a determination letter from the IRS that it is so qualified, and no fact or event has occurred since the date of such determination letter that should adversely affect the qualified status of any such Pension Plan.

(c) Neither the Company nor any ERISA Affiliate has incurred any liability for any penalty or tax under Sections 4971, 4972, 4975, 4976, 4979, or 4980 of the Code or Section 502 of ERISA.

(d) Each of the Benefit Plans that is a “group health plan” (as defined in Code Section 5000(b)) has at all times been in material compliance with the provisions of Section 4980B of the Code and Parts 6 and 7 of Title I of ERISA and any similar applicable state laws. No Benefit Plan that is a “welfare plan” (as defined in Section 3(1) of ERISA) (the “Welfare Plans”) provides or promises post-retirement health or life benefits to current employees or retirees of the Company, except to the extent required under any applicable state law or under Section 601 of ERISA. Each Welfare Plan contains a procedure for amendment and termination of such plan.

(e) No Benefit Plan is funded by a trust described in Section 501(c)(9) of the Code or subject to the provisions of Section 505 of the Code.

(f) Full payment of all amounts has been made to each Benefit Plan which are required to be made as contributions thereto, under applicable Law or under any Benefit Plan or any agreement relating to a Benefit Plan as of the last day of the most recent fiscal year of such Benefit Plan ended prior to the date hereof. The Company has made adequate provision for reserves to meet contributions that have not been made because they are not yet due under the terms of any Benefit Plan or related agreements. Benefits under all Benefit Plans are as represented and have not been increased subsequent to the date as of which documents have been provided.

(g) Except as set forth in *Employee Plans Schedule* the execution and delivery of, and performance of the transactions contemplated by, this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Benefit Plan or individual agreement that will or may result in any payment (whether of severance pay or otherwise), acceleration, vesting or increase in benefits with respect to any employee.

(h) No amount that could be received (whether in cash or property or the vesting of property) as a result of the consummation of the transactions contemplated by this Agreement by any employee, officer or director of the Company or any Subsidiary who is a “disqualified individual” (as such term is defined in proposed Treasury Regulation Section 1.280G-1) under any employment, severance or termination agreement, other compensation arrangement or Benefit Plan currently in effect could be characterized as an “excess parachute payment” (as defined in Section 280G(b)(1) of the Code).

(i) All applicable filings, notice or reports (including without limitation, annual reports filed on IRS Form 5500 and disclosure to participants and beneficiaries) relating to any Benefit Plan have been timely made.

(j) The ESOP has been duly adopted and established as a grantor trust in accordance with the laws of the State of Oregon. The ESOP is qualified under Section 401 of the Code and meets the requirements of an "employee stock ownership plan" within the meaning of Section 4975(e)(7) of the Code and 407(d)(6) of ERISA. The Trustee has all requisite trust powers to enter into the transactions contemplated by this Agreement.

3.18. Accounts Receivable; Prepaid Membership Dues

(a) The *Accounts Receivable Schedule* is a true, correct and complete listing of the accounts receivables of the Company as of the date thereof. There will be no reserves for doubtful receivables and uncollectible accounts reflected on the books of the Company as of the Closing Date, nor would any such reserve be required under GAAP. The accounts receivable as reflected on the books of the Company as of the Closing Date represent valid claims that have arisen in the ordinary course of business and, to the knowledge of Sellers, will be collectible to the extent then due in the ordinary course of business within 90 days after the date due, without resort to legal proceedings. The accounts receivable under the Membership Contracts represent valid claims that have arisen in the ordinary course of business

(b) The aggregate number of all prepaid membership months for all members with respect to months remaining in memberships after the date hereof does not exceed

3.19. Insurance. The *Insurance Schedule* contains a complete and accurate list of all existing and valid policies of fire, liability, title, worker's compensation, product liability and other forms of insurance and showing as to each policy the carrier, policy number, coverage limits, expiration dates, annual premiums, a general description of the type of coverage provided and a brief summary of the loss experience history by line of coverage) maintained by the Company on its business, assets or employees. All insurance coverage applicable to the Company, its business and assets is in full force and effect, and provides coverage as may be required by applicable Laws and by any Contracts to which the Company is a party. The Company is not in default under any such coverage nor has the Company failed to give notice or present any claim under any such coverage in a due and timely fashion. There are no outstanding unpaid premiums except in the ordinary course of business and no notice of cancellation or non-renewal of any such coverage has been received. To the knowledge of Sellers, there are no facts upon which an insurer might be justified in reducing coverage or increasing premiums on existing policies.

3.20. Accounts and Powers of Attorney. The *Accounts and Attorneys Schedule* sets forth a true and complete list showing:

(a) the name of each bank, trust company or similar institution in which the Company has accounts or safe deposit boxes, the number or designation of each such account

and safe deposit box and the names of all persons authorized to draw thereon or to have access thereto; and

(b) the name of each person, firm, corporation or business organization holding a general or special power of attorney from the Company and a summary of the terms thereof.

3.21. **Business of the Company.** The Business is the only business operation carried on by the Company, and in Sellers' reasonable judgment the property and assets owned or leased by the Company reasonably are sufficient to carry on its Business. During the three years preceding the date of this Agreement, there has not been any significant interruption of operations (being a interruption of more than one day) of the Business due to inadequate maintenance of any of the property and assets owned and used by the Company. All the tangible assets of each such Company are situated at the locations of the Leased Real Property.

3.22. **Non-Arm's Length Transactions.** The Company has not since October 1, 1999, made any payment or loan to, or borrowed any moneys from or is otherwise indebted to, any officer, director, employee, shareholder/partner or any other person not dealing at arm's length with the Company, except as disclosed in the Financial Statements and except for usual employee reimbursements and compensation paid in the ordinary and normal course of the business. Except for Contracts of employment disclosed on the *Personnel Information Schedule*, and as otherwise disclosed on the *Non-Arms Length Transactions Schedule* the Company is not a party to any Contract with any officer, director, employee, shareholder or any other person not dealing at arm's length with such Company. No officer, director, or shareholder of the Company and no entity that is an Affiliate of one or more of such individuals:

(a) owns, directly or indirectly, any interest in (except for shares representing less than 1% of the outstanding shares of any class or series of any publicly traded company), or is an officer, director, partner, employee or consultant of, any person which is, or is engaged in business as, a competitor of the Company or a lessor, lessee, supplier, distributor, sales agent or customer of the Company;

(b) owns, directly or indirectly, in whole or in part, any property that the Company uses in the operation of the Business; or

(c) has any cause of action or other claim whatsoever against, or owes any amount to, the Company, except for any liabilities reflected in the Financial Statements and claims in the ordinary and normal course of business, such as for accrued vacation pay and accrued benefits under the Employee Plans.

3.23. **Disclosure.** None of the representations, warranties or statements by the Sellers in this Agreement or any document or certificate delivered pursuant to this Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make the statements or facts contained herein not misleading. To the Sellers' knowledge, there is no fact in existence which has, or is reasonably likely to have, a

Material Adverse Effect which has not been expressly set forth in this Agreement, or in the other documents described herein.

3.24. Disclosure Schedule.

(a) (i) Not later than 20 days after the date of this Agreement, the Seller Representative shall deliver to Purchaser the Disclosure Schedule referred to in this Article III, which shall contain certain information regarding the Sellers and the Company as indicated at various places in this Agreement and shall be attached to and shall form a part of this Agreement upon acceptance by Purchaser or as provided below. Each Seller hereby authorizes the Seller Representative to prepare, submit and modify the Disclosure Schedule as provided herein, and each Seller hereby accepts and ratifies this Agreement when such Disclosure Schedule is attached hereto, as if they had executed and delivered this Agreement with the Disclosure Schedule attached hereto.

(ii) Purchaser shall review the Disclosure Schedule delivered by the Seller Representative, and if Purchaser determines, in its sole discretion, that the Disclosure Schedule is in form and substance (including the acceptability of any matters disclosed thereon) satisfactory in all respects, Purchaser shall so notify the Seller Representative. If Purchaser determines, in its sole discretion, that the Disclosure Schedule is not satisfactory, Purchaser shall so notify the Seller Representative and shall specify the item or items listed thereon, or omitted therefrom, to which Purchaser objects. Purchaser and the Seller Representative will discuss Purchaser's objections to the Disclosure Schedule, and they may amend this Agreement or take such other action as they may agree such that Purchaser, in its sole discretion, will approve the Disclosure Schedule.

(iii) If, within 20 days after providing such objections, Purchaser and the Seller Representative are unable to resolve such matters and Purchaser has not approved the Disclosure Schedule, Purchaser may terminate this Agreement under Section 7.01(f).

(b) From time to time after the date the Seller Representative initially delivers the Disclosure Schedule pursuant to Section 3.24(a) hereof (the "Delivery Date") and prior to the date that is seven (7) days prior to the Closing Date, the Seller Representative will promptly supplement or amend the Disclosure Schedule (each such supplement or amendment, a "Schedule Supplement") with respect to any event, condition or matter arising or discovered after the Delivery Date or which was inadvertently omitted from the Disclosure Schedule which, if existing, occurring or discovered at or prior to the Delivery Date would have been required to be set forth or described in the Disclosure Schedule or which is necessary to correct any information in a schedule or in any representation and warranty of the Sellers which has been rendered inaccurate thereby. Purchaser shall review each such Schedule Supplement and, if Purchaser determines, in its sole discretion, that such Schedule Supplement is in form and substance (including the acceptability of any matters disclosed thereon) satisfactory in all respects, Purchaser shall so notify the Seller Representative and, following Purchaser's approval, such Schedule Supplement will be deemed to be a part of the Disclosure Schedule for purposes of determining the accuracy of the representations and warranties of the Sellers contained in this Agreement in order to determine the fulfillment of the conditions set forth in Sections 6.01, 6.02 and 6.03, for

purposes of the termination provisions set forth in Article VII, and for the purposes of the indemnification provisions set forth in Article VIII. If Purchaser determines, in its sole discretion, that such Schedule Supplement is not satisfactory, Purchaser shall so notify the Seller Representative of its objections. Purchaser and the Seller Representative will discuss Purchaser's objections to such Schedule Supplement and they may amend this Agreement or take such other action as they may agree such that Purchaser, in its sole discretion, will approve such Schedule Supplement. If, within seven (7) days after providing such objections, Purchaser and the Seller Representative are unable to resolve such matters and Purchaser has not approved such Schedule Supplement, Purchaser may terminate this Agreement under Section 7.01(g).

(c) All information set forth in the Disclosure Schedule will be true, correct and complete in all material respects as of the Delivery Date, will not omit to state any material fact necessary in order to make the statements therein not misleading, and shall be deemed for all purposes of this Agreement to constitute part of the representations and warranties under this Article. Each of the documents and other writings furnished to the Purchaser pursuant to this Agreement is or will be true, correct and complete in all material respects as of the date furnished and does not, or when delivered, will not, omit to state any material fact necessary in order to make the statements therein not misleading. The Sellers shall promptly provide the Purchaser with written notification of any material event, occurrence or other information of any kind whatsoever necessary to maintain this Agreement including the Disclosure Schedule, and all other documents and writings furnished to the Purchaser pursuant to this Agreement as true, correct and complete in all material respects at all times prior to and including the Closing Date; provided that no such notification by Sellers shall be deemed to amend or modify the representations and warranties made by Sellers herein for any purpose under this Agreement, including without limitation, the conditions to Closing under Article VI or Sellers' indemnification obligations under Article VIII.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER

Each of Parent and Purchaser represents and warrants to Sellers as of the date hereof and as of the Closing Date, the following:

4.01. Organization. Each of Parent and Purchaser is duly organized, validly existing and in good standing under the laws of Delaware.

4.02. Authorization. Each of Parent and Purchaser has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by Parent and Purchaser have been duly and validly authorized by all necessary action of Parent and Purchaser and no additional authorization on the part of Parent or Purchaser is necessary in connection with the execution, delivery and performance by Parent and Purchaser of this Agreement.

4.03. Binding Effect. This Agreement has been duly executed and delivered by Parent and Purchaser and this Agreement is a legal, valid and binding obligation of Parent and Purchaser, enforceable against Parent and Purchaser in accordance with its terms, subject to

applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

4.04. **No Violations**. The execution and delivery by Parent and Purchaser of this Agreement do not, and the performance and consummation of the transactions contemplated by this Agreement will not, (i) conflict with or violate any provision of the certificate of incorporation, bylaws or other organizational documents of Parent or Purchaser, (ii) conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation or acceleration (whether after the giving of notice or the lapse of time or both) of any right or obligation of Parent or Purchaser under, any note, bond, mortgage, indenture, Permit, license, lease, agreement, contract, arrangement or commitment to which Parent or Purchaser is a party or by which Parent or Purchaser or any of their respective assets or properties are bound or affected, or (iii) violate or result in a breach of or constitute a default under any Law or Judgment applicable to Parent or Purchaser or by which Parent or Purchaser or any of their respective assets are bound or affected, except, in the cases of clauses (ii) and (iii), for any conflict, breach, default, termination, cancellation, acceleration, loss or violation which, individually or in the aggregate, would not materially impair Parent or Purchaser's ability to effect the Closing.

4.05. **Consents and Approvals**. Except for the Consent required under the HSR Act, no Consent is required to be obtained by Parent or Purchaser or any Affiliate from, and no notice or filing is required to be given by Parent or Purchaser or any Affiliate to or made by Parent or Purchaser or any Affiliate with, any Governmental Authority or other Person in connection with the execution, delivery and performance by Parent or Purchaser of this Agreement, other than in all cases where the failure to obtain such Consent or to give or make such notice or filing would not, individually or in the aggregate, materially impair Parent's or Purchaser's ability to effect the Closing.

4.06. **Reports and Financial Statements**

(a) Parent has filed all required reports, schedules, forms, statements and other documents required to be filed by it with the SEC since January 1, 1998 (collectively, including all exhibits thereto, the "**Parent SEC Reports**"). None of the Parent SEC Reports, as of their respective dates (and, if amended or superseded by a filing prior to the date of this Agreement or of the Closing Date, then on the date of such filing), contained or will contain any untrue statement of a material fact or omitted or will omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the financial statements (including the related notes) included in the Parent SEC Reports presents fairly, in all material respects, the consolidated financial position and consolidated results of operations and cash flows of Parent and its Subsidiaries as of the respective dates or for the respective periods set forth therein, all in conformity with GAAP consistently applied during the periods involved except as otherwise noted therein, and subject, in the case of the unaudited interim financial statements, to normal and recurring year-end adjustments that have not been and are not expected to be material in amount. All of such Parent SEC Reports, as of their respective dates (and as of the date of any amendment to the respective Parent SEC Report), complied as to form in all material respects with the

applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder.

(b) Except as set forth in the Parent SEC Reports filed prior to the date of this Agreement, and except for liabilities and obligations incurred in the ordinary course of business consistent with past practice since December 31, 1998, neither Parent nor any of its Subsidiaries has any liabilities or obligations of any nature which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on Parent or could reasonably be expected to prevent or materially delay the performance of this Agreement by Parent and Purchaser.

4.07. Absence of Certain Changes or Events. Except as expressly disclosed in the Parent SEC Reports filed prior to the date of this Agreement, since December 31, 1998, Parent and its Subsidiaries have conducted their respective businesses in the ordinary course and there has not been a Material Adverse Effect on Parent or any development or combination of developments of which management of Parent has knowledge which is reasonably likely to result in such an effect.

4.08. No Vote Required. Except as required by the terms of the ESOP, no vote or approval of the holders of any class of Parent or Purchaser shares is necessary to approve this Agreement and the transactions contemplated hereby.

4.09. Brokers and Finders. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Parent or any Affiliate of Parent who might be entitled to any fee or commission from Parent or Purchaser or any Affiliate of Parent in connection with the transactions contemplated by this Agreement.

ARTICLE V. COVENANTS

5.01. Conduct of the Business Pending the Closing. During the period from the date of this Agreement to the Closing, except as otherwise contemplated by this Agreement or as Parent shall otherwise consent in writing, the Company shall, and each Seller shall cause the Company to, conduct its business and operations in the ordinary and usual course in a manner consistent with past practice, and use all commercially reasonable efforts to preserve intact the Company present business organization, to make available to Purchaser the services of the officers and employees of the Company, to preserve the good will and relationships with members, suppliers and others having business dealings with the Company, to maintain the books and records of the Company in the regular manner, to pay the proper amount of installments of Taxes within the time prescribed under any applicable legislation, to make adequate provision in the financial statements of the Company for the Taxes in respect of periods or portions thereof ending on or before the Closing Date which are not yet due and payable and for which Tax Returns are not yet required to be filed, to perform in all material respects all of its obligations under the Contracts, and to cause the Company to comply in all material respects with all applicable Laws (except to the extent any non-compliance is reflected in the Disclosure Schedule) all to the end that the businesses and operations of the Company as going concerns shall be

unimpaired and transferred to Purchaser at the Closing. Without limiting the foregoing, during the period from the date of this Agreement to the Closing, except as otherwise provided for in this Agreement or as Purchaser shall otherwise consent, other than in the ordinary course of business, the Company shall not and Sellers shall not permit the Company to:

(a) commence or enter into arrangements for any capital expenditure that is in excess of \$10,000 or aggregate capital expenditures that are in excess of \$10,000;

(b) dispose of any capital assets if the greater of the book value or the fair market value, individually or in the aggregate, of such assets exceeds

or incur, create or assume any Lien on any individual capital asset if the greater of the book value or the fair market value of such capital asset exceeds \$5,000, other than Permitted Liens;

(c) enter into any contract or other commitment (including any hedging arrangement or other derivative transaction) in excess of \$10,000 or that has a term of, or requires the performance of any obligations over a period in excess of, three years, or incur any indebtedness for money borrowed;

(d) except as required by Law or the terms of any existing Contract, increase the salary, wage, rate of compensation, commission, bonus or other direct or indirect remuneration payable to, or other compensation of, any employee or enter into any contract or other binding commitment in respect of any such increase except in the ordinary course of business or as consistent with past practice (such increase not to exceed 2% of such Company's current payroll costs, in the aggregate), nor amend, adopt or terminate any Employee Plan covering employees of the Company that would increase the liability of the Company or enter into any negotiation in respect of or enter into any collective bargaining agreement covering employees of the Company;

(e) amend in any respect any Contract that would materially adversely affect the use and enjoyment thereof by Purchaser, or terminate any of the Contracts (except with respect to termination of Contracts caused by the termination or default of any other party thereto) or default in the performance of any material covenant or obligation thereunder which default is not cured within any applicable grace period;

(f) change its pricing or sales practices;

(g) merge with or into or consolidate with any other Person or acquire any business or assets of any other Person, except for consummation of the transactions relating to Dejac Investments, Inc. as described on the *Non-Arms Length Transactions Schedule*;

(h) amend its, articles of incorporation or by-laws or equivalent governing documents;

(i) purchase or acquire an option to purchase or enter into any other agreement or obligation to purchase any securities of any Person, except for any repurchases of

Shares from a Class B Shareholder pursuant to an existing Buy-Sell Agreement between the Company and such Class B Shareholder, a copy of which has been delivered to Purchaser;

(j) issue or sell any capital stock or other securities, options, warrants, calls or other rights to acquire such stock;

(k) pay any dividend or make any other distribution in respect of the Company's common stock or other securities except for any payments to Class B Shareholders in connection with a repurchase of Shares pursuant to an existing Buy-Sell Agreement between the Company and such Class B Shareholder, a copy of which has been delivered to Purchaser;

(l) make any change in the key management structure, including without limitation, the hiring of additional officers;

(m) willingly allow or permit to be done any act by which any of its insurance policies may be suspended, impaired or canceled;

(n) make any loans or advances to any Person, except for loans or advances (i) with respect to the relocation of employees consistent with past practice, or (ii) incurred in the ordinary course of business by employees;

(o) make any new elections with respect to Taxes, or changes in current elections with respect to Taxes;

(p) settle any Tax audit or dispute with any taxing or governmental authority; or

(q) agree or commit to do any of the foregoing.

5.02. Access to Information; Confidentiality

(a) The Sellers will cause the Company to permit representatives of the Purchaser to have full access (including without limitation, access in connection with Purchaser's review of the Disclosure Schedule pursuant to Section 3.24(a)) at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Company, to all premises, properties, personnel, books, records (including tax records), contracts and documents of or pertaining to the Company; provided, however, that, prior to the expiration or termination of any waiting period required by any Governmental Authority or other similar laws applicable to the transaction, each party shall only be permitted such reasonable access which, in its discretion, after consultation with counsel, is appropriate during such review process. No information or knowledge obtained in any investigation pursuant to this Section 5.02 shall affect or be deemed to modify any representation or warranty contained in the Agreement or the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement. The confidentiality of all such documents and information furnished in connection with the transactions contemplated by this Agreement shall be governed by the terms of the Confidentiality Agreement.

(b) Without limiting the terms of the Confidentiality Agreement, except for disclosures required to enable Gold's Gym Franchising, Inc. ("Gold's") to exercise any right of first refusal which may exist under the existing license agreements between Gold's and the Company identified on Exhibit A (the "Gold's License Agreements"), disclosures required to obtain the Required Consents or other disclosures approved by Purchaser, none of the Sellers or the Company shall disclose the terms or existence of this Agreement or the subject matter or terms of any of the transactions contemplated hereby to any other person or entity. Notwithstanding the foregoing, this Section 5.02(b) shall not prohibit a Seller or the Company from making any disclosure which, in the reasonable opinion of the Company's outside legal counsel, is required to avoid a violation of law by such Seller or the Company, in which event the party required to make such disclosure shall do so only to the limited extent necessary to comply with such law and shall, to the extent practicable, give advance notice thereof to Purchaser and an opportunity to comment on any such disclosure and oppose the need therefor.

5.03. Reasonable Best Efforts; Good Faith

(a) Upon the terms and subject to the conditions of this Agreement, Sellers and Purchaser will cooperate and use all reasonable best efforts to fulfill the conditions precedent to the other parties' obligations under this Agreement, including securing as promptly as practicable all Required Consents. Without limiting the foregoing, the parties to this Agreement shall cooperate with one another: (i) in the prompt preparation and filing (which filing shall occur no later than 10 days after the date of this Agreement) of the filings required under the HSR Act and any other required filings with any Governmental Authority, and the parties shall cooperate with each other in connection with the making of all such filings, including providing copies of all such documents to the non-filing party and its advisors prior to filing and, if requested, to accept all reasonable additions, deletions or changes suggested in connection therewith; (ii) in determining whether action by or in respect of, or filing with, any Governmental Authority is required, proper or advisable or any actions, consents, waivers or approvals are required to be obtained from parties to any Contracts, in connection with the transactions contemplated by this Agreement; and (iii) in seeking timely to obtain any such actions, consents or waivers or to make any such filings. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each party to this Agreement shall take all such necessary action according to Section 10.02.

Company agree to cooperate and to use their respective commercially reasonable efforts to obtain any government clearances required for Closing (including thorough compliance with the HSR Act), and to respond to any government requests for information, and to contest and resist any action that restricts, prevents or prohibits the consummation of the Stock Purchase or any other transactions contemplated by this Agreement, including, without limitation, by vigorously pursuing all available avenues of administrative and judicial appeal. The parties hereto will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to the HSR Act or any other federal or state antitrust or fair trade law. shall be entitled to direct any proceedings or negotiations with

any Governmental Entity relating to any of the foregoing, provided that it shall afford the Company a reasonable opportunity to participate therein. Notwithstanding anything to the contrary in this Section 5.03, neither nor any of Parent's Subsidiaries nor the Company shall be required to take any action that would reasonably be expected to substantially impair the overall benefits expected, as of the date hereof, to be realized from the consummation of the Share Purchase or the divestiture or holding separate of any assets.

5.04. Public Announcements. Prior to Closing, the parties hereto will consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated by this Agreement and none of the parties shall issue any such press release or make any such public statement without the prior approval of (i) in the case of announcement by Parent or Purchaser, the Seller Representative and (ii) in the case of announcement by any other party or the Seller Representative, by Parent, such approval not to be unreasonably withheld or delayed, except as may be required by applicable Law or any securities exchange on which the securities of the parties or their Affiliates are listed.

5.05. Employee Benefits. Purchaser agrees that for purposes of all employee benefit plans under which an employee's benefit depends, in whole or in part, on length of service, credit will be given to individuals employed by the Company as of the Closing Date ("Company Employees") for service previously credited with the Company prior to the Closing Date, provided, that such crediting of service does not result in duplication of benefits, and provided that such crediting of service shall not be given for benefit accrual purposes under any defined benefit plan.

5.06. No Solicitation. From the date of this Agreement through the Closing or the earlier termination of this Agreement, Sellers, the Company and their representatives shall not, directly or indirectly, enter into, solicit, initiate or continue any discussions or negotiations with, or encourage or respond to any inquiries or proposals by, or participate in any negotiations with, or provide any information to, or otherwise cooperate in any other way with, any Person, other than Purchaser and its representatives, concerning any sale of all or a portion of the assets or the business of the Company, or of the shares or any other equity securities of the Company, or any merger, consolidation, liquidation, dissolution or similar transaction involving the Company, its assets or its business (a "Proposed Acquisition"). Sellers agree that they will immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties (other than Parent) heretofore conducted, or the provision by the Company or any of its representatives of information to any party (other than Parent) to which information heretofore has been provided. If, after the date hereof, any Seller or the Company receives any such inquiry or proposal or request for information, or offer to discuss or negotiate any Proposed Acquisition, such Seller or the Company will immediately provide notice thereof to Parent, including all material terms of the Proposed Acquisition and the identity of the proposing party or parties. Notwithstanding the foregoing, nothing in this Section 5.06 shall prevent or restrict Sellers, the Company and their representatives from providing such access to Gold's as is required by the Gold's License Agreements or applicable law in connection with the exercise of any right of first refusal which may exist under the Gold's License Agreements; provided, that none of the Sellers or the Company shall enter into an agreement with respect to a Proposed Acquisition by Gold's prior to termination of this Agreement pursuant to Section 7.01(d).

5.07. Transactions with Affiliates. Prior to the Closing, all financial transactions outstanding between the Company and current or former holders of common stock or other equity securities of the Company, related entities or individuals, key employees and officers shall be properly recorded and accrued such that the Company's books and records shall reflect the assets or liabilities related to such transactions.

5.08. Preparation of Tax Returns. Parent shall prepare or cause to be prepared and file or cause to be filed all Company Tax Returns for all Tax periods ending on or prior to the Closing Date which are filed after the Closing Date. Parent shall permit the Sellers to, upon their request, review and comment on each such Tax Return prior to filing. Parent shall prepare or cause to be prepared and file or cause to be filed all Company Tax Returns for all Tax periods which begin before the Closing Date and end after the Closing Date.

5.09. Cooperation on Tax Matters. The parties shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns after the Closing Date and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The parties agree (A) to retain all books and records with respect to Tax matters pertinent to the Company relating to any Taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by the other party, any extensions thereof) of the respective Taxable periods, and to abide by all record retention agreements entered into with any Taxing authority, and (B) to give the other party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, to allow the other party to take possession of such books and records. The parties further agree, upon request, to use their best efforts to obtain any certificate or other document from any governmental authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby). The parties further agree, upon request, to provide the other party with all information that either party may be required to report pursuant to Section 6043 of the Code and all Treasury Regulations promulgated thereunder.

5.10. Tax Free Reorganization. The parties acknowledge and agree that it is an essential part of the transactions contemplated with this Agreement either that the Share Purchase be treated as a reorganization within the meaning of Section 368 of the Code, or that Sellers receive the Cash Purchase Price; provided, however, that if Purchaser makes a Stock Election and the Share Purchase fails to qualify as a reorganization within the meaning of Section 368 of the Code for any reason other than a breach of this Agreement by Purchaser or Parent, Purchaser and Parent shall have no liability to Sellers for any Taxes or other liabilities that may be imposed on Sellers as a result of such failure.

5.11. Noncompetition, Nonsolicitation

(d) If, at the time of enforcement of any of the provisions of this Section 5.11 a court holds that the restrictions stated herein are unreasonable under the circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

(e) The Garrisons agree that the covenants made in Section 5.11 shall be construed as an agreement independent of any other provision of this Agreement and shall survive any order of a court of competent jurisdiction terminating any other provision of this Agreement.

ARTICLE VI.
CONDITIONS TO CLOSING

6.01. **General Conditions.** The obligations of the parties to this Agreement to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, or waiver by each of the parties, at or prior to the Closing of the following conditions:

(a) No order, statute, rule, regulation, executive order, injunction, stay, decree, directive, or restraining order shall have been enacted, entered, promulgated or enforced

by any court of competent jurisdiction or Governmental Authority that makes the consummation of the transactions contemplated by this Agreement illegal;

(b) All filings required by any Governmental Authority under applicable laws contemplated by this Agreement shall have been made and any required waiting period under such laws applicable to the transactions contemplated by this Agreement (including the waiting period under the HSR Act) shall have expired or been earlier terminated;

(c) All Required Consents shall have been obtained, given or made;

(d) No action, suit, proceeding or investigation by any Governmental Authority or any other person shall have been initiated or threatened to restrain, prohibit or invalidate any of the transactions contemplated by this Agreement;

(e) If Purchaser makes a Stock Election, Sellers and Parent shall have entered into a mutually acceptable Registration Rights Agreement, substantially in the form of Exhibit B hereto (the "Registration Rights Agreement"), with respect to the Bally Stock to be delivered to Sellers pursuant to this Agreement;

(f) The Trustee has provided Parent with a certificate stating that it has concluded that the transactions contemplated by this Agreement: (1) are in the best interests of participants in the ESOP, (2) comply with the requirements of ERISA and the applicable requirements of the Code, and (3) will not involve any non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code; and

(g) To the extent required by the ESOP and applicable law, the Trustee has solicited and obtained the requisite vote of the ESOP participants to the transactions contemplated by this Agreement.

6.02. Conditions to Obligations of the Sellers. The obligations of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

(a) Purchaser shall have performed and complied with all agreements and covenants required to be performed and complied with by Purchaser under this Agreement at or prior to the Closing;

(b) The representations and warranties of Parent and Purchaser in Article IV of this Agreement that are qualified as to materiality shall be true and correct, and those that are not so qualified shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing Date as though restated on and as of such date (except in the case of any representation or warranty that by its terms is made as of a date specified therein, in which case such representation or warranty that is qualified as to materiality shall be true and correct, and any representation or warranty so qualified shall be true and correct in all material respects, as of such date), except where the failure of one or more representations or warranties to be true and correct, individually or in the aggregate, would not reasonably be

expected to result in a material adverse effect on the expected benefits to the Sellers of the transactions contemplated under this Agreement;

(c) Sellers shall have received from Purchaser (or Parent on Purchaser's behalf) the portion of the Purchase Price payable to Sellers on the Closing Date pursuant to Section 1.02;

(d) Sellers shall have received from Purchaser a certificate signed by an appropriate officer of Purchaser as to Purchaser's compliance with the conditions set forth in paragraphs (a) and (b) of this Section 6.02;

(e) Sellers shall have received from Parent's internal counsel, an opinion of counsel relating to this transaction substantially in the form of Exhibit C;

(f) The Garrisons shall have received from each lender releases of the personal guarantees and security interests set forth on Exhibit D, provided, however, that if any such lender (other than Merrill Lynch Business Financial Services, Inc. ("Merrill") under the Term WCMA Loan Agreement dated as of November 20, 1996 between Merrill and the Company, which must release the Garrisons for this condition (f) to be satisfied) refuses to release the Garrisons, this condition shall be deemed satisfied if Parent, in its sole discretion, agrees to indemnify the Garrisons, on terms acceptable to the Garrisons in their sole discretion, for any obligations the Garrisons may have under such guarantee or security interest; and

(g) The ESOP shall have received from Willamette Capital Management the opinion described in Section 6.03(n).

6.03. Conditions to Obligations of Parent and Purchaser. The obligations of Parent and Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

(a) Sellers shall have performed and complied with all agreements and covenants required to be performed and complied with by Sellers under this Agreement at or prior to the Closing;

(b) The representations and warranties of Sellers in Articles II and III of this Agreement that are qualified as to materiality shall be true and correct, and those that are not so qualified shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing Date as though restated on and as of such date (except in the case of any representation or warranty that by its terms is made as of a date specified therein, in which case such representation or warranty shall be true and correct, and any representation or warranty so qualified shall be true and correct in all material respects, as of such date);

(c) Neither Parent nor Purchaser nor any of their Affiliates shall be subject to any (i) action brought or threatened by any third party challenging the transactions contemplated hereby which would, if decided adversely to Parent, Purchaser or any of their Affiliates, have a Material Adverse Effect on Parent or Purchaser, in either case, taken as a whole, on or after the Closing, or (ii) order, decree or injunction by a Governmental Authority, or action

brought or threatened by a Governmental Authority or any other third party, which would (A) require divestiture of any significant assets or portion of such entity's business or impose any significant limitation on the ability of Parent or Purchaser effectively to exercise full rights of ownership of, or control over, the Shares or any significant assets or portion of the business of the Company or of Parent or any of its Affiliates;

(d) All documentation relating to the due authorization and completion of the purchase and sale of the Shares in all corporate actions and proceedings taken on or prior to the Closing in connection with the performance by the Sellers of their obligations under this Agreement shall be satisfactory to the Purchaser and the Parent, and Purchaser shall have received copies of all such documentation or such other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated thereby and the taking of all corporate proceedings in connection therewith in compliance with these conditions, in form (as to certification and otherwise) and substance satisfactory to the Purchaser and the Parent.

(e) From the date of this Agreement until the Closing, there shall not have occurred any Material Adverse Change with respect to the Company;

(f) Purchaser shall have received the documents referred to in Section 1.05;

(g) Purchaser shall have received from each Seller a certificate signed by such Seller as to such Seller's compliance with the conditions set forth in paragraphs (a) and (b) of this Section 6.03;

(h) Purchaser shall have received from Bittner & Hahs, Garrisons' counsel, an opinion of counsel relating to this transaction substantially in the form of Exhibit E;

(i) The Sellers shall have given or obtained the Required Consents, in each case in form and substance reasonably satisfactory to the Purchaser;

(j) Such directors and officers of the Company as the Purchaser may specify in writing shall have resigned in favor of nominees of the Purchaser effective as of the Closing, and the Sellers and such directors and officers of the Company shall have executed and delivered, at the Closing, releases in favor of the Company and the Purchaser in form and substance reasonably satisfactory to the Purchaser;

(k) All actions, proceedings, instruments and documents required to implement this Agreement, or instrumental thereto and all legal matters relating to the purchase and sale of the shares shall have been approved as to form and legality by the Purchaser;

(l) Purchaser shall have reviewed and approved the leases relating to the Leased Real Property and shall have obtained consent, assignment and non-disturbance agreements satisfactory to Purchaser with respect to such leases;

(m) Purchaser shall have received from McDermott Will & Emery, counsel to the Trustee and the ESOP, an opinion substantially in the form of Exhibit F;

(n) Purchasers shall have received a copy of a report of Willamette Capital Management, financial advisor to the ESOP, to the effect that (i) such financial advisor is independent to the ESOP and the Company within the meaning of proposed regulation 2510.3-18, (ii) the Purchase Price is not less than "adequate consideration" within the meaning of Section 3(18) of ERISA, and (iii) the transactions contemplated by this Agreement are fair to the ESOP;

(o) Purchaser shall have received from the Trustee a certificate as to Trustee's compliance with Section 6.01(f) and 6.01(g);

(p) Sellers shall have provided Parent with a clearance certificate or similar document(s) which may be required by any state taxing authority in order to relieve Parent and Purchaser of any obligation to withhold any portion of the payments to the Sellers pursuant to this Agreement;

(q) The Gold's License Agreements shall have been terminated on terms acceptable to Purchaser, in its sole discretion;

(r) The Seller Representative shall have delivered the Disclosure Schedule to Purchaser in accordance with Section 3.24(a), and such Disclosure Schedule shall have been accepted by Purchaser pursuant to such Section;

(s) Purchaser shall have completed its due diligence investigation of the Company, and Purchaser, in its sole discretion, shall be satisfied in all respects with the results of such investigation; and

(t) The Share Purchase, this Agreement and the other documents referred to herein shall have been approved and adopted by the Board of Directors of Parent and Purchaser.

ARTICLE VII. TERMINATION

7.01. Termination. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing:

(a) by the mutual written agreement of Purchaser and the Garrisons;

(b) by either Purchaser or the Garrisons by giving written notice of such termination to the other party, if the Closing shall not have occurred by March 31, 2000 (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 7.01(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date;

(c) by either the Sellers or Purchaser if (i) a statute, rule, regulation or executive order shall have been enacted, entered or promulgated prohibiting the consummation of the transaction contemplated hereby or (ii) an order, decree, ruling or injunction shall have been

entered permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, and such order, decree, ruling or injunction shall have become final and non-appealable and the party seeking to terminate this Agreement pursuant to this clause 7.01(c)(ii) shall have used its reasonable best efforts to remove such injunction, order or decree, and such Party shall have complied with its obligations under Section 5.03;

(d) (i) by the Garrisons, if Gold's shall have exercised any right of first refusal which may exist under the Gold's License Agreements and any of the Sellers and/or the Company shall have determined to enter into an agreement with respect to a Proposed Acquisition by Gold's, or (ii) by Purchaser, if Gold's shall have exercised any right of first refusal which may exist under the Gold's License Agreements;

(e) by Purchaser, if the Gold's Agreements are not terminated on terms acceptable to Purchaser, in its sole discretion, on or before December 31, 1999;

(f) by either the Sellers, on the one hand, or the Purchaser on the other hand, upon a material breach by the other of any of its obligations under this Agreement, which breach has not been cured within 20 days after notice thereof has been provided to the breaching party; provided that there shall be no right to terminate if such breach was caused, in whole or in part, by a material breach by the party seeking to terminate this Agreement;

(g) by Purchaser pursuant to its rights under Section 3.24(a);

(h) by Purchaser pursuant to its rights under Section 3.24(b); or

(i) by Purchaser if Purchaser, in its sole discretion, is not satisfied in all respects with the results of its due diligence investigation of the Company.

7.02. Effect of Termination. If this Agreement is terminated as permitted under Section 7.01, such termination shall be without liability to any party to this Agreement or to any Affiliate, or their respective shareholders, directors, officers, employees, agents, advisors or representatives, and following such termination no party shall have any liability under this Agreement or relating to the transactions contemplated by this Agreement to any other party except as provided in Section 7.03; provided that no such termination shall relieve any party that has willfully breached any provision of this Agreement from Liability for such breach, and any such breaching party shall (A) reimburse the non-breaching party for all fees, costs and expenses incurred by such non-breaching party in connection with this Agreement and the transactions contemplated hereby, including but not limited to, fees and expenses of investment bankers, accountants, and attorneys and (B) remain fully liable for (i) any and all Damages incurred or suffered by another party to this Agreement as a result of such breach and (ii) any other relief a court deems appropriate. The provisions of this Section 7.02 and 7.03 and the Confidentiality Agreement shall survive any termination of this Agreement and shall remain in full force and effect. Payments for reimbursements pursuant to this Section 7.02 shall be made in cash no later than five days following delivery by the party entitled to such reimbursement to the other party, of a written notice setting forth the amount to be reimbursed.

ARTICLE VIII.
INDEMNIFICATION

8.01. Indemnification by the Garrisons. From and after the Closing Date, the Garrisons, jointly and severally, agree to indemnify, defend and save Purchaser and Parent and their respective Affiliates, and each of their respective officers, directors, employees, shareholders, attorneys, accountants, representatives, employees, agents, Employee Plans, and fiduciaries, plan administrators or other parties dealing with any such plans, and their respective heirs, successors and assigns, forever harmless from and against, and to promptly pay to or reimburse each such person or entity for, any and all liabilities (whether contingent, fixed or unfixed, liquidated or unliquidated, or otherwise), obligations, deficiencies, demands, claims, suits, actions, or causes of

action, assessments, losses, costs, expenses, interest, fines, penalties, Prohibited Transactions under Section 4975 of the Code or Section 406 of ERISA, breaches of fiduciary duty, penalties under Section 502 of ERISA, actual or punitive damages or costs or expenses of any and all investigations, proceedings, judgments, environmental analyses, remediations, settlements and compromises (including reasonable fees and expenses of attorneys, accountants and other experts) (collectively, "Damages") arising out of or relating to:

(a) inaccuracy or breach of any representation or warranty of Sellers contained in this Agreement;

(b) any non-compliance with or breach of any covenant or agreement of Sellers contained in this Agreement;

(c) Sellers' use of the name "Nautilus Plus of Oregon, Inc." or any other variation thereof containing the word "Nautilus;"

(d) the Gold's License Agreements, including any breach or termination thereof; or

(e) Taxes of: (A) the Company and the Sellers (to the extent liability for Taxes of a Seller is imposed on the Company, Parent or Purchaser) with respect to the transactions contemplated by this Agreement; (B) the Company and the Sellers (to the extent liability for Taxes of a Seller is imposed on the Company, Parent or Purchaser) with respect to Tax years or portions thereof ending on or before the Closing Date (and for any Tax year beginning before and ending after the Closing Date, for the portion of such year ending on the Closing Date) to the extent such Taxes are not reflected in the reserve for Tax liability (other than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) on the Closing Balance Sheet. For purposes of this Section 8.01(e), in the case of any Taxes that are imposed on a periodic basis and are payable for a Taxable period that includes (but does not end on) the Closing Date, the portion of such Tax which relates to the portion of such Taxable period ending on the Closing Date shall (i) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire Taxable period multiplied by a fraction the numerator of which is the number of days in the Taxable period ending on the Closing Date and the denominator of which is the number of days in the entire Taxable period, and (ii) in the case of any Tax based upon or related to income or receipts be deemed equal to the amount which would be payable if the relevant Taxable period ended on the Closing Date. Any credits relating to a Taxable period that begins before and ends after the Closing Date shall be taken into account as though the relevant Taxable period ended on the Closing Date. All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with the prior practice of the Company.

8.02. Indemnification by Purchaser

(a) From and after the Closing Date and subject to the provisions of this Article VIII, Purchaser agrees to indemnify, hold harmless and defend each Seller Indemnified Party from and against any and all Damages arising out of or relating to:

- (i) any inaccuracy or breach of any representation or warranty of Purchaser contained in this Agreement;
- (ii) any non-compliance with or breach of any covenant or agreement of Purchaser contained in this Agreement; or
- (iii) Purchaser's conduct of the Business after the Closing Date, except to the extent that any such Damages are the subject of indemnification by any of the Sellers pursuant to Section 8.01.

8.03. **Indemnification Process.** The party or parties making a claim for indemnification under this Article VIII shall be, for the purposes of this Agreement, referred to as the "Indemnified Party" and the party or parties against whom such claims are asserted under this Article VIII shall be, for the purposes of this Agreement, referred to as the "Indemnifying Party". All claims by any Indemnified Party under this Article VIII shall be asserted and resolved as follows:

(a) In the event that (i) any claim, demand or Proceeding is asserted or instituted by any Person other than the parties to this Agreement or their Affiliates which could give rise to Damages for which an Indemnifying Party could be liable to an Indemnified Party under this Agreement (such claim, demand or Proceeding, a "Third Party Claim") or (ii) any Indemnified Party under this Agreement shall have a claim to be indemnified by any Indemnifying Party under this Agreement which does not involve a Third Party Claim (such claim, a "Direct Claim" and, together with Third Party Claims, "Claims"), the Indemnified Party shall with reasonable promptness send to the Indemnifying Party a written notice specifying the nature of such claim, demand or Proceeding and the amount or estimated amount thereof (which amount or estimated amount shall not be conclusive of the final amount, if any, of such claim, demand or Proceeding) (a "Claim Notice"), provided that a delay in notifying the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Agreement except to the extent that (and only to the extent that) such failure shall have caused the Damages for which the Indemnifying Party is obligated to be greater than such Damages would have been had the Indemnified Party given the Indemnifying Party proper notice.

(b) In the event of a Third Party Claim, the Indemnifying Party shall be entitled to appoint counsel of the Indemnifying Party's choice at the expense of the Indemnifying Party to represent the Indemnified Party and any others the Indemnifying Party may reasonably designate in connection with such claim, demand or Proceeding (in which case the Indemnifying Party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by any Indemnified Party except as set forth below); provided that such counsel is reasonably acceptable to the Indemnified Party. Notwithstanding an Indemnifying Party's election to appoint counsel to represent an Indemnified Party in connection with a Third Party Claim, an Indemnified Party shall have the right to employ separate counsel, and the Indemnifying Party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel selected by the Indemnifying Party to represent the Indemnified Party would present such counsel with a conflict of interest or (ii) the Indemnifying Party shall not have employed counsel to represent the Indemnified Party within a reasonable time after notice of the institution of such Third Party

Claim. If requested by the Indemnifying Party, the Indemnified Party agrees to cooperate with the Indemnifying Party and its counsel in contesting any claim, demand or Proceeding which the Indemnifying Party defends, or, if appropriate and related to the claim, demand or Proceeding in question, in making any counterclaim against the person asserting the Third Party Claim, or any cross-complaint against any person. No Third Party Claim may be settled or compromised (i) by the Indemnified Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed or (ii) by the Indemnifying Party without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed. In the event any Indemnified Party settles or compromises or consents to the entry of any Judgment with respect to any Third Party Claim without the prior written consent of the Indemnifying Party, each Indemnified Party shall be deemed to have waived all rights against the Indemnifying Party for indemnification under this Article VIII.

(c) In the event of a Direct Claim, the Indemnifying Party shall notify the Indemnified Party within 30 Business Days of receipt of a Claim Notice whether or not the Indemnifying Party disputes such claim.

(d) From and after the delivery of a Claim Notice under this Agreement, at the reasonable request of the Indemnifying Party, each Indemnified Party shall grant the Indemnifying Party and its representatives all reasonable access to the books, records and properties of such Indemnified Party to the extent reasonably related to the matters to which the Claim Notice relates. All such access shall be granted during normal business hours and shall be granted under conditions which will not unreasonably interfere with the business and operations of such Indemnified Party. The Indemnifying Party will not, and shall require that its representatives do not, use (except in connection with such Claim Notice) or disclose to any third person other than the Indemnifying Party's representatives (except as may be required by applicable Law) any information obtained pursuant to this Section 8.03(d) which is designated as confidential by an Indemnified Party.

(e) Actions to be taken by or for the benefit of, and notices to be provided to, the Sellers pursuant to this Section 8.03, shall be taken by and given to the Seller Representative.

8.04. Payment for Damages. If and to the extent that any Damages shall arise and shall be pursuant to an order or judgment by a court of proper jurisdiction (unless and to the extent such payment is stayed by a court, it being understood that the parties agree that it would be inappropriate for such court to examine and take into account the existence of any Indemnity Shares or Indemnity Cash held by Parent or Purchaser when ruling on such stay) or written agreement of the parties (a "Final Determination") then the Garrisons shall satisfy their obligations under this Article VIII by the alternatives set forth below:

(a) In the event that (i) Purchaser shall have made a Stock Election and a number of Indemnity Shares remains, calculated as of the time such payment is due (taking into account previous reductions thereof under this Section 8.04), the Garrisons shall be deemed to have immediately released their claim to and be deemed to have transferred to Parent that number of Indemnity Shares equal to the quotient of (A) the amount of Damages which is then due and

payable under the terms of this Agreement to the Purchaser Indemnified Parties (the "Damages Payment") which is not funded under clause (b) below divided by (B) the Stock Price or (ii) Purchaser shall have made a Cash Election and an amount of Indemnity Cash remains, calculated as of the time such payment is due (taking into account any previous reductions thereof under this Section 8.04), the Garrisons shall be deemed to have immediately released their claim to and be deemed to have transferred to Purchaser an amount of Indemnity Cash equal to the Damages Payment which is not funded under clause (b) below.

(b) In the event that (i) Purchaser shall have made a Stock Election and no Indemnity Shares remain or a negative number of Indemnity Shares remains, calculated as of the time such payment is due (taking into account previous reductions thereof under this Section 8.04), or the quotient of the Damages Payment divided by the Stock Price exceeds such number of Indemnity Shares, the Garrisons shall deliver cash to Purchaser within five (5) Business Days of the Final Determination to satisfy all or part of their unsatisfied obligations in respect of the Damages Payment or (ii) Purchaser shall have made a Cash Election and no Indemnity Cash remains or a negative amount of Indemnity Cash remains, calculated as of the time of such payment is due (taking into account any previous reductions thereof under this Section 8.04), or the amount of the Damages Payment exceeds such amount of Indemnity Cash, the Garrisons shall deliver cash to Purchaser within five (5) Business Days of the Final Determination to satisfy all or part of their unsatisfied obligations in respect of the Damages Payment.

(c) Upon the request of Purchaser, the Garrisons shall execute and deliver such releases, documents and instruments of conveyance and transfer as Purchaser may request in order to substantiate or effect the release by the Garrisons and transfer to Parent or Purchaser the Indemnity Shares or the Indemnity Cash (as the case may be) pursuant to this Section 8.04.

8.05. Delivery of Unapplied Indemnity Shares or Indemnity Cash

(a) Within 20 Business Days after the date that is 6 months after the Closing Date (the "Release Date"), if (x) the number of Indemnity Shares or the amount of Indemnity Cash (as the case may be) remaining (after giving effect to Section 8.04) on the Release Date is greater than zero and (y) there are (i) no Claims under Section 8.01(a) which resulted in liability for the Garrisons and remained unsatisfied and (ii) there are no pending Claims under Section 8.01, then Parent or Purchaser, as the case may be, shall deliver to the Garrisons the remaining Indemnity Shares or Indemnity Cash.

(b) If, within 20 Business Days after the Release Date, (x) the amount of Indemnity Shares or the amount of Indemnity Cash (as the case may be) remaining (after giving effect to Section 8.04) on the Release Date is greater than zero and (y) (i) there have been Claims under Section 8.01(a) which resulted in liability for the Garrisons which remain unsatisfied or (ii) there are pending Claims under Section 8.01, then (i) if Parent is holding Indemnity Shares, Parent shall transfer to Purchaser and Purchaser shall deliver to each of the Garrisons (or Parent may transfer directly to the Garrisons on Purchaser's behalf) one-half (1/2) of that portion of the remaining Indemnity Shares equal to the difference (but not less than zero) between (A) the number of remaining Indemnity Shares and (B) the quotient of (1) the aggregate amount of

resolved (but unsatisfied) and pending Claims (such pending Claim's amount for this purpose to be equal to the amount demanded by the Person asserting such Claim or such lower amount as Purchaser and the Garrisons may mutually agree) divided by (2) the Stock Price or (ii) if Purchaser is holding Indemnity Cash, Purchaser shall deliver to each of the Garrisons one-half (1/2) of that portion of the remaining Indemnity Cash equal to the difference (but not less than zero) between (A) the amount of Indemnity Cash and (B) the aggregate amount of resolved (but unsatisfied) and pending Claims (such Claim's amount for this purpose to be equal to the amount demanded by the Person asserting such Claim or such lower amount as Purchaser and the Garrisons may mutually agree).

(c) From and after the release of Indemnity Shares or Indemnity Cash pursuant to Section 8.05(b), as soon as practicable following the resolution of a pending Claim, Parent or Purchaser, as the case may be, shall release to each of the Garrisons an aggregate amount equal to one-half (1/2) of the portion, if any, of the Indemnity Shares or Indemnity Cash (as the case may be) which remain after the resolution of such pending Claim and were allocable thereto, which are not being retained with respect to other pending Claims. No fractional shares of Bally Stock will be issued pursuant hereto. In lieu of the issuance of any fractional share of Bally Stock, each of the Garrisons shall be entitled to receive a cash payment equal to the value of such fractional share, determined based upon the Stock Price.

8.06. Survival of Representations and Warranties. The representations and warranties of the Company and Sellers contained in this Agreement shall survive the Closing for the applicable period set forth in this Section 8.06, and any and all claims and causes of action for indemnification under this Article VIII arising out of the inaccuracy or breach of any representation or warranty of Sellers or Purchaser must be made prior to the termination of the applicable survival period. All of the representations and warranties of the Company and Sellers contained in this Agreement and any and all claims and causes of action for indemnification under this Article VIII with respect thereto shall terminate 18 months after the Closing Date; provided that (a) the representations and warranties of the Company and Sellers contained in Sections 2.01, 2.02, 2.03, 2.04, 3.01, 3.02 and 3.08(a) shall survive indefinitely, (b) the representations and warranties of the Company and Sellers contained in Section 3.12 shall survive for 10 years following the Closing Date and (c) the representations and warranties of the Company and Sellers contained in Sections 3.16 and 3.17.2 shall survive until 90 days following the expiration of the applicable statute or similar period of limitations; it being understood that in the event notice of any claim for indemnification under Section 8.01(a) or Section 8.02(a) shall have been given within the applicable survival period, the representations and warranties that are the subject of such indemnification claim shall survive until such time as such claim is finally resolved.

8.07. Characterization of Indemnification Payments. Purchaser and the Garrisons agree to treat any payment made under this Article VIII as an adjustment to the Purchase Price. If, contrary to the intent of Purchaser and the Garrisons as expressed in the preceding sentence, any payment made pursuant to this Article VIII is treated as taxable income of an Indemnified Party, then the Indemnifying Party shall indemnify and hold harmless the Indemnified Party from any liability for Taxes attributable to the receipt of such payment.

ARTICLE IX.
DEFINITIONS AND TERMS

9.01. Specific Definitions. As used in this Agreement, the following terms have the following meanings:

“Adjustment Amount” has the meaning specified in Section 1.02(b)

“Adjustment Cash” has the meaning specified in Section 1.05.

“Adjustment Shares” has the meaning specified in Section 1.05.

“Affiliate” means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with, such Person. For the purposes of this definition, “control” (including, with correlative meaning, the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such Person through the ownership of more than 50% of the voting securities, by contract or otherwise.

“Agreement” means this Stock Purchase Agreement, as the same may be amended or supplemented from time to time in accordance with the terms of this Agreement.

“Bally Stock” has the meaning specified in Section 1.02

“Business” shall mean the Company’s business of operating health clubs, including all administrative and other ancillary services related thereto.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks in New York City are authorized or obligated by law or executive order to close.

“Claims” has the meaning specified in Section 8.03(a).

“Claim Notice” has the meaning specified in Section 8.03(a).

“Closing” means the closing of the transactions provided for in this Agreement.

“Closing Balance Sheet” means the combined balance sheet of the Company as of the Closing Date prepared in accordance with GAAP, applied on a consistent basis with that used in the preparation of the balance sheets of the Company for the fiscal years ended September 30, 1998 and September 30, 1999

“Closing Date” means the Business Day on which the Closing occurs.

“Closing Price” has the meaning specified in Section 1.02(b).

“Closing Stock” has the meaning specified in Section 1.02(b).

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations and interpretations issued thereunder.

“Company Employees” has the meaning specified in Section 5.05(b).

“Confidentiality Agreement” means the Confidentiality Agreement, dated June 14, 1999 among the Company and Purchaser.

“Consent” means waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, clauses of declaration or filing with, or report or notice to any person or entity, including, but not limited to any Governmental Authority, which by its or their terms is final and conclusive, from which there is no further appeal right, or any such appeal right has expired.

“Contracts” means any of the agreements, contracts, leases, powers of attorney, notes, loans, evidence of indebtedness, purchase orders, letters of credit, settlement agreement, franchise agreements, undertakings, covenants not to compete, employment agreements, licenses, instruments, obligations, commitments, understandings, policies, purchase and sales orders, quotations and other executory commitments to which any company is a party or to which any of the assets of the companies are subject, whether oral or written, express or implied, including, without limitation, Membership Contracts.

“Damages” has the meaning specified in Section 8.01(a).

“Damages Payment” has the meaning specified in Section 8.05(a).

“Direct Claim” has the meaning specified in Section 8.03(a).

“Disclosure Schedule” has the meaning specified in Article II.

“Employee Plans” has the meaning specified in Section 13.17.2.

“Environmental Conditions” means the introduction into the environment of any pollution, including, without limitation, any contaminant, irritant or pollutant or other Hazardous Substance (whether upon any Facility or other property and whether or not such pollution constituted at the time thereof a violation of any Environmental Law in connection with the Release of any Hazardous Substance) as a result of which the Company or any of its Subsidiaries has or may reasonably be expected to become liable to any Person or by reason of which any Facility or any of the assets may reasonably be expected to suffer or be subjected to any lien.

“Environmental Laws” means any federal, state, district, or local Laws, regulations, ordinances, orders, permits and judgments, consent orders and common Law relating to the protection of the environment, including any Law of strict liability, nuisance or with respect to conducting abnormally dangerous activities including, without limitation, provisions pertaining to or regulating air pollution, water pollution, noise control, wetlands, water courses, natural resources, wildlife, Hazardous Materials, or any other activities or conditions which impact or relate to the environment or nature. Such Environmental Laws shall include, without

limitation, the Comprehensive Environmental Response, Compensation, and Recovery Act (“CERCLA”), 42 U.S.C. Section 9601 *et seq.*, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 *et seq.*, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*, the Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. Section 11001 *et seq.*, the Oil Pollution Act, 33 U.S.C. Section 2701 *et seq.*, and the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*, each as amended, and is first used as a defined term in Section 4.6B.

“Environmental Permits” means all licenses, permits, approvals, consents, certificates, registrations and other authorizations under Environmental Laws used or required in connection with the business of the Company.

“Equity Amount” has the meaning specified in Section 1.02(b).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations and interpretations issued thereunder.

“ERISA Affiliate” means each corporation, trade or business which is treated as a single employer with the Company under Section 414 of the Code or Section 4001(a) of ERISA.

“ESOP” has the meaning specified in the recitals to this Agreement.

“ESOP Loan” has the meaning specified in Section 5.12.

“ESOP Note” has the meaning specified in Section 5.12.

“Estimated Adjustment Amount” has the meaning specified in Section 1.03.

“Estimated Closing Balance Sheet” has the meaning specified in Section 1.03.

“Excess Prepaids Amount” has the meaning specified in Section 1.02(b).

“Existing Membership Contracts” has the meaning specified in Section 3.14(b).

“Expenses” means all reasonable out-of-pocket expenses (including, without limitation, all fees and expenses of counsel, accountants, experts and consultants) incurred by Parent or Purchaser or on their behalf in connection with or related to the authorization, preparation, negotiation, documentation, execution, performance or termination of this Agreement and the transactions contemplated hereby.

“Facilities” means all buildings, improvements, fixtures and all real property and related facilities on the properties the addresses of which are listed on the *Assets Schedule*.

“Financial Statements” has the meaning specified in Section 3.06(a).

“Final Determination” has the meaning specified in Section 8.05.

“GAAP” means United States generally accepted accounting principles.

“Gold’s” has the meaning specified in Section 5.02(b).

“Gold’s License Agreements” has the meaning specified in Section 5.02 (b).

“Governmental Authority” means any nation or government, any state or provincial or other political subdivision thereof, any province, city or municipality, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any governmental authority, agency, department, board, commission or instrumentality of the United States, any State of the United States, or any political subdivision thereof, any government authority, agency, department, board, commission or instrumentality of the United States or any political subdivision thereof and any tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization.

“HSR Act” means the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended.

“Hazardous Substance” means any pollutant, contaminant, chemical, waste and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical or chemical compound or otherwise hazardous substance or waste, including, without limitation, any quantity of asbestos, urea formaldehyde, PCBs, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products, by-products or derivatives, radioactive substance or material, pesticide, waste waters, or sludges that are subject to regulation, control or remediation under any Environmental Laws.

“Indemnified Party” has the meaning specified in Section 8.03.

“Indemnifying Party” has the meaning specified in Section 8.03.

“Indemnity Cash” has the meaning specified in Section 1.05

“Indemnity Shares” has the meaning specified in Section 1.05.

“Intellectual Property” has the meaning specified in Section 3.15(a).

“Judgments” means any judgments, injunctions, orders, decrees, writs, rulings, settlements, or awards of any court or other judicial authority or any other Governmental Authority.

“knowledge” or similar language shall mean the actual knowledge, after due inquiry, of each Person identified and other facts or matters that such individual should reasonably be expected to discover or otherwise become aware of in the course of their ordinary responsibilities as shareholders, directors, officers or employees of the Company prior to the Closing Date.

“Laws” means all laws, statutes, by-laws, ordinances, rules, regulations, orders, Judgments or decrees of any Governmental Authority.

“Leased Real Property” has the meaning set forth in Section 3.08(c) hereof.

“Liabilities” means, with respect to the Estimated Closing Balance Sheet or the Closing Balance Sheets, liabilities stated in accordance with GAAP, and means, in the case of other provisions of this Agreement, any direct or indirect liability, indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any type, whether accrued, absolute, contingent, matured, unmatured, liquidated, unliquidated, known or unknown.

“Liens” means all liens, mortgages, easements, charges, restrictions, claims, security interests, options or other encumbrances of any nature.

“Material Adverse Change” means a change that has had a Material Adverse Effect.

“Material Adverse Effect” means a material adverse effect (i) on the business, properties, financial condition, assets (except insofar as there is an offsetting reduction in liabilities) or results of operations of any Company or (ii) on the ability of the Sellers to consummate the transactions contemplated by this Agreement; provided, however, that any conditions or effects resulting primarily from the announcement of the existence or terms of this Agreement shall not constitute a Material Adverse Effect.

“Membership Contracts” means health facility membership arrangements related to the Business.

“Most Recent Financial Statements” has the meaning specified in Section 3.06(a).

“Most Recent Fiscal Period” has the meaning specified in Section 3.06(a).

“Noncompete Period” has the meaning specified in Section 5.13(a).

“Other Securities” has the meaning specified in Section 3.02.

“Parent” has the meaning specified in the Recitals.

“Parent SEC Reports” has the meaning specified in Section 4.06(a).

“Participate” or **“Participation”** means to have any direct or indirect interest in any enterprise, whether as an officer, director, employee, partner, sole proprietor, agent, representative, independent contractor, consultant, franchisor, franchisee, creditor, owner or otherwise; provided, that the term “Participate” shall not include the ownership of less than one percent (1%) of the stock of a publicly-held corporation whose stock is traded on a national securities exchange or in the over-the-counter market.

“Percentage of Ownership” means that percentage of the Stock Purchase Price or the Cash Purchase Price, as the case may be, attributed to each Seller as set forth on the *Share Ownership Schedule*.

“Permits” means all permits, authorizations, approvals, registrations, licenses, certificates, directives, orders or variances granted by or obtained from any Governmental Authority and used or required in connection with the Business of the Company.

“Permitted Liens” means (i) Liens created by Purchaser, (ii) Liens for or in respect of Taxes, impositions, assessments, fees, water and sewer rents and other governmental charges levied or assessed or imposed against the Leased Real Property which are not yet delinquent or are being contested in good faith by appropriate proceedings, (iii) the rights of lessors and lessees under Leases executed in the ordinary course of business, (iv) the rights of licensors and licensees under licenses executed in the ordinary course of business, (v) Liens, and rights to Liens, of mechanics, warehousemen, carriers, repairmen and others arising by operation of law and incurred in the ordinary course of business, securing obligations not yet delinquent or being contested in good faith by appropriate proceedings or (vi) any conditions relating to the Leased Real Property that would be disclosed on any title commitments obtainable by Purchaser.

“Person” means an individual, a corporation, a limited liability company, a partnership, an association, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Personal Property Leases” has the meaning specified in Section 3.08(a).

“Proceeding” means any action, application, suit, demand, claim or legal, administrative, arbitration or other alternative dispute resolution proceeding, hearing or investigation.

“Proposed Acquisition” has the meaning specified in Section 5.07.

“Purchase Price” has the meaning specified in Section 1.02.

“Purchaser” has the meaning specified in the Recitals.

“Purchaser Indemnified Party” means Purchaser, Purchaser’s Affiliates, and their respective directors, officers, shareholders, attorneys, accountants, representatives, agents and employees, and their respective heirs, successors and assigns.

“Purchaser Plans” has the meaning specified in Section 5.05(a).

“Registration Rights Agreement” has the meaning specified in Section 6.01(e).

“Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching, exhausting or migration on or into the environment or into, on, under or from any property.

“Release Date” has the meaning specified in Section 8.06.

“Required Consents” has the meaning specified in Section 3.05.

“Reviewed Financial Statements” has the meaning specified in Section 3.06(a).

“SEC” shall mean the United States Securities Exchange Commission.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Seller Indemnified Party” means Sellers, Sellers’ respective Affiliates (other than the Companies), and their respective directors, officers, shareholders, attorneys, accountants, representatives, agents and employees, and their respective heirs, successors and assigns.

“Seller Representative” has the meaning specified in Section 1.07.

“Sellers” has the meaning specified in the Recitals.

“Shares” has the meaning specified in the Recitals.

“Share Purchase” has the meaning specified in the Recitals.

“Stock Price” has the meaning specified in Section 1.02(b).

“Subsidiary” or “Subsidiaries” of any Person means any corporation, partnership, limited liability company, association, trust, joint venture or other entity or organization of which such Person, either alone or through or together with any other Subsidiary, owns, directly or indirectly, more than 25% of the stock or other equity interests, the holder of which is generally entitled to vote for the election of the board of directors or other governing body of such corporation, partnership, limited liability company, association, trust, joint venture or other entity or organization.

“Tax Returns” means any report, return (including information return), election, document, estimated tax filing, declaration or other filing required to be supplied to any taxing authority or jurisdiction with respect to Taxes including any amendments thereto.

“Taxes” means all taxes, assessments, charges, duties, fees, levies, imposts or other governmental charges, including, without limitation, all federal, state, local, municipal, county, foreign and other income, franchise, profits, capital gains, capital stock, capital structure, transfer, gross receipt, sales, use, transfer, service, occupation, ad valorem, property, excise, severance, windfall profits, premium, stamp, license, payroll, employment, social security, unemployment, disability, environmental (including taxes under Code Section 59A), alternative, minimum, add-on, value-added, withholding and other taxes, assessments, charges, duties, fees, levies, imposts or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return), and all estimated taxes, deficiency assessments, additions to tax, additional amounts imposed by any governmental authority (domestic or foreign), penalties, and interest, and shall include any liability for such amounts as a result either of being (or having been) a member of a combined, consolidated, unitary or affiliated group or of a contractual obligation to indemnify any Person, and shall include any liability for such amounts relating to any other Person if such liability is imposed by reason of law (including transferee or successor liability).

“Termination Date” has the meaning specified in Section 7.01(b).

“Third Party Claim” has the meaning specified in Section 8.03(a).

“Total Liabilities Amount” has the meaning specified in Section 1.02(b).

“Trading Day” has the meaning specified in Section 1.02(b).

“Transaction Expenses” has the meaning specified in Section 1.02(b).

“Trustee” means Alaska Trust Company, in its individual or corporate capacity, but solely as trustee of the ESOP.

“United States” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia.

9.02. Other Definitional Provisions

(a) Any reference to an Article, Section or Annex is a reference to an Article or Section of, or an Annex to, this Agreement.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) The words “include”, “includes” and “including” mean include, includes and including without limitation.

ARTICLE X. GENERAL PROVISIONS

10.01. Expenses and Taxes; Tax Returns. Except as otherwise provided in Section 7.03, each party to this Agreement shall pay all fees and expenses incurred by it in connection with this Agreement and the transactions contemplated by this Agreement. The parties to this Agreement agree that all other applicable excise, sales, transfer, documentary, filing, recordation and other similar Taxes, levies, fees and charges, if any (including all real estate transfer taxes and conveyance and recording fees, if any) that may be imposed upon, or payable or collectible or incurred in connection with, this Agreement and the transactions contemplated by this Agreement shall be borne by the party on which such Taxes, levies, fees or charges are imposed by operation of Law. Each party to this Agreement agrees to file all necessary documentation (including all Tax Returns) with respect to such Taxes in a timely manner.

10.02. Further Assurances. From time to time after the Closing and without further consideration, each of the parties, upon the request of another party and at such other party's expense, shall execute and deliver such documents and instruments of conveyance and transfer as such other party may reasonably request in order to consummate more effectively the terms of this Agreement (including the purchase and sale of the Shares as contemplated by this Agreement and the vesting in Purchaser of title to the Shares transferred under this Agreement).

10.03. Amendment/Non-assignment. Except as expressly provided in Section 5.13 with respect to the addition of holders of Other Securities as parties to this Agreement, this Agreement may not be amended except by an instrument in writing signed by Purchaser and Sellers. This Agreement may not be assigned or transferred by any party to this Agreement without the prior written consent of the other parties to this Agreement. Notwithstanding the foregoing, Sellers acknowledge and agree that Purchaser may assign its rights and its obligations under this Agreement to a wholly-owned Subsidiary of Parent; provided that no such assignment shall relieve Purchaser of its obligations under this Agreement.

10.04. Waiver. Either Purchaser or Sellers may (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any inaccuracies in the representations and warranties of the other contained in this Agreement or in any document delivered by the other pursuant to this Agreement or (iii) waive compliance with any of the agreements, or satisfaction of any of the conditions, contained in this Agreement by the other. Any agreement on the part of a party to this Agreement to any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the other parties.

10.05. Notices. Any notices or other communications required or permitted under, or otherwise in connection with, this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or upon confirmation of receipt when transmitted by facsimile transmission or on receipt after dispatch by registered or certified mail, postage prepaid, addressed, as follows:

If to Sellers or the Seller Representative:

Jack E. Garrison
9403 S.W. Nimbus Avenue
Beaverton, Oregon 97008
Facsimile: (503) 641-7933

With a copy to:

Bittner & Hahs, P.C.
One S.W. Columbia Street
Suite 1800
Portland, Oregon 97528
Attention: Andrew D. Hahs
Facsimile: (503) 228-8566

If to the Trustee:

Alaska Trust Company
1029 W. 3rd Avenue
Suite 601
Anchorage, Alaska 99501
Attention: Doug Blattmachr
Facsimile: (907) 258-1649

With a copy to:

McDermott Will & Emery
227 W. Monroe Street
Chicago, Illinois 60606
Attention: Susan Schaefer
Facsimile: (312) 984-7700

If to Purchaser or Parent to:

Bally Total Fitness Holding Corporation
8700 W. Bryn Mawr Avenue
Chicago, Illinois 60631
Attention: President and General Counsel
Facsimile: (773) 399-0126

With a copy to:

Latham & Watkins
233 South Wacker Drive
Suite 5800
Chicago, Illinois 60606
Attention: Mark D. Gerstein
Facsimile: (312) 993-9767

or such other address as the person to whom notice is to be given has furnished in writing to the other parties. A notice of change in address shall not be deemed to have been given until received by the addressee.

10.06. Headings and Schedules. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. The disclosure or inclusion of any matter or item on any Schedule included in the Disclosure Schedule shall not be deemed an acknowledgment or admission that any such matter or item is required to be disclosed or is material for purposes of the representations and warranties set forth in this Agreement.

10.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Oregon regardless of principles of conflicts of laws.

10.08. No Third Party Rights. Except as specifically provided in Article VIII, this Agreement is intended to be solely for the benefit of the parties to this Agreement and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties to this Agreement.

10.09. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

10.08. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions of this Agreement shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

10.09. Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) sets forth the entire understanding and agreement among the parties as to the matters covered in this Agreement and supersedes and replaces any prior understanding, agreement or statement of intent, in each case, written or oral, of any and every nature with respect to such understanding, agreement or statement other than the Confidentiality Agreement.

10.10. Consent to Jurisdiction; Jury Trial; Venue. All disputes, litigation, proceedings or other legal actions by any party to this Agreement in connection with or relating to this Agreement or any matters described or contemplated in this Agreement shall be instituted in the United States in the courts of the State of Oregon or of the United States sitting in the State of Oregon. Each party to this Agreement irrevocably submits to the exclusive jurisdiction of the courts of the State of Oregon and of the United States sitting in the State of Oregon in connection with any such dispute, litigation, action or proceeding arising out of or relating to this Agreement. Each party to this Agreement will maintain at all times a duly appointed agent in the State of Oregon for the service of any process or summons in connection with any such dispute, litigation, action or proceeding brought in any such court and, if it fails to maintain such an agent during any period, any such process or summons may be served on it by mailing a copy of such process or summons to it at its address set forth, and in the manner provided, in Section 10.06, with such service deemed effective on the fifteenth day after the date of such mailing.

Each party to this Agreement irrevocably waives the right to a trial by jury in connection with any matter arising out of this Agreement and, to the fullest extent permitted by applicable law, any defense or objection it may now or hereafter have to the laying of venue of any proceeding under this Agreement brought in the courts of the State of Oregon or of the United States sitting in the State of Oregon and any claim that any proceeding under this Agreement brought in any such court has been brought in an inconvenient forum.

10.11. Fair Construction. This Agreement shall be deemed to be the joint work product of the Purchaser and the Sellers without regard to the identity of the draftsman, and any rule of construction that a document shall be interpreted or construed against the drafting party shall not be applicable. Each of the parties to this Agreement has caused this Agreement to be executed on its behalf by its duly authorized representative, all as of the day and year first above written.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

BALLY TOTAL FITNESS HOLDING CORPORATION

By: *John W. Dwyer*
Name: *John W. Dwyer*
Title: *EXEC V.P., CFO & TREASURER*

BALLY TOTAL FITNESS CORPORATION

By: *John W. Dwyer*
Name: *John W. Dwyer*
Title: *EXEC V.P., CFO & TREASURER*

NAUTILUS PLUS OF OREGON, INC.

By: _____
Name: _____
Title: _____

JACK GARRISON

DEANE GARRISON

SELLER REPRESENTATIVE

By: _____
Name: Jack Garrison

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

BALLY TOTAL FITNESS HOLDING CORPORATION

By: _____
Name: _____
Title: _____

BALLY TOTAL FITNESS CORPORATION

By: _____
Name: _____
Title: _____

NAUTILUS PLUS OF OREGON, INC.

By: Jack Garrison
Name: Jack Garrison
Title: President

JACK GARRISON

Jack Garrison

DEANE GARRISON

Deane Garrison

SELLER REPRESENTATIVE

By: Jack Garrison
Name: Jack Garrison

**NAUTILUS PLUS OF OREGON EMPLOYEE
STOCK OWNERSHIP TRUST**

By: [Signature]
Its: President

Not in its individual or corporate capacity but
solely as trustee of the Nautilus Plus of Oregon
Employee Stock Ownership Trust.

CLASS B SHAREHOLDERS:

Name:

Signature Page to Stock Purchase Agreement Dated November 29, 1999

CH_DOCS\192082.16

TRADEMARK
REEL: 002114 FRAME: 0629

1. List attached

3.15

INTELLECTUAL PROPERTY SCHEDULE

1. Federal trademark application pending for "ExcelTraining"
2. Federal trademark application submitted for "StraightUp." Deemed abandoned as of November 20, 1999.
3. Federal trademark application submitted for "Lifeforce." Deemed abandoned as of November 20, 1999.
4. Federal trademark application submitted ro "Heartbeat and Design." Deemed abandoned as of November 20, 1999.
5. Oregon state trade/service mark "Nautilus Plus" renewed 10/25/96 for 5 years.
6. Oregon state trade/service mark "Nautilus Aerobics with cross section of Nautilus shell" renewed 10/29/96 for 5 years.
7. Oregon state trade/service mark "Nautilus Plus in inverted triangle and cross section of Nautilus shell" renewed 10/29/96 for 5 years.
8. Oregon state trade/service mark "Nautilus Aerobics Plus" renewed 10/29/96 for 5 years.
9. Oregon assumed business name "Straight Up" effective 3/27/95.
10. Oregon assumed business name "Western Nautilus Plus" effective 11/4/94.
11. Oregon assumed business name "Nautilus Plus" effective 8/30/90.
12. Oregon assumed business name "Excel Training" effective 3/17/99.
13. Oregon assumed business name "Life Force Plus" effective 3/1/96.
14. Oregon assumed business name "Acrobic Excel" effective 3/17/99.
15. Washington assumed business name "Nautilus Plus" effective 9/10/90.
16. Washington assumed business name "Nautilus Aerobic Plus" effective 10/23/90.
17. Washington assumed business name "Straight Up" effective 9/90.

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