

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is entered into between FORECOURT, INC., a Washington corporation ("Seller"), and BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT, a municipal corporation ("Purchaser") with respect to that certain athletic club being operated at 11170 Meadowmeer Cir NE, Bainbridge Island, Washington 98110. The effective date ("Effective Date") of this Agreement means the date of complete and mutual execution hereof.

1. Purchase and Sale. Seller is engaged in the business of operating an athletic club. Purchaser is acquiring the real property upon which the athletic club is operated from a different selling entity under a separate agreement and Purchaser desires to also acquire certain assets of the athletic club. Upon the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, certain assets of the business of Seller (the "Assets"). The business of Seller is operated under the business name Bainbridge Athletic Club ("BAC").

1.1 Purchased Assets. The Assets of Seller to be purchased by Purchaser under the terms of this Agreement consist of the following (excepting all Retained Assets defined in Section 1.2 below):

(a) all tangible personal property, including all equipment, furniture, fixtures, office furnishings, and to the extent assignable and transferable, all rights in all warranties of any manufacturer or vendor with respect thereto, which are owned by Seller, used in the conduct and operation of BAC, and currently and at Closing located at the BAC (collectively the "Personal Property"), including but not limited to the Personal Property described on Exhibit A attached hereto,

(b) the interest of Seller in the contracts relating to the operation of the BAC assumed by Purchaser at Closing,

(c) all inventories of usable goods and supplies of BAC owned by Seller and existing at Closing,

(d) to the extent transferable and/or assignable, and subject to all applicable privacy laws and consent requirements, all member lists and records,

(e) all computer hardware and equipment used in the operation of BAC, and to the extent transferable and/or assignable, all rights in all warranties of any manufacturer or vendor with respect thereto, and to the extent transferable and/or assignable the computer software and subscriptions listed on Exhibit B attached hereto,

(f) the noncompete agreement of Seller as set forth in Section 14,

(g) all logos and symbols used by Seller in connection with BAC, the domain name "Bainbridge Athletic Club.com", and all telephone and facsimile numbers currently used by Seller in the operation of BAC, and

(h) all goodwill associated with the business of Seller at BAC, as a going concern.

1.2 Retained Assets. The assets of Seller which will not be sold but will be retained by Seller after Closing are described on Exhibit C attached hereto ("Retained Assets").

2. Purchase Price; Payment Terms. The total purchase price (the "Purchase Price") for the Assets is Four Million Four Hundred Thousand and No/100 Dollars (\$4,400,000) to be paid as follows:

2.1 Cash at Closing. At Closing, Purchaser shall pay the entire Purchase Price in cash.

2.2 Sales and Other Tax. Purchaser shall also pay at Closing any and all amounts due to the State of Washington that are associated with the sale under this Agreement, including but not limited to sales, use or transfer tax (but excluding any Federal income tax payable by Seller as a result of the sale of Assets hereunder). The parties will cooperate with the Escrow Agent and with each other to complete any necessary forms associated with the payment and submittal of the tax and will cooperate with each other to the extent additional forms or filings are necessary after Closing. Upon request, Purchaser shall provide Seller will proof that all applicable taxes have been paid, and shall hold Seller harmless from all such tax payments.

2.3 Allocation of Purchase Price. The Purchase Price shall be allocated among the Assets as follows: (a) Personal Property; \$575,400 (five hundred seventy five thousand four hundred dollars), (b) Inventory; \$10,000 (ten thousand dollars), (c) Noncompete; \$10,000 (ten thousand dollars), (d) Intangible property, including but not limited to member list, goodwill, domain name, and intellectual property; \$3,804,600 (three million eight hundred four thousand six hundred dollars), and (e) other property that may be transferred hereunder. Seller, in Seller's sole discretion, shall have the right to modify this allocation prior to Closing and both parties agree to be bound by any modified allocation and to report this transaction and the final allocation as necessary for federal and state income tax purposes. Seller will provide Purchaser with a completed IRS form 8594 after Closing for reporting purposes.

3. Liabilities. Purchaser will not be assuming any debt of Seller and Seller shall remain obligated for all debt. It is the intention of the parties that at Closing Purchaser will assume all the day to day liabilities associated with the operation of BAC and those contracts that Purchaser agrees to assume at Closing pursuant to Section 4.3 below, with Seller responsible for payments to Closing and Purchaser responsible for payments after Closing. If Purchaser waives the due diligence contingency in Section 4 below and this transaction closes, Purchaser agrees to assume these liabilities. Notwithstanding anything else, Purchaser shall not assume any contracts or liabilities except as explicitly provided in this Agreement.

4. Purchaser's Due Diligence Review.

4.1 Review Materials. Within five (5) business days after the Effective Date, Seller shall deliver to Purchaser the following review materials to the extent in Seller's possession ("Review Materials"): (a) copies of all contracts currently in effect relating to the operations of BAC, (b) any third party warranties or guaranties relating to the Assets, (c) maintenance and repair logs and records for the Assets, (d) general records relating to number of memberships and fees charged (without disclosure of any member names prior to Closing and

subject to all privacy laws and consent requirements at all times), (e) operating statements for BAC for the past four (4) years (which have already been provided to Purchaser), (f) that certain agreement with Kitsap Physical Therapy for use of space at BAC, dated November 14, 2018 (the "Kitsap PT Agreement") (which has already been provided to Purchaser), (g) a Tax Status Letter from the State of Washington regarding the status of Seller's business tax account (notwithstanding anything else, Seller shall provide this to Purchaser within 20 (twenty) days after the Effective Date), and (h) other documents reasonably requested and necessary for Purchaser's review in connection with Purchaser's due diligence. Notwithstanding the foregoing, in no event shall Seller be required to deliver any "proprietary information" which means tax returns, appraisals, prior purchase and sale agreements, attorney-client privileged work and similar materials. The term "Seller's possession" as used above means in the physical possession of Seller.

4.2 Asset Review. After the Effective Date, Purchaser and Purchaser's representatives may have access to the BAC facility for the purpose of inspecting the Personal Property being acquired under this Agreement. Purchaser shall be required to perform any such inspection in a manner as to not disturb or interfere with the operations of BAC, and the inspection will require reasonable advance notice and coordination with Seller who shall have the right to set the time for access. Purchaser shall hold Seller harmless from any claims as a result of Purchaser's entry into the BAC facility.

4.3 Contracts. Purchaser and Seller shall work together cooperatively to determine which of Seller's contracts related to the operation of the BAC will be assumed by Purchaser at Closing, and which will be terminated by Seller. It is agreed that Purchaser will assume the Kitsap PT Agreement at Closing. Seller shall terminate any contracts relating to the operation of the BAC not assumed by Purchaser, and shall indemnify and hold Purchaser harmless from any obligations thereunder after Closing. Purchaser will indemnify and hold Seller harmless from any further obligations under any contracts relating to the operation of the BAC assumed by Purchaser at Closing.

It shall be the sole obligation of Purchaser to terminate any assumed contract Purchaser desires after Closing, and Purchaser understands that the ability to terminate will be subject to the terms of each assumed Contract. Seller will provide any approval necessary for Purchaser to assume a contract. Seller makes no representation or warranties with regard to the terms of any of the assumed Contracts.

Notwithstanding anything else, Purchaser agrees to honor Seller's outstanding gift cards (or provide dollar for dollar credit if a gift card pertains to discontinued services or merchandise) for the BAC totaling not more than \$15,000 (fifteen thousand dollars), provided that within 5 business days of the Effective Date, Seller sends written notice to the BAC members and any known holders of gift cards for which Seller has contact information encouraging them to redeem any and all gift cards before the Closing Date.

Notwithstanding anything else, Purchaser agrees to honor Seller's outstanding three-month summer passes for the BAC to the extent the expiration date thereof occurs after Closing. If Seller continues to sell summer passes after the waiver of the due diligence review under Section 4, the expiration date of such passes shall be on or before the Closing Date.

4.4 Waiver. Purchaser's obligation to close is contingent on Purchaser's review under this section. Purchaser shall have thirty (30) days from the Effective Date (the "Review



Period”) to review all the information and studies and notify Seller in writing of Purchaser’s approval or disapproval. If Purchaser disapproves the due diligence contingency under this Section 4, this Agreement shall terminate and all rights, liabilities and obligations of the parties hereunder shall be of no further force or effect, other than rights and obligations that expressly survive termination. If no written notice is provided by Purchaser within the thirty (30) days, the due diligence contingency shall be deemed approved. If Purchaser does not waive the due diligence contingency, or if this transaction fails to close, all studies and reports generated by Purchaser during the Review Period shall be delivered to Seller.

Any failure of Seller to timely deliver or make available any of the above listed Review Materials will not extend the Review Period, and Purchaser’s sole and exclusive remedy for Seller’s failure, if any, shall be to terminate this Agreement before the expiration of the Review Period in accordance with the provisions of this Section 4. Seller makes no representation or warranty, express or implied, as to the accuracy or completeness of the information contained in the Review Materials, and Purchaser acknowledges that the Review Materials will be for informational purposes only and shall not give Purchaser any cause of action against Seller or the preparer, absent an agreement from the preparer that Purchaser is entitled to rely on a particular matter. In no event will the Review Materials include appraisals, valuation memos, or correspondence related to the sale of the Assets.

4.5 Indemnification. Purchaser shall indemnify, defend (with counsel reasonably satisfactory to Seller), protect, and hold harmless the Seller Parties (as defined below) from and against any and all actions, causes of action, liabilities, claims, suits, penalties, fines, judgments, liens, awards, loss, cost, damage, or expense of any kind whatsoever (including, without limitation, attorney’s fees and costs) (hereinafter “Claims”), which the Seller Parties may sustain or incur, for injury to or death of any person (including without limitation claims brought by employees, invitees, agents contractors, subcontractors and consultants of Purchaser or any employees or invitees of any invitees, agents, contractors, subcontractors and consultants of Purchaser (hereinafter collectively “Contractor”) or damage to or loss of any property, and expenses, costs of litigation, and reasonable attorney’s fees related thereto, or incident to establishing the right to indemnification, to the extent such Claims arise out of Purchaser’s due diligence activities conducted pursuant to this Agreement, including (without limitation), by reason of or in connection with any studies made by Purchaser or Purchaser’s agents or its Contractors relating to or in connection with the Assets, or entries by Purchaser or its agents or Contractors into the BAC facility. Purchaser shall defend, indemnify and hold harmless the Seller Parties to the full extent allowed by applicable law. In no event shall Purchaser’s obligations hereunder be limited to the extent of any insurance available to Purchaser. The “Seller Parties” are Seller and its affiliates, members, directors, officers, employees, attorneys, agents, contractors, successors, and assigns. The provisions of this Section 4 shall survive Closing or termination of this Agreement.

5. Financing Contingency. Purchaser’s obligation to close is contingent on Purchaser’s securing financing to pay the Purchase Price at Closing. Purchaser shall have 45 (forty-five) days from the Effective Date to secure this financing and to notify Seller in writing of Purchaser’s approval or disapproval. If Purchaser disapproves the financing contingency under this Section 5, this Agreement shall terminate and all rights, liabilities and obligations of the parties hereunder shall be of no further force or effect, other than rights and obligations that expressly survive termination. If no written notice is provided by Purchaser within the 45 (forty-five) days, the financing contingency shall be deemed approved. Purchaser agrees to actively pursue securing



financing and to waive this contingency as soon as Purchaser is satisfied that financing is in place for Closing.

6. Closing. Upon execution of this Agreement, the parties shall mutually agree on a person or entity to serve as the escrow agent ("Escrow Agent") for the closing of this transaction (the "Closing"). The Closing shall take place at the offices of the Escrow Agent on August 31, 2021, or such earlier date as both parties mutually agree in writing (the date on which the Closing occurs being referred to herein as the "Closing Date"). Purchaser shall deposit the necessary documents and funds with the Escrow Agent sufficiently in advance of the Closing Date to facilitate an orderly closing and both parties shall execute and deliver closing documents as outlined herein. This Agreement shall serve as escrow instructions and an executed copy of this Agreement shall be delivered to Escrow Agent. The parties shall execute such additional instructions as Escrow Agent may provide so long as they do not change the terms of this Agreement.

The Closing of the transaction contemplated under this Agreement is contingent upon the concurrent closing of the transaction between BAC Court LLC ("BAC"), as Seller, and Purchaser, as purchaser of that certain parcel of real property located at 11170 Meadowmeer Cir NE, Bainbridge Island, WA, pursuant to the terms of the Real Estate Purchase and Sale Agreement between BAC and Purchaser, which is being executed concurrent with the execution of this Agreement ("PSA Agreement"). Both transactions must close at the same time.

Seller shall apply for forgiveness of its second Payroll Protection Program (PPP) loan (the "PPP Loan") as soon as it is able to do so. If Seller has not received a determination on its forgiveness application (the "Application") from the PPP lender and/or U.S. Small Business Association (SBA) in a timely manner, then Seller shall, before the Closing Date, set up and fund an escrow account with its PPP lender in accordance with SBA rules to allow this transaction to close with the Application pending.

In the unlikely event the SBA eliminates the escrow option and does not replace it with a procedure to allow this transaction to close with the Application pending, then the Closing Date will automatically be extended to the earlier of September 30, 2021, or five (5) business days after Seller receives a determination on the Application. If Seller does not receive a determination on the Application by September 30, 2021, the parties agree to work together cooperatively to come up with a mutually agreeable solution to facilitate closing of this transaction. If a mutually agreeable solution cannot be worked out and reduced to a writing signed by the parties within five (5) business days after September 30, 2021, either party may terminate this Agreement, which termination will not be a default under this Agreement, and in which event the Earnest Money under the PSA Agreement shall be retained by Seller. Purchaser hereby authorizes Escrow Agent to release the Earnest Money to Seller upon receipt of a copy of written notice to terminate hereunder and agrees to execute any further authorizations requested by Escrow Agent.

6.1 Seller's Closing Deliveries. At or prior to the Closing, Seller shall deliver or cause to be delivered to the Escrow Agent the following items and documents, duly executed and acknowledged by Seller where applicable: (i) a Bill of Sale conveying to Purchaser the Assets, free and clear of any liens and encumbrances, in the form attached as Exhibit D (the "Bill of Sale"), (ii) an Assignment and Assumption of Contracts and Intangible Property, assigning to Purchaser Seller's interest in the contracts assumed by Purchaser and intangible property included in the transaction, in the form attached as Exhibit E ("Assignment"), (iii) a Nonforeign Certification, certifying the nonforeign status of Seller, (iv) funds to pay all closing costs and expenses to be paid



by Seller hereunder, or, in the alternative, a written authorization satisfactory to the Escrow Agent providing for the deduction of such amounts out of escrow funds due Seller, and (v) any other documentation reasonably required by the Escrow Agent to close this transaction.

6.2 Purchaser's Closing Deliveries. At or prior to the Closing, Purchaser shall deliver or cause to be delivered to the Escrow Agent the following items and documents, duly executed, and acknowledged by Purchaser where applicable (i) the Purchase Price, (ii) funds to pay all closing costs and expenses to be paid by Purchaser hereunder, (iii) the Assignment, and (iv) any other documentation reasonably required by the Escrow Agent to close this transaction.

6.3 Prorations. Personal Property taxes due and payable in the year of sale, and operating income or expenses that are known at the time of Closing shall be prorated to Closing, based upon actual days involved. Seller shall, on or before Closing, furnish to Purchaser and the Escrow Agent all information reasonably necessary to compute the prorations provided for in this Section, and Purchaser shall provide any information required to claim any exemption from the payment of sales tax or personal property taxes, if applicable. The parties acknowledge and agree that there will be the need for post-Closing reconciliations and adjustments, as discussed in Section 12.3, and will work with each other to finalize these.

6.4 Closing Costs. Seller shall pay one-half of the fee charged by the Escrow Agent, and Seller's share of the prorations set forth above. Purchaser shall pay one-half of the fee charged by the Escrow Agent, Purchaser's proportionate share of the prorations set forth above, all sales, use or conveyance tax due, and any and all costs associated with any financing documents or requirements.

7. Operations Pending Closing. From the date hereof until Closing, Seller agrees to (i) continue to operate BAC in the same manner it is being operated, (ii) maintain the existing insurance coverage for BAC, (iii) perform its obligations under any existing contracts, (iv) not sell or dispose of any business assets except in the normal course of business, and (v) not enter into any written or oral contracts or agreements that would be binding on Purchaser or the Assets after Closing, except to the extent reasonably necessary to operate BAC (and subject to the reasonable approval of Purchaser after waiver of the Review Period and the Financing Contingency).

8. Limitations of Seller's Representations and Warranties, Release.

8.1 AS-IS. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY INSTRUMENTS TO BE DELIVERED BY SELLER AT CLOSING, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS PURCHASING THE ASSETS IN AN "AS-IS" CONDITION "WITH ALL FAULTS" AND WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESSED OR IMPLIED, OF ANY NATURE WHATSOEVER FROM OR ON BEHALF OF SELLER, INCLUDING WITHOUT LIMITATION, THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND USE.**

8.2 No Reliance. Purchaser acknowledges that (i) Purchaser has had or will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigation as Purchaser deems necessary, desirable or appropriate with respect to the Assets, and (ii) except as otherwise expressly set forth in this Agreement or in any instruments to be delivered by Seller at Closing, neither Seller, nor anyone acting for or on behalf of Seller, has made any representation, warranty, promise or statement, express or implied, to

Purchaser, or to anyone acting for or on behalf of Purchaser, concerning the Assets or the condition, and use thereof. Purchaser represents that, in entering into this Agreement, Purchaser has not relied on any representation, warranty, promise or statement, express or implied, of Seller, or anyone acting for or on behalf of Seller, other than as expressly set forth in this Agreement or in any instruments to be delivered by Seller at Closing, and that Purchaser shall purchase the Assets based upon Purchaser's own prior investigation and examination of the Assets. If Purchaser elects (A) not to inspect the Assets, (B) to terminate this Agreement on or before the expiration of the Review Period, or (C) to proceed to Closing, such election will be made at Purchaser's absolute discretion, in reliance solely upon the tests, analyses, inspections and investigations that Purchaser makes, or had the right to make and opted not, or otherwise failed, to make, and not in reliance upon any alleged representation made by or on behalf of Seller, except as set forth in this Agreement or in any instruments to be delivered by Seller at Closing.

8.3 Release. Except to the extent such claim and liability is the result of the breach of Seller's representations and warranties as may be expressly provided in this Agreement or any instruments to be delivered by Seller at Closing, Purchaser, for itself and its successors in interest, releases Seller from, and waives all claims and liability against Seller for, the condition and status of the Assets, and hereby releases Seller from, and waives all liability against Seller attributable to the condition and status of the Assets, including without limitation whether or not current members remain as members after Closing. The provisions of this Section 8 shall survive indefinitely any Closing or termination of this Agreement and shall not be merged into the Closing documents.

9. Representations and Warranties of Seller

9.1 Seller hereby represents and warrants to Purchaser, which representations and warranties shall be deemed made by Seller as of the as of the Effective Date and also as of the Closing Date, and except as disclosed in the Review Materials, or otherwise disclosed by Seller to Purchaser in writing, or discovered by Purchaser in connection with its due diligence review pursuant to this Agreement:

(a) Seller is a corporation duly organized, validly existing and in good standing in the State of Washington with full authority to sell and convey the Assets and to enter into this Agreement.

(b) Seller has the full power, authority, and capacity necessary to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement has been duly authorized and approved by all necessary action of the Seller. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally.

(c) There are no actions or proceedings pending, or to the actual knowledge of Seller, threatened against Seller relating to or affecting the Assets.

(d) Seller has marketable title to the Assets which will be conveyed to Purchaser at Closing free and clear of any liens or liabilities, except for the contracts assumed by Purchaser (and any other liabilities agreed to under Section 3).

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(e) There are no leases or contracts affecting the Assets to which Seller is a party which will not be terminated, other than the contracts assumed by Purchaser.

9.2 Seller's Actual Knowledge. References to the "actual knowledge of Seller" or "Seller has no actual knowledge" shall mean the present, actual knowledge of Michele Stockman, principal of Seller, as of the Effective Date and the Closing Date, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any agent, representative, consultant or employee of Seller, and without any obligation to undertake any further investigation or take any affirmative action to acquire any knowledge.

10. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller, which representations and warranties shall be deemed made by Purchaser as of the Effective Date and also as of the Closing Date, or otherwise disclosed by Purchaser to Seller in writing:

(a) Purchaser is a municipal corporation duly organized, validly existing and in good standing in the State of Washington with full authority to purchase the Assets and to enter into this Agreement. Purchaser has provided all public and other notices and secured all approvals necessary to enter into this Agreement and to finalize the Closing under this Agreement. No further consent, authorization, order, or approval of any governmental agency or third party is required in connection with the execution of this Agreement, or the closing of the transaction contemplated hereby.

(b) Purchaser has the full power, authority, and capacity necessary to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement has been duly authorized and approved by all necessary action of the Purchaser. This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid, and binding obligation of Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally.

11. Update and Survival of Representations and Warranties

11.1 Update after Effective Date. If there is an event that occurs or a disclosure that Seller becomes aware of between the Effective Date and the Closing Date that changes any representation and warranty made by Seller, Seller shall notify Purchaser which notification shall update the representations and warranties.

11.2 Survival. All representations and warranties made by the parties hereto shall survive the Closing, shall not merge in the performance of any obligation by any party hereto, and shall terminate and expire twelve (12) months from the Closing Date, except to the extent provisions hereof provide for a different term of survival. Purchaser agrees that it will not assert a breach of a representation or warranty after the Closing Date to the extent Purchaser was actually aware prior to the Closing Date of the facts upon which that claim for breach of that representation or warranty is based.

12. Additional Agreements.



12.1 Employees. As of the Closing Date, Seller will have paid (or will pay after Closing as needed and hold Purchaser harmless from any claim from an employee for amounts due for the time period prior to Closing) in full to its employees all wages, benefits, and other compensation due to or on behalf of such employees through the Closing Date. Seller agrees that it is solely responsible for the payment, termination and any claims made for wages or benefits for all employees prior to the Closing Date. To the extent Purchaser elects to employ any of Seller employees, Purchaser will be solely responsible for the hiring, payment and any claims made for wages or benefits for all of Seller's employees after the Closing Date, and Purchaser agrees to hold Seller harmless from any claim from a prior employee of Seller for amounts due that employee for the period of time after the Closing Date.

Seller and Purchaser agree to jointly meet with Seller's employees after the Effective Date to provide the employees with details of Purchaser's plans after Closing and any information on the desire of Purchaser to hire some of Seller's employees after Closing. The parties agree to work together to plan for such meeting(s). It is agreed that Purchaser will not independently contact or otherwise communicate with Seller employees prior to Closing without first advising Seller and securing written approval for such discussion.

12.2 Members. Seller will not provide Purchaser with a list of names of all members of BAC until Closing but will provide general membership information (number of members and dues amounts) during the Review Period to the extent allowed under all applicable laws and regulations. Purchaser acknowledges and agrees that Seller has made no representations or warranties regarding whether existing members of BAC will choose to remain as members after Closing.

Purchaser acknowledges and agrees that Seller must comply with all privacy laws and regulations and consent requirements relating to sharing member information including banking, and all personal contact information, and that no such information will be provided to Purchaser unless and until all these requirements are met, even if after Closing.

12.3 Post-Closing Adjustments. After Closing, Purchaser and Seller agree to cooperate as needed to reconcile items that were not prorated, charged, or credited at Closing, including all revenues such as member dues and charges, and all expenses and any bills that are received by either party after Closing which relate to services rendered to BAC prior to or after Closing. Specifically, there will be revenues from members collected after Closing which are attributed to BAC member fees and charges on member accounts for the period of time prior to Closing and Purchaser agrees to share records and accountings for these amounts to facilitate the reconciliation and payment to Seller of all amounts attributed to the period of time prior to Closing. There may also be some expenses that are billed after Closing which may cover periods of time both before and after Closing, and these expenses shall also be reconciled. All such revenues and expenses to be reconciled shall be paid by the appropriate party upon presentation of the accounting, bill, or invoice.

12.4 Access by Seller to Books and Records. Purchaser will retain and, make available to Seller any information relating to the Purchased Assets or the business formerly conducted by Seller as may be reasonably needed by Seller to wind down and file all necessary tax and other filings. Additionally, Seller shall have the right to use the services of the BAC employee who does the books and accountings after Closing to assist with the wind down of Seller books and tax reportings, pursuant to an independent contract with her.



12.5 Consulting Agreement. Seller and Purchaser have discussed the idea of Michele K. Stockman providing transitional and consulting services to Purchaser following the Closing Date. The parties agree that if this does occur, it will be negotiated and agreed to between the parties and memorialized in a separate written contract. It is understood that Michele K. Stockman is not obligated to enter into a consulting agreement, and this is not a condition to the Closing hereunder.

12.6 State Tax Filings. After Closing, Seller will be responsible for and agrees to perform all filings and pay all excise, B&O and other operational taxes due for the periods prior to Closing. Purchaser will be responsible for and agrees to perform all filings and pay all excise, B & O and other operational taxes due for all periods after Closing. The parties agree to hold each other harmless from the payment of any such taxes due from such party.

13. Confidentiality; Press Release. Subject to the terms of the NDA executed between Seller and Purchaser prior to the date hereof, as modified, Seller and Purchaser agree that other than the public notice that Purchaser is required to make under the Open Public Meetings Act (RCW 42.30), information reasonably required to be disclosed by Purchaser at public meetings, and disclosures otherwise required by law, including without limitation the Public Records Act, the terms and conditions of this Agreement and details regarding its negotiation, all of the Review Materials provided Purchaser hereunder, and any matter learned relating to the business of Seller ("Confidential Information"), are and shall remain confidential between Seller and Purchaser, and Purchaser shall limit disclosure of Confidential Information to people with a need to know in order for Purchaser to perform due diligence; provided, however, that the foregoing prohibitions shall not apply to (i) disclosures that are required by Law; (ii) information that is ascertainable or obtained from public or published information, not made available to the public by the disclosing party; (iii) information received from a third party not known to the disclosing party to be under an obligation to keep such information confidential; (iv) information independently developed by the disclosing party, or (v) information disclosed to professional advisors (who shall be similarly bound).

The parties agree to use reasonable efforts to ensure that its representatives, and related parties will not, use (except as contemplated by this Agreement) reproduce, distribute, or disclose to any other person or entity any Confidential Information relating to Seller or Purchaser. The obligations under this Section 13 shall survive Closing for a period of three (3) years, unless terminated earlier in writing by Seller.

With respect to public announcements regarding this transaction (excluding notices of meetings of Purchaser's Board) between the Effective Date and the Closing Date, each party shall give the other party an advance courtesy copy of any such announcement for review and comment and shall give due consideration to feedback received from the other party.

14. Non-Compete Obligation. Seller, Michele K. Stockman and Melissa House agree that they will not, directly, or indirectly, own or be employed by any person or entity engaged in the operation of an athletic club anywhere in Bainbridge Island, Suquamish, Poulsbo, and Indianola (including any unincorporated Kitsap County upon which these towns/cities are located and which is located between them) for a period of three (3) years following the Closing Date. The foregoing notwithstanding, Seller, Michele K. Stockman or Melissa House may purchase shares of a publicly traded company engaged in competing activities.

15. Default; Remedies

15.1 Default by Purchaser. If Purchaser fails, without legal excuse, to complete the purchase of the Assets in accordance with the terms of this Agreement or otherwise defaults hereunder, Seller shall have the option either (i) to seek specific performance provided an action therein is commenced within sixty (60) days of Purchaser's failure to perform, or (ii) to terminate this Agreement as the sole and exclusive remedy available to Seller for such default.

15.2 Default by Seller. If Seller fails, without legal excuse, to complete the sale of the Assets in accordance with the terms of this Agreement or otherwise defaults hereunder, Purchaser may, as its sole remedy, either (i) terminate this Agreement or (ii) seek specific performance provided an action thereon is commenced within sixty (60) days of Seller's failure to perform.

16. Possession. Purchaser shall be entitled to possession of the Assets at Closing.

17. Brokers. Each party represents and warrants to the other that it has dealt with no real estate broker regarding this transaction in a manner which would result in any obligation to pay a commission. Each party agrees to indemnify and hold the other party harmless from and against any and all claims or charges for any other brokerage commissions from any person such that the party incurring any other brokerage charge shall have the sole obligation to pay the same and hold the other party harmless.

18. Attorneys' Fees. If it shall be necessary for either Purchaser or Seller to employ an attorney to enforce their rights pursuant to this Agreement because of the default of the other party, the prevailing party in any such action shall be entitled to recover all of its costs, expenses, and reasonable attorneys' fees.

19. Notices. All notices, requests, demands and other communications in connection with this Agreement shall be in writing and furnished to the other party at its address listed below (or at such other address as may be specified from time to time by notice from the addressee to the other party) and shall be deemed to have been duly given when delivered personally or sent by nationally recognized overnight courier; sent by certified or registered mail, postage prepaid; or transmitted by email (with copies also mailed the same day by U.S. mail, postage prepaid), to the following respective addresses:

If to Seller: 11700 Meadowmeer Cir NE, Bainbridge Island, WA 98110
Attn: Michele Stockman
shelly@bainbridgeac.com

With a copy to: Mary Ann Barkshire
PO Box 267, Medina, WA 98039
mbarkshire@comcast.net

If to Purchaser: 7666 High School Road, Bainbridge Island, WA 98110
Attn: Executive Director

Email: terry@biparks.org

With a copy to: Law Office of Hayes Gori, PLLC
271 Wyatt Way NE, Suite 112, Bainbridge Island, WA 98110
hayes@hayesthelawyer.com

Notice shall be deemed to have been received (i) upon receipt in the case of personal delivery, (ii) one (1) business day after being deposited in the case of overnight courier, (iii) three (3) business days after the date deposited in the U.S. mail in the case of certified or registered mail, and (iv) the day of receipt as evidenced by an email confirmation in the case of transmittal by email.

20. Assignment. Purchaser shall not have the right to assign its rights under this Agreement except with the prior written consent of Seller; provided, however that Purchaser may assign its rights under this Agreement to an entity related to or controlled by Purchaser.

21. Entire Agreement. This Agreement constitutes the entire agreement of the parties with regard to the Assets being conveyed hereunder and supersedes all prior oral and written understandings.

22. Binding Effect. Once mutually executed, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

23. Exhibits. The exhibits attached hereto are incorporated herein by reference as if fully set forth herein. Purchaser and Seller represent that they have reviewed to their satisfaction the Exhibits hereto.

24. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Purchaser.

25. Expenses. Each party to this Agreement shall pay its own expenses (including, without limitation, the fees and expenses of its agents, representatives, counsel, and accountants) incidental to the preparation and consummation of this Agreement.

26. Governing Law. This Agreement is being delivered in and shall be construed in accordance with, and governed by, the laws of the State of Washington. Seller hereby consents to jurisdiction and venue for any action commenced to enforce this Agreement in the County of Kitsap, State of Washington.

27. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

28. Invalid Provisions. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.

29. No Waiver. Either party's waiver of the other's performance of any covenant, condition or promise does not invalidate this Agreement nor shall it be considered a waiver of any other covenant, condition, or promise, and will not constitute a waiver of performance of any




other act required at a later time. The exercise of any remedy available through this Agreement does not waive any additional remedy provided by law, nor does it exclude any other remedy unless expressly excluded.

30. Counterparts. This Agreement may be executed on original or facsimile counterpart signature pages, and each such counterpart signature page will be deemed a part of one original agreement. Signatures transmitted electronically shall be deemed the equivalent of original signatures for all purposes.


31. Time of Essence. Time is of the essence for each and every term, condition, obligation, and provision hereof. If the date for any performance under this Agreement falls on a weekend or a holiday, the time for such performance shall extend to the next business day. Any period of time stated in this Agreement shall expire at 9:00 p.m. of the last calendar day of the specified period of time. Unless otherwise stated, as used in this Agreement "day" shall mean a calendar day.

SELLER:

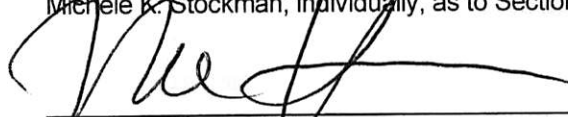
FORECOURT, INC
a Washington Corporation

By: 
Michele K. Stockman, its President

Date signed: 6/17/2021


Michele K. Stockman, individually, as to Section 14

Date signed: 6/17/2021


Melissa House, individually, as to Section 14

Date signed: 6/17/2021

PURCHASER:

BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT
a municipal corporation

By: 
Terry Lande, its Executive Director

Date signed: 6/17/2021

EXHIBIT A

PERSONAL PROPERTY

(Not a comprehensive list; Sale includes all personal property located at BAC at Closing excluding Retained Assets)

Category	Items	FMV
1	Storage (Shelving, Cabinets, Deck Boxes, Gazebos, etc.)	\$35,000.00
2	Janitorial Equipment (Vacuums, mops, brooms, garbage cans, etc.)	\$25,000.00
3	TV and Sound Systems	\$20,000.00
4	Networking (wireless, security, local, phone, etc.)	\$10,000.00
5	Office Furniture (Desks, Chairs, File Cabinets, Credenzas, etc.)	\$30,000.00
6	Computers and Peripherals	\$15,000.00
7	Maintenance Equipment (Lift, hand tools, power tools, ladders, tool chests, etc.)	\$30,000.00
8	Court Maintenance Equipment (ball mowers, court sweepers, vacuums, etc.)	\$5,000.00
9	Recreation Equipment (Bouncy house, basketball hoops, volleyball net system, pickle ball nets, etc.)	\$30,000.00
10	Fitness Equipment (plaste loaded, selectorized, cardio, misc.)	\$200,000.00
11	Tennis Equipment (Racquets, balls, teaching tools, stringer, nets, etc.)	\$15,000.00
12	Artwork	\$5,000.00
13	Carpets, Flooring, Court Surface	\$13,000.00
14	Sauna and Steam	\$6,400.00
15	Pool (Vacuum, Cleaning Tools, Lane Lines, Covers, Fitness Equipment, etc.)	\$45,000.00
16	Lighting	\$10,000.00
17	Indoor Furniture	\$10,000.00
18	Outdoor Furniture	\$6,000.00
19	Appliance (Hot water tank, water storage, ice machine, dishwasher, washer/dryer, drinking fountains, etc.)	\$30,000.00
20	Misc. (BBQ, AED, Mirrors, Window Treatment, Lockers and locks, septic, etc.)	\$35,000.00
		<hr/>
		\$575,400.00


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EXHIBIT B

COMPUTER SOFTWARE

The following subscriptions, to the extent transferrable and assignable:

1. Jonas Point of Sale Software subscription, and the right to allow members to use their Online Mobile Application.
2. Fitness on Demand
3. Upkeep Maintenance Software
4. Reach AV System
5. Tennis bookings
6. Paychex
- 7 Humanity
8. Jot form

It is understood that Seller is transferring to Purchaser only such interest that Seller has in said software subscriptions, without representation as to whether such interest is transferable or assignable.

It shall be the responsibility of Purchaser to work with the above vendors during the Review Period to ascertain the extent of the interest of Seller and to set up new accounts with such vendors if desired.

Notwithstanding, Purchaser agrees that certain personal information contained in said software will not be transferrable without compliance with all applicable privacy laws and consent requirements.



EXHIBIT C

RETAINED ASSETS

All cash in Seller accounts at Closing

All Seller banking relationships, records, credit card and other accounts

Accounts with Vendors Costco, Amazon, cell phone and others

All employee benefit accounts and employee records

2018 Toyota Highlander

Two personal laptops used by Michele K. Stockman and Melissa House

The email accounts used by Michele K. Stockman and Melissa House

Files and office contents personal to Michele K. Stockman and Melissa House

Corporate name and all corporate records and tax records of Seller

Personal IRA and health insurance for Michele K. Stockman and Melissa House

Seller's QuickBooks



EXHIBIT D
BILL OF SALE

This Bill of Sale ("Bill of Sale") is entered into as of _____ by and between Forecourt, Inc., a Washington corporation ("**Seller**"), and Bainbridge Island Metropolitan Park & Recreation District, a municipal corporation ("**Purchaser**"). This Bill of Sale is made pursuant to the Asset Purchase Agreement, dated _____, 2021, by and between Purchaser and Seller (the "Agreement"), to transfer certain of the Assets (as defined in the Agreement), specifically all of the Assets that are tangible property (collectively the "Tangible Assets").

1. Conveyance. For good and valuable consideration, the receipt, adequacy, and legal sufficiency of which Seller hereby acknowledges, Seller hereby irrevocably sells, assigns, transfers, and conveys to Purchaser, all of its right, title, and interest in and to the Tangible Assets.
2. Disclaimer of Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS BILL OF SALE OR THE AGREEMENT, THE TANGIBLE ASSETS ARE CONVEYED BY SELLER AND ACCEPTED BY PURCHASER AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS, IMPLIED, OR STATUTORY, IT BEING THE INTENTION OF SELLER AND PURCHASER EXPRESSLY TO NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE TANGIBLE ASSETS CONVEYED HEREUNDER, OR BY ANY SAMPLE OR MODEL THEREOF, AND ALL OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW.
3. Further Assurances. The parties agree to execute any further documentation reasonably required to vest in Purchaser the interests conveyed hereunder.
4. Law; Binding Effect. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Washington and shall inure to and be binding upon the parties hereto and their respective heirs, successors, and assigns. This Bill of Sale may be executed and delivered electronically and in counterparts.

IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Bill of Sale as of the date first written above.

SELLER:

FORECOURT, INC
a Washington Corporation

By: _____
Michele K. Stockman, its President

PURCHASER:

BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT
a municipal corporation

By: _____
Terry Lande, its Executive Director

EXHIBIT E

ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND INTANGIBLE PROPERTY

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND INTANGIBLE PROPERTY (this "Assignment") is entered into as of _____ by and between Forecourt, Inc., a Washington corporation ("**Seller**"), and Bainbridge Island Metropolitan Park & Recreation District, a municipal corporation ("**Purchaser**"). This Assignment is made pursuant to the Asset Purchase Agreement, dated _____, 2021, by and between Purchaser and Seller (the "Agreement"), to transfer certain of the Assets (as defined in the Agreement), specifically all of the Assets that are intangible property, including the Assumed Contracts (as defined below) (collectively the "Intangible Assets").

In consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Contracts. Seller assigns and transfers to Purchaser, to the extent assignable and transferable and without representation or warranty, all of Seller's right, title, and interest in and to the contracts assumed by Purchaser under the Agreement, which contracts are listed in attached Exhibit A (the "Assumed Contracts"). By execution hereof, Purchaser accepts this Assignment, and hereby assumes all of the obligations of Seller accruing after the date hereof with respect to the Assumed Contracts and agrees to indemnify and hold Seller harmless from all such obligations.

2. Intangible Property. Seller assigns and transfers to Purchaser, to the extent assignable and transferrable, and without representation or warranty, all of Seller's right, title, and interest in and to the Intangible Assets (other than the Assumed Contracts). By execution hereof, Purchaser accepts this Assignment, and hereby assumes all of the obligations of Seller accruing after the date hereof with respect to the Intangible Assets (other than the Assumed Contracts) and agrees to indemnify and hold Seller harmless from all such obligations.

3. Further Assurances. It is specifically agreed that Seller shall not be responsible for the discharge and performance of any duties or obligations to be performed and/or discharged in connection with the Intangible Assets after the date hereof. The parties agree to execute any further documentation reasonably required to vest in Purchaser the interests conveyed hereunder.

4. Law; Binding Effect. This Assignment shall be governed by and construed in accordance with the laws of the State of Washington and shall inure to and be binding upon the parties hereto and their respective heirs, successors, and assigns. This Assignment may be executed and delivered electronically and in counterparts.

IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Assignment as of the date first written above.

SELLER: FORECOURT, INC
a Washington Corporation

By: _____
Michele K. Stockman, President

PURCHASER: BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT
a municipal corporation

By: _____
Terry Lande, its Executive Director

