

## FRANCHISE DISCLOSURE DOCUMENT



FITNESS TOGETHER FRANCHISE, LLC  
(a Delaware limited liability company)  
9780 South Meridian Boulevard, Suite 400  
Englewood, Colorado 80112  
(303) 663-0880  
[www.fitnessstogether.com](http://www.fitnessstogether.com)  
[info@fitnessstogether.com](mailto:info@fitnessstogether.com)

Fitness Together Franchise, LLC, offers franchises for the operation of personal fitness training studios under the name Fitness Together,<sup>®</sup> which provide individualized one-on-one and small group personal fitness training, a nutrition program and other related services and products.

The total investment necessary to begin operation of a Fitness Together studio ranges from ~~\$143,600~~189,162 to ~~\$258,100~~328,576. This includes ~~\$56,209~~43,559 to ~~\$61,209~~48,559 that must be paid to us or our affiliates.

The total investment necessary to begin operation of a Fitness Together area development franchise ranges from \$79,800 (for a 2-studio commitment) to ~~\$199~~299,000 (for a 10-studio commitment). This entire amount must be paid to us.

This ~~Disclosure Document~~disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this ~~Disclosure Document~~disclosure document and all accompanying agreements carefully. You must receive this ~~Disclosure Document~~disclosure document at least 14 calendar-days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your ~~Disclosure Document~~disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact the Fitness Together Franchise, LLC, Legal Department at 9780 South Meridian Boulevard, Suite 400, Englewood, CO 80112 (303) 663-0880.

The terms of your contract will govern your franchise relationship. Don't rely on the ~~Disclosure Document~~disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this ~~Disclosure Document~~disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this ~~Disclosure Document~~disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise", which can help you understand how to use this ~~Disclosure Document~~disclosure document, is available from the Federal Trade Commission ("FTC"). You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them. ~~(See Exhibit F.)~~

Issuance ~~date~~Date: March ~~13, 2019, as amended June 28, 2019 and September 10, 2019~~30, 2020

## STATE COVER PAGE

~~Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.~~

~~Call the state franchise administrator listed in Exhibit F for information about the franchisor, or about franchising in your state.~~

~~MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.~~

~~Please consider the following RISK FACTORS before you buy this franchise:~~

- ~~1. THE FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT REQUIRES THAT ALL DISAGREEMENTS AND DISPUTES BE SETTLED BY BINDING ARBITRATION OR LITIGATION IN THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED, WHICH IS CURRENTLY ENGLEWOOD, COLORADO. OUT OF STATE ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN OUR HOME STATE RATHER THAN IN YOUR HOME STATE.~~
- ~~2. COLORADO LAW GOVERNS THE FRANCHISE AGREEMENT AND AREA DEVELOPMENT AGREEMENT AND THE RELATIONSHIP BETWEEN US AND YOU. THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.~~
- ~~3. PLEASE NOTE THAT 57.2% OF OUR ASSETS ARE INTANGIBLE. YOU MAY WANT TO TAKE THIS INTO CONSIDERATION WHEN MAKING A DECISION TO PURCHASE THIS FRANCHISE OPPORTUNITY.~~
- ~~4. YOUR SPOUSE MUST SIGN A DOCUMENT THAT MAKES YOUR SPOUSE LIABLE FOR ALL FINANCIAL OBLIGATIONS UNDER THE FRANCHISE AGREEMENT EVEN THOUGH YOUR SPOUSE HAS NO OWNERSHIP INTEREST IN THE FRANCHISE. THIS GUARANTEE WILL PLACE BOTH YOUR AND YOUR SPOUSE'S MARITAL AND PERSONAL ASSETS, PERHAPS INCLUDING YOUR HOUSE, AT RISK IF YOUR FRANCHISE FAILS.~~
- ~~5. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.~~

~~We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.~~

~~Effective Date: See the next page for state effective dates.~~

FT Studio (Unit)

September 2019 Amended FDD

## ~~STATE EFFECTIVE DATES~~

~~The following states require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration:~~

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This Franchise Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

<del>California</del> <u>QUESTION</u>	<del>Exempt</del> <u>WHERE TO FIND INFORMATION</u>
Florida	October 1, 2019
Hawaii <u>How much can I earn?</u>	as amended Sept. 19, 2019 <u>Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Exhibit D.</u>
Illinois <u>How much will I need to invest?</u>	<del>Exempt</del> <u>Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.</u>
Indiana <u>Does the franchisor have the financial ability to provide support to my business?</u>	<del>Exempt</del> <u>Item 21 or Exhibit E includes financial statements. Review these statements carefully.</u>
Maryland <u>Is the franchise system stable, growing or shrinking?</u>	March 20, 2019 <u>Item 20 summarizes the recent history of the number of company-owned and franchised outlets.</u>
Michigan	March 13, 2019
Minnesota	April 11, 2019 as amended July 17, 2019 as amended Sept. 27, 2019
New York	Exempt
North Dakota	March 22, 2019 as amended July 23, 2019 as amended Sept. 27, 2019
Rhode Island <u>Will my business be the only Fitness Together Franchised Business in my area?</u>	as amended Sept. 12, 2019 <u>Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.</u>
South Dakota <u>Does the franchisor have a troubled legal history?</u>	March 27, 2019 <u>Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.</u>

Texas\* March 25, 2010

Utah March 30, 2019

<del>Virginia</del> <a href="#">What's it like to be a Fitness Together Franchised Business franchisee?</a>	<del>March 20, 2019</del> <a href="#">Item 20 lists current and former franchisees. You can contact them to ask about their experiences.</a>
<del>Washington</del> <a href="#">What else should I know?</a>	<del>Exempt</del> <a href="#">These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.</a>

~~Wisconsin~~ March 13, 2019 as amended July 3, 2019 as amended Sept. 9, 2019

—————\*Denotes one-time filing

In all other states that do not require registration, the effective date of this Disclosure Document is the issuance date of March 13, 2019, as amended June 28, 2019 and September 10, 2019.



## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its Operations Manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating Restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, access to customers, what you sell, how you market and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have a right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise agreement ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit F.

Your state also may have laws that require special disclosures or amendments to be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Colorado. Out-of-state mediation, arbitration or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Colorado than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

## STATE OF MICHIGAN DISCLOSURE NOTICE

**THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.**

A prohibition on the right of a franchisee to join an association of franchisees.

A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in the Michigan Franchise Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

A provision that permits a franchisor to terminate a franchise before the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.

A provision that permits the franchisor to refuse to renew a franchise on the terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

The fact that the proposed transferee is a competitor of the franchisor or sub-franchisor.

The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of these assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.

Any questions regarding this notice should be directed to: Michigan Attorney General's Office, Consumer Protection Division, Attn: Franchise Section, G. Mennen Williams Building – 1<sup>st</sup> Floor, 525 West Ottawa Street, Lansing, Michigan 48933, Telephone Number: (517) 373-7117

THE MICHIGAN NOTICE APPLIES ONLY TO FRANCHISEES WHO ARE RESIDENTS OF MICHIGAN OR LOCATE THEIR FRANCHISES IN MICHIGAN.

Note: Despite paragraph (f) above, we intend, and we and you agree to fully enforce the arbitration provisions of the Franchise Agreement and Area Development Agreement. We believe that paragraph (f) is unconstitutional and cannot preclude us from enforcing these arbitration provisions.

**FITNESS TOGETHER FRANCHISE, LLC**

**Franchise Disclosure Document**

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## ITEM 1. THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

### The Franchisor

To simplify the language in this Franchise Disclosure Document (“Disclosure Document”), “we,” “us,” “Franchisor,” “Fitness Together” or “our” means Fitness Together Franchise, LLC. “You,” “your,” or “Franchisee” means the person or legal entity (including an individual, corporation, partnership, limited liability company or other legal entity, and its owners, officers, and directors) buying the franchise. If you are a legal entity, your direct and indirect owners will have to guarantee your obligations and be bound by the provisions of the franchise agreement and other agreements as described in this Disclosure Document.

We were incorporated in the State of Arizona on January 25, 1996, under the name Fitness For Life Franchise Corporation. In 2005, we changed our name to Fitness Together Franchise Corporation. On October 8, 2015, we changed our state of incorporation from Arizona to Delaware. On October 9, 2015, we converted to a Delaware limited liability company. Our principal business address is 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112. We conduct business under our company name and no others.

Our agents for service of process are listed on Exhibit F to this Disclosure Document.

### Our Business Activities

*Franchise Program.* We sell franchises to own and operate Fitness Together® studios (“Studios”). The Fitness Together franchise system is a unique and comprehensive system providing individualized personal one-on-one and personal small group fitness training, a nutrition program, and related services and products (the “Franchise System”).

We will enter into the franchise agreement attached as Exhibit B (the “Franchise Agreement”), which will grant to you a license to use the service marks “Fitness Together®” and “Nutrition Together®” for the purpose of owning and operating a Studio.

If we offer you the right to enter into an Area Development Agreement (the “Area Development Agreement”), you will acquire a specified number of franchises and open, according to a specified schedule (the “Development Schedule”), a corresponding number of Studios, each under a separate Franchise Agreement, within a specifically described geographic territory (the “Development Area”). The form of Area Development Agreement you would sign is attached as Exhibit C to this Disclosure Document. For each Studio you develop, you must sign our then-current form of Franchise Agreement, which may be different than the form we were using when you signed the Area Development Agreement.

Although, currently, we do not directly own or operate any Studios, as of ~~the date of this Disclosure Document~~ December 31, 2019, our wholly owned subsidiary owns and operates ~~one~~ 1 Studio. We have offered franchises in the line of business disclosed in this Disclosure Document since 1996, and, other than ~~the~~ a previous area director program ~~described below~~ offered from December 2002 to May 2009 and again from July 2014 to December 2017, we have not offered franchises in any other line of business or conducted any other business.

~~Area Director Program. From December 2002 to May 2009 and again from July 2014 to December 2017, we offered qualified individuals franchises for the operation of area director businesses (also known as~~

~~area representative franchises) in specific territories (“Area Directors”). Each Area Director acts as our representative, with the right to solicit and identify prospective franchisees on our behalf and provide support services to the franchisees in his or her territory. When a franchise is sold, the franchise agreement is signed by the franchisee and us. To the extent the Area Directors provide sales and support services, they are compensated with a portion of the franchise and royalty fees paid to us by franchisees in the Area Director’s territory. We are contractually responsible to you if the services are not performed as required under the Franchise Agreement. We do not grant Area Directors management responsibility relating to the sale or operation of franchises. As of December 31, 2018, there were no Fitness Together Area Director franchises.~~

### **Our ~~Parent~~Parents, Predecessors and Affiliates**

*Parents.* We are a wholly owned subsidiary of WBZ Investment LLC (“WBZ”), which is wholly owned by WBZ Holdings II, LLC (“Holdings II”). Holdings II is owned by the following: KSL Capital Partners III, L.P., KSL Capital Partners III TE, L.P., KSL Capital Partners III TE-A, L.P. and KSL Capital Partners III FF, L.P., which are our ultimate parents.

We do not have any predecessors.

*Elements Massage Franchise Programs.* Our affiliate, Elements Therapeutic Massage, LLC (“~~Elements~~ETM”), offers and sells franchises to operate massage studios. ~~Elements~~ETM began offering and selling Elements franchises in 2006. As of December 31, ~~2018~~2019, there were ~~237~~250 franchised Elements ~~Massage~~<sup>®</sup> studios in the United States, ~~with eight operated by ETM’s subsidiaries.~~

~~From October 2006 to October 2008 and again from December 2013 to December 2017, Elements offered franchises for area director businesses in which the area director acts as a sales representative within a defined geographic area to solicit and identify prospective Elements franchisees, to assist in locating and securing sites for Elements studios within that territory, and to provide additional support before, during, and after the Elements studios open. As of December 31, ~~ETM~~2018, there was 1 Elements area director franchise operating in 1 state.~~

~~Elements~~ wholly owns Elements Massage Franchise Canada Ltd. (“EMFC”). EMFC has offered franchises for Elements ~~Massage~~<sup>®</sup> studios in Canada since November 11, 2013. As of December 31, ~~2019~~2018, there was ~~1~~one franchised Elements ~~Massage~~ studio in Canada.

*Amazing Lash Studio Franchise Program.* Our affiliate, Amazing Lash Franchise, LLC (“ALF”), is the franchisor of the Amazing Lash ~~Studio~~<sup>®</sup> franchise system. ALF began offering franchises in September 2018; however, its predecessor began offering Amazing Lash ~~Studio~~ franchises in May 2013. As of December 31, ~~2019~~2018, there were ~~205~~245 Amazing Lash ~~franchises~~Studio locations, ~~with seven operated by ALF’s subsidiaries.~~

[Our affiliate, FTHC Operating Company \(“FTHC”\), provides services in connection with ETM’s gift card program.](#)

We may designate our affiliate, Wellness and Vitality Exchange, LLC (“WAVE”), as an approved supplier for certain inventory items that franchisees must use at their Studios.

WBZ, ~~Elements~~ETM, EMFC, ALF, ~~FTHC~~, and WAVE each has its principal business address at the same address as ours. The principal business address for the other parent companies described in this Item 1 is 100 Fillmore Street, Suite 600, Denver, Colorado 80206. Other than as described above, none of our parent companies, nor any affiliates required to be disclosed in this Item 1 directly offers franchises in any line of business or otherwise conducts business of the type being offered to you in this Disclosure Document.

### **Description of the Franchised Business**

We grant to each franchisee a license to use the “Fitness Together<sup>®</sup>,” “1 Client 1 Trainer 1 Goal<sup>®</sup>” and “Nutrition Together<sup>®</sup>” trademarks, together with other trademarks, service marks, ~~trade names, and commercial~~ symbols, ~~emblems, slogans, insignias, designs and logos, existing now or which may exist in the future (together (collectively,~~ the “Marks”) for use in identifying and operating the Studio. You will sell and provide one-on-one and small group personal fitness training services and offer and sell a nutrition program, as well as related services and products. that may be offered in the future. You will operate the Studio according to our ~~standards, mandatory~~ specifications, ~~methods, techniques, and standards,~~ operating ~~and other~~ procedures, and rules (“System Standards”) ~~that constitute the Franchise System.”).~~ The distinguishing characteristics of the Franchise System include ~~the Marks, the interior layout and design, color scheme, signage and~~ business formats, business system, methods, procedures, signs (and together with other fixtures, furniture, equipment, ~~copyrights, titles, symbols, emblems, slogans, insignia, and required computer hardware and software (the “Operating Assets”)), designs, diagrams, artworks, worksheets, originals, techniques, rules, ideas, philosophies, illustrations, course materials, the operations manual, any other manuals or materials made available to you, and any additional manuals and materials periodically provided to you regarding the operations of your Studio (collectively, the “layouts, standards, specifications, the Operations Manual”), the System Standards, advertising and promotional materials, the Nutrition Together™ guide, the fitness program, other audio, video and written materials, and other aspects of the Franchise System we have developed and designated for use within the Franchise System, or may acquire or develop and designate for use within the Franchise System in the future, (as defined in Item 11) and Marks,~~ all of which we may ~~enhance and improve,~~ further develop ~~(the “Proprietary Assets”), or otherwise modify from time to time.~~ Studios offer a program under which clients may purchase multiple training sessions at ~~1~~one time.

### **The Market and Competition**

Your Studio will offer its services and products to the general public. You will compete with nationally recognized trade names in the physical fitness industry, the nutrition industry, and with other local and regional businesses offering similar services and products. The market is developed, but expanding. Depending on your Studio’s location and demographics, certain seasons may be busier than others.

### **Licenses, Permits, and Industry Regulations**

~~It is your sole and absolute obligation to research all applicable federal, state~~ A number of states and local laws and jurisdictions have enacted laws, rules, regulations governing and ordinances which may apply to the operation of your Studio. ~~You must comply with such laws and with all other laws, including those that apply generally to all businesses. We are not aware of any specific federal regulations governing the personal training industry or nutrition programs such as~~ (1) establish licensing and certification requirements for businesses in general, (2) establish general standards, specifications and requirements for the construction, design and maintenance of the Studio location; (3) establish licensing and certification requirements for personal fitness trainers or Nutrition Together. However, the state or other locality in which you operate your Studio may have codes, ordinances, statutes, or laws which license or regulate personal trainers, Nutrition Together® coaches, fitness centers, (4) regulate matters affecting the health clubs or businesses such as the one being offered in this Disclosure Document, and such regulations could affect the operations of your Studio. These state and local laws may include such things as posting required, safety and welfare of your customers, such as general health and sanitation requirements for health and fitness clubs; (5) set standards pertaining to employee health and safety, (6) set standards and requirements for fire safety and general emergency preparedness, (7) regulate the proper use, storage and disposal of waste and other hazardous materials, (8) require statements concerning steroid and other drug use, requiring (9) require certain medical equipment in the Studio (such as automated external defibrillators (AEDs)), limiting (10) limit the supplements that health and fitness clubs can sell, requiring (11) require bonds if a health or fitness club sells memberships valid for more than a specified period of time, requiring (12) require club owners to deposit into escrow certain amounts collected from members before the club opens (so-called “presale” memberships), and imposing (13) impose other restrictions on memberships that health or fitness clubs sell. You are solely responsible for investigating the license/permit requirements in your state.

You must ~~Other regulations may apply to site location and also~~ comply with all other local, state, and federal laws that apply to your operations, including health, sanitation, smoking, EEOC, OSHA, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), discrimination, employment, and sexual harassment laws. The Americans with Disabilities Act of 1990 requires readily accessible accommodations for disabled people and may affect your building construction, site design, entrance ramps, doors, seating, bathrooms, drinking facilities, etc. You must ~~know the laws~~ also obtain real estate permits, licenses, and regulations applicable to operational licenses for your Studio business and ensure that you and your employees and fitness trainers.

You must ~~comply with all such laws and regulations. You are also responsible for obtaining any licenses or permits required for operating your Studio and you and your employees must obtain national certification as a personal trainer. You should consult with your own professional advisors, such as an attorney and accountant, regarding applicable laws and regulations~~ payment card infrastructure (“PCI”) industry and government security standards and requirements designed to protect cardholder data. PCI standards apply to both technical and operational aspects of credit card and other payment card transactions and apply to all organizations which store, process or transmit cardholder data.

## **ITEM 2. BUSINESS EXPERIENCE**

### **Jeremy Morgan, Chief Executive Officer (WellBiz)**

Mr. Morgan has been Chief Executive Officer of WellBiz Brands, Inc. (“WellBiz”), WBZ, WBZ Holdings, Inc. (“Holdings”), WAVE, and FTHC ~~Operating Company (“FTHC”)~~ in Englewood, Colorado since May 2019. Mr. Morgan has been ETM’s Manager and the Director of EMFC in Englewood, Colorado since January 2020. In addition, since May 2019, Mr. Morgan has been the Director of FTHC. From May 2019 to August 2019, Mr. Morgan served as Fitness Together Franchise, LLC’s Chief Executive Officer and Manager. From March 2019 to May 2019, Mr. Morgan served as President of WellBiz. From October 2017 to May 2019, Mr. Morgan served as a Director for EMFC. From February 2017 to March 2019, Mr. Morgan was ~~Elements’~~ETM’s and EMFC’s Chief Executive Officer, in Englewood, Colorado. From July 2014 to February 2017, he was the Chief Executive Officer for Tava Kitchen in San Francisco, California. From June 2011 to July 2014, Mr. Morgan was the Senior Vice President of Marketing and Consumer Insights for Smashburger in Denver, Colorado.

### **Stephanie Hu, Chief Executive Officer & Manager**

Ms. Hu has been our Chief Executive Officer and Manager since August 2019 in Englewood, Colorado. From May 2018 to July 2019, Ms. Hu served as President of Life Time Sport for Life Time, Inc. in Chanhassen, Minnesota. From December 2015 to April 2018, Ms. Hu served as President of Life Time Medical and Total Health for Life Time, Inc. From July 2015 to November 2015, Ms. Hu served as Vice President of Marketing for Life Time, Inc. From December 2011 to July 2015, Ms. Hu served as Marketing Manager for General Mills in Golden Valley, Minnesota.

### **Robert Bell, Chief Financial Officer**

Mr. Bell has been our Chief Financial Officer, and has held the same position at WellBiz, WBZ, Holdings, WAVE, ALF, ~~Elements~~ETM, EMFC, and FTHC ~~Operating Company~~ since May 2019, each in Englewood, Colorado. From March 2019 to May 2019, Mr. Bell served as our Senior Vice President of Finance and held the same position at WellBiz, WBZ, Holdings, WAVE, ALF, ~~Elements~~ETM, EMFC, and FTHC ~~Operating Company~~. From April 2018 to February 2019, Mr. Bell served as our Vice President of Finance and held the same position at WellBiz, WBZ, Holdings, WAVE, ~~Elements~~ETM, EMFC, and FTHC ~~Operating Company~~. In addition, Mr. Bell served as Vice President of Finance for ALF from September 2018 to February 2019. From April 2018 to November 2018, Mr. Bell served as Vice President for our former affiliate Fit 36, LLC (“Fit 36”) in Englewood, Colorado. From October 2015 to April 2018, Mr. Bell was Vice President of Finance for Raising Cane’s Franchising LLC in Plano, Texas. From October 2011 to September 2015, Mr. Bell served as Director of Finance for Smashburger Franchising LLC in Denver, Colorado.

### **Trever Ackerman, Chief Marketing Officer**

Mr. Ackerman has been our Chief Marketing Officer, and he has held the same position at WellBiz, ~~Elements~~ETM, and EMFC since April 2017 and for ALF since September 2018, each in Englewood, Colorado. From April 2017 to November 2018, Mr. Ackerman served as Chief Marketing Officer for Fit 36, in Englewood, Colorado. From December 2013 to March 2017, Mr. Ackerman was the Vice President of Marketing and Chief Marketing Officer for Les Mills US in Chicago, Illinois.

### **Matt Stanton, Chief Development Officer**

Mr. Stanton has been our Chief Development Officer, and has held the same position at WellBiz, ~~Elements~~ETM, and EMFC since December 2017, and for ALF since September 2018, each in Englewood, Colorado. From December 2017 to November 2018, Mr. Stanton served as Chief Development Officer for Fit 36, in Englewood, Colorado. From June 2016 to December 2017, Mr. Stanton served as Vice President, Development, for Taco Bueno Restaurants in Dallas, Texas. From November 2011 to April 2016, Mr. Stanton served as Vice President, Strategy and Development, for Smashburger Franchising LLC in Denver, Colorado.

### **Eric Goetsch John Pantera, Vice President of Operations**

~~Mr. Goetsch has been our Vice President of Operations since January 2013 and has held the same position at WellBiz since that time, each in Englewood, Colorado.~~ Pantera has been our Vice President of Operations since February 2020 in East Longmeadow, Massachusetts. From September 2019 to February 2020, Mr. Pantera served as our Senior Director of Sales & Team Development in East Longmeadow, Massachusetts. From December 2017 to September 2019, Mr. Pantera served as our Business Coach in East Longmeadow, Massachusetts. From June 2009 to December 2017, Mr. Pantera served as Area Director for Mid-Atlantic Fitness, Inc. in Bethesda, Maryland. From October 2008 to June 2018, Mr. Pantera served as President of Pioneer Valley Wellness, Inc. in East Longmeadow, Massachusetts.

## **ITEM 3. LITIGATION**

### **Completed**

Anthony Kim, an individual; Blue Pearl Ventures, Inc., a California corporation; Richard Muscio, an individual; Play Shortstop, LLC, a California limited liability company; Christine Burke, an individual; and San Diego Fitness Venture Corp., a California corporation v. Fitness For Life Franchise Corp., an Arizona Corporation; Richard Sikorski, an individual; and Lance Freeman, an individual, (Case No. 37-2009-00081782-CU-BC-CTL, Superior Court of California, County of San Diego). Plaintiffs, 3 former California franchisees filed a complaint on January 22, 2009 alleging breach of contract, fraud and deceit, negligent misrepresentation, and violation of the California Franchise Investment law. Richard Sikorski is our founder and former CEO. Lance Freeman is a former Area Director and employee of ours. Plaintiffs contended that defendants made representations at the time that the plaintiffs entered into their respective franchise agreements to the effect that the franchise could be run as a “turn-key” operation, that we had a comprehensive marketing system that would lead to client acquisition, and that no past experience, knowledge or additional maintenance other than general data input were required to operate the franchised business. Plaintiffs further alleged that defendants provided inadequate support and training. Plaintiffs sought damages in excess of \$1,000,000. On January 20, 2010, the parties entered into an agreement, under which, without admission of any wrongdoing, defendants paid plaintiffs an aggregate amount of \$100,000 to settle the case. The case was subsequently dismissed with prejudice on February 25, 2010.

Paul D. McKinnis and Dalriada Enterprises LLC v. Fitness Together Franchise Corporation, (Case No. 10-CV-0230-KPM-KLM, United States District Court for the District of Colorado). Plaintiffs, the principal of an area director of defendant and an area director of defendant, respectively, filed a complaint on September 20, 2010 (a) seeking declaratory judgment and alleging breach of contract and breach of implied covenant of good faith and fair dealing with regard to defendant’s alleged failure to offer plaintiffs a right of first refusal with respect to the purchase of the territory of Virginia, (b) alleging breach of contract,

breach of implied covenant of good faith and fair dealing and negligent misrepresentation relating to the territorial protection in certain franchise agreements in the Washington, D.C. territory resulting in plaintiffs incurring certain legal fees related to a franchisee complaint against plaintiffs, and (c) alleging fraud in the inducement and violation of the Georgia Fair Business Practices Act with respect to plaintiffs' purchase of the Georgia territory. Plaintiffs seek a declaratory judgment that plaintiffs are entitled to be offered a right of first refusal, rescission of its Georgia Master Franchise Agreement, unspecified damages and an award in the amount of the legal fees expended by plaintiffs in connection with the franchisee complaint against plaintiffs and attorneys' fees and expenses in connection with this action. On October 12, 2010, defendant filed a motion to dismiss the complaint or, in the alternative, for summary judgment with respect to all of plaintiffs' claims. Plaintiffs responded by voluntarily moving to dismiss, without prejudice, certain of plaintiffs' claims. On December 6, 2010, the court dismissed all of plaintiffs' claims except for its claim for fraud in the inducement. On December 16, 2010, plaintiffs filed a motion seeking leave to file an interlocutory appeal with respect to the court's order dismissing plaintiffs' claims for declaratory judgment and breach of contract and implied covenant of good faith and fair dealing. On August 25, 2011, the parties entered into a settlement agreement under which, without admission of wrong-doing, defendants paid plaintiffs \$150,000, a portion of which is payable over time.

Todd Tantillo, TT Wash Park Fitness, Inc., and GT Fitness, Inc. v. Fitness Together Franchising Corp., Case No. 01-17-0000-5720 (American Arbitration Association). On January 25, 2017, Claimants, who were holdover franchisees and their principal, initiated an arbitration proceeding against Fitness Together seeking a declaration that the post-term covenants not to compete in two franchise agreements were invalid and unenforceable against them. Following an evidentiary hearing, the arbitrator issued a Final Declaratory Award on April 27, 2017. The arbitrator held that the covenants not to compete were valid and enforceable. The arbitrator further held that the one-year non-compete period under one of the agreements had expired. The District Court for the City and County of Denver, Colorado, confirmed the arbitrator's award on July 26, 2017.

Other than the 3 items disclosed above, no litigation is required to be disclosed in this Item.

## ~~ITEM 1 Bankruptcy~~

## ITEM 4. BANKRUPTCY

No bankruptcy is required to be disclosed in this Item.

## ITEM 5. INITIAL FEES

**Initial Franchise Fee.** Unless you are signing a Franchise Agreement under an Area Development Agreement, when you sign a Franchise Agreement to develop a single Studio, you must pay us an initial franchise fee (the "Initial Franchise Fee") of \$39,900. You must pay the Initial Franchise Fee as a lump sum by wire transfer. The Initial Franchise Fee is fully earned by us when paid by you, and is not refundable.

**Development Fee.** If we grant you the right to develop ~~2~~two or more Studios under an Area Development Agreement, you must pay us a one-time development fee (the "Development Fee") upon executing your Area Development Agreement. Your Development Fee will depend on the number of Studios we grant you the right to develop within the Development Area and is calculated as follows:

(1) \$79,800 if you sign an Area Development Agreement in which you agree to develop ~~2 studios~~two Studios;

~~(2)~~(2) \$34,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop three to five Studios; and

(3) \$29,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop 3 to 5 studios; six or more Studios.

~~(3) \$24,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop 6 to 9 studios; and~~

~~(4) \$19,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop 10 or more studios.~~

Typically, an area developer is expected to develop ~~2~~two to 10 Studios and the range of the Development Fee in that case would be \$79,800 to ~~\$199,299~~299,000. You will be required to enter into our then-current form of Franchise Agreement for each Studio you wish to develop under your Area Development Agreement, but you will not be required to pay an Initial Franchise Fee at the time you execute each of these Franchise Agreements.

The Development Fee is due in a lump sum when you sign your Area Development Agreement. The Development Fee is fully earned by us upon your execution of the Area Development Agreement, and is not refundable.

*Veteran's and Active-Duty Military Discount.* We offer a 20% discount on the Initial Franchise Fee (or the Development Fee if you sign the Area Development Agreement) for veterans and active-duty members of the United States armed forces who meet our program requirements.

We reserve the right to waive or reduce the Initial Franchise Fee for other franchisees. In the fiscal year ended December 31, ~~2019~~2018, we received Initial Franchise Fees in amounts ranging from \$0 to \$39,900.

**Other Initial Payments.** Before you open your Studio, you ~~are~~may be required to pay us the fees stated below:

*Additional Attendees for Training Program.* We currently require only you or your Operating Partner (as defined in Item 11) and your Designated Manager (if applicable) (as defined in Item 11) to attend the Training Program (as defined in Item 11) before opening your Studio. You may invite additional employees to attend the Training Program if space allows, but we will charge you our then-current training fee (currently, \$500 per attendee, plus costs). We do not expect or require you to send additional persons to the Training Program, and we may limit the number of attendees, so we currently estimate your cost for additional attendees will be \$0.

*Set-Up and Technology Fees.* You are required to pay us a \$499 set-up fee for the set-up of certain required software programs. You are also required to pay us a technology fee for the two months before opening (\$~~405~~330 per month).

Site Survey Fee. No later than 10 days after the date that you sign an approved lease for your Studio's specific address and location (the "Premises"), you must pay to us a non-refundable site survey fee equal to \$2,500, in the form of a lump sum payment by ACH (the "Site Survey Fee").

*Construction Management Fee.* If we approve an exception to the requirement that you use ~~one of our Approved Suppliers~~designated service provider of construction-management services, you are required to pay us a construction management fee of \$5,000.

~~Grand Opening Spend Fee.~~ No later than 10 days after the date that you sign an approved lease for your Studio premises (or 10 days after the date you purchase an existing Studio), you must pay us, by ACH, \$15,000 as a non-refundable grand opening spend fee (the "Grand Opening Spend Fee"). However, if you are signing the Franchise Agreement in connection with the renewal of an existing Studio, we do not charge a ~~Approved Mentorship Studio~~. Before you open your Studio, based on the factors we determine, we may offer you (or your Operating Partner) and any applicable Designated Manager the opportunity to attend non-mandatory training at a franchisee-owned Studio that we have certified as an "Approved Mentorship Studio." Alternatively, a franchisee from an Approved Mentorship Studio may visit your Studio. If we offer such training involving an Approved Mentorship Studio and you elect to participate in such training, you may be required to pay us our then-current fee (currently, we do not charge a fee), plus costs and expenses.

~~Grand Opening Spend Fee.~~

*Referral Fee Program.* If an existing franchisee refers a prospective franchisee to us who ultimately purchases a franchise for a Studio, we currently pay the referring franchisee a referral fee which ranges from \$0 to \$15,000. We may discontinue this referral program or change the amount of the referral fee at any time.

Except as otherwise noted, the initial fees described above are not refundable under any circumstances.

**ITEM 6. OTHER FEES**

Type of Fee*	Amount	Due Date	Remarks
Royalty	6% of <del>gross receipts</del> <u>Gross Receipts</u>	5 <sup>th</sup> day of each month	See Note 1
<u>Brand</u> Marketing Fund	Greater of 2% of <del>gross receipts</del> <u>Gross Receipts</u> or \$500 per month (subject to maximum monthly contribution of \$1,000)	5 <sup>th</sup> day of each calendar month	See Note 2
<del>Local Advertising Fee</del>	<del>\$800 per month</del>	<del>15th day of each calendar month</del>	<del>See Note 3</del>

Type of Fee*	Amount	Due Date	Remarks
Local <del>Marketing Spend Amount</del> <u>Requirement</u>	2% of <del>gross receipts</del> <u>Gross Receipts</u>	As incurred	Payable to the <del>Approved Supplier</del> <u>designated supplier</u> , which may be us. (See Note 3)
Default Fee	\$250	Upon receipt of statement	See Note 4
Dishonored Check or Insufficient Funds Fee	\$150	Upon receipt of statement	See Note 5
Interest on Late Payments	1.5% per month or highest commercial rate	Upon receipt of statement	See Note 6
<del>Default Operation Costs</del> <u>Monthly Management Fee</u> (in event of your <u>abandonment, default, or termination</u> )	Up to \$7,500 per month, <u>plus direct out-of-pocket expenses</u>	1 <sup>st</sup> day of each month upon occurrence	See Note 7
<u>Additional/Replacement Training Fee</u>	<u>Then-current fee (currently, \$500 per attendee), plus costs and expenses</u>	<u>Before additional and/or replacement training</u>	<u>See Note 8</u>
<u>Annual Meeting Registration Fees</u>	<u>Then-current annual meeting registration fees for at least one attendee (currently, \$125 per person), plus costs and expenses. Default fee applies for non-attendance.</u>	<u>Before annual meeting</u>	<u>See Note 9</u>
<u>Advanced Manager Training Program</u>	<u>Then-current fee (currently \$99 per trainee), plus costs and expenses</u>	<u>Before you attend training program</u>	<u>See Note 10</u>
<u>Approved Mentorship Studio Training Program</u>	<u>Then-current fee (not currently charged), plus costs and expenses</u>	<u>Before training</u>	<u>See Note 11</u>
Technology Fee	<del>\$405</del> <u>\$330</u> per month; <del>additional \$7.50 per month per email user in excess of 4</del>	1 <sup>st</sup> day of each calendar month	See Note <del>8</del> <u>12</u>
<u>Marketing Cooperatives</u>	<u>As established (none are currently in existence)</u>	<u>As established</u>	<u>See Note 13</u>
<del>Renewal</del> <u>Successor Franchise Fee</u>	\$10,000	Upon renewal	See Note <del>9</del> <u>14</u>
Transfer Fee – Franchise Agreement	50% of the then-current Initial Franchise Fee	Upon signing the consent to transfer	See Note <del>10</del> <u>15</u>
Transfer Fee – Area Development Agreement	\$10,000	Upon signing the consent to transfer	
Transfer Fee Deposit	\$3,500	Upon signing the consent to transfer	See Note <del>11</del> <u>16</u>

Type of Fee*	Amount	Due Date	Remarks
Inventory	Varies according to <del>the</del> products purchased.	At the time of purchase	See Note <del>12</del> <a href="#">17</a>
Royalty Underpayments (audit)	Varies. Difference between amount reported and correct amount, plus <del>18% of such amount</del> <a href="#">applicable interest</a> (and if understated amount is more than 2%, plus our costs (including attorneys' and accountants' fees)).	Time of audit	See Note <del>13</del> <a href="#">18</a>
Defense or Enforcement Costs	All costs including attorneys' fees (variable)	Upon settlement or conclusion of a claim or other legal action	See Note <del>14</del> <a href="#">19</a>
Indemnification	All costs including attorneys' fees (variable)	Upon settlement or conclusion of a claim or other legal action	See Note <del>15</del> <a href="#">20</a>
Collection Costs	Actual costs <a href="#">and expenses</a> to collect past due or other amounts	Upon settlement or conclusion	See Note <del>16</del> <a href="#">21</a>
Arbitration and Proceeding Costs	Our arbitration or other <del>proceeding fees</del> <a href="#">and court</a> costs plus attorneys' fees and costs if we prevail in the arbitration or proceeding	Upon conclusion of arbitration or proceeding	See Note <del>17</del> <a href="#">22</a>

Type of Fee*	Amount	Due Date	Remarks
Liquidated Damages	An amount equal to the <del>net present value</del> <u>combined monthly average</u> of the Royalties <del>and</del> <u>Brand Marketing Fund contributions</u> <del>that would have become due following termination of the Franchise, and any other fees under this Agreement for the period beginning on</del> <u>(without regard to any fee waivers, or other reductions) payable during the 36 months preceding</u> the date of <u>early termination</u> <del>and ending 24 months from, multiplied by the termination date, unless</del> <u>lesser of (i) 36 or (ii) the scheduled expiration number of full months remaining in the term of the Franchise Agreement expires earlier, in which case the period for calculating the damages. The present value of the total calculated at a discount rate of 8%, assuming payment at the end of each month, will end on the date of the scheduled expiration (the "Measurement Period").</u> <u>be our Liquidated Damages.</u>	Upon termination of Franchise Agreement by you without cause or because of your default	See Note <del>18</del> <u>23</u>
<u>Alternative Supplier Evaluation</u>	<u>Not currently charged, but if implemented, our then-current fee which we estimate to be costs for time and resources we spend in evaluating the proposed supplier</u>	<u>On demand</u>	<u>See Note 24</u>

\*Except as otherwise noted, all fees are uniformly imposed on all franchisees and collected by, and payable to, us (or our designated affiliate). Any fees paid to us are non-refundable unless otherwise noted. Your costs for certain items listed above may differ depending on the suppliers used, local costs, and other factors. We will auto-debit your bank account (known as "ACH") for all fees you are required to pay to us under the Franchise Agreement. We will ACH your bank account for the amounts due based on your gross monthly receipts from the previous month, as obtained by us from our approved computer system used by you to record receipts. Your ACH will remain in effect throughout the term of the Franchise Agreement. You must ensure that funds are available in your bank account to cover our withdrawals. Some banks charge fees for us to ACH your account; you must pay those fees. We may require you to pay any amounts due under the Franchise Agreement or otherwise by means other than ACH (e.g., by check or credit card) whenever we deem appropriate, and you must comply with our payment instructions. If you fail to comply with our payment instructions, we reserve the right to exclude you from participating in certain programs. In addition, your failure to comply with our payment instructions will be considered a default under the Franchise Agreement.

1. **Royalty.** You must pay us a monthly royalty on the 5th day of each month starting with the 1st

full calendar month after opening the Studio. We reserve the right to collect royalties on a weekly, rather than monthly, basis upon notification to you.

If we are unable to ~~obtain your gross receipts directly~~ access information from ~~our approved computer system used by your~~ Computer System (as defined in Item 11), and you fail to record receipts report your Studio's Gross Receipts when due, then for each payment due under the Franchise Agreement that is calculated based on Gross Receipts, we may debit your business account ~~for an estimated royalty equal to~~ 110% of the average of your last ~~3 months of gross receipts for your Studio ("Estimated Royalty")~~ three applicable payments that we debited. If the Estimated Royalty amounts that we debit from your business account ~~is~~ are less than the ~~amount~~ amounts you actually owe us (once we have determined your Studio's true and correct ~~gross receipts~~ Gross Receipts), we will debit your business account for the balance on the day we specify. If the Estimated Royalty amounts we debit from your business account ~~is~~ are greater than the ~~amount~~ amounts you actually owe us, we will credit the excess against the amounts we otherwise would debit from your business account ~~during on~~ the ~~following period~~ next payment due date.

Despite any designation you make, we may apply any of your payments to us or our affiliates to any of your past due ~~amounts you owe us~~ indebtedness to us or our affiliates.

"Gross ~~receipts~~ Receipts" include all of your revenue and receipts, including those taken by cash, credit card, debit card, check, ~~trade, barter or exchange,~~ electronic funds transfer, ~~or ACH, trade, barter or exchange.~~ Gross Receipts also include: (a) any other means of credit, which are revenue derived from the operations of your Studio, including the sale of memberships, fitness services, gift cards which are not sold under our national gift card programs, merchandise, or any products or any other products or services that are sold by you, whether sold at your Studio location the Premises or from an off-site Premises location. Gross receipts also include; (b) all revenue from the sale or redemption of gift cards, in accordance with our then-current System Standards; and (c) the gross amount of redemptions for gift cards sold under our national gift card program. Gross receipts any business interruption or similar insurance payments. Gross Receipts exclude: (i) sales, use or privilege taxes paid to the appropriate taxing authority; (ii) refunds made that are provided to clients, and gross redemption amount of gift cards sold under any of our national gift card programs. In addition, should your business be interrupted for any reason and you are receiving business interruption insurance payments, the gross amount of these payments will be considered to be gross receipts; and will be subject (iii) tips received from clients for payment to the Royalty. your employees. The "Premises" is the specific location of your Studio that we approve.

2. **Brand Marketing Fund**. You must make contributions to ~~a~~ an advertising and marketing fund (the "Brand Marketing Fund") of the greater of 2% of the ~~gross receipts~~ Gross Receipts of your Studio or \$500 per month (subject to a maximum monthly contribution of \$1,000), which we will spend on preparing marketing, recruiting, advertising, and promotional materials and advertising, marketing and promotional programs for your Studio that will be used nationally, regionally, multi-regionally, or locally. You must also satisfy the Grand Opening Spend ~~Fee~~ Requirement and the Local Marketing Spend Requirement described below.
3. **Local Marketing Spend Amount Requirement**. You must ~~pay us a fee of \$800 per month (the~~

~~“Local Advertising Fee”). In addition, you must~~ spend a minimum of 2% of the ~~gross receipts~~ Gross Receipts of your Studio toward approved advertising, marketing and promotional programs for your Studio within an area reasonably surrounding your Studio (the “Local ~~Spend Amount~~”). ~~We will refer to the Local Advertising Fee and your Local Spend Amount together as the “Local Marketing Spend Requirement.”~~ Your Local Marketing Spend Requirement excludes any contributions you make to the Brand Marketing Fund, but any contributions you make to a Marketing Cooperative will count toward your Local Marketing Spend Amount Requirement. Your required Marketing Cooperative contributions could, by themselves, exceed the Local ~~Spend Amount~~. ~~We currently collect the Local Advertising Fee on the 15th day of each month for the preceding month. We may change the day of the month on which we collect the Local Advertising Fee.~~ Marketing Spend Requirement. We or our affiliates may be ~~an Approved Supplier~~ a designated supplier of local advertising, marketing and promotional programs for your Studio.

4. **Default Fee.** If you are in default of the Franchise Agreement and we send you a default notice, you must pay us a default fee.
5. **Dishonored Checks or Insufficient Funds Fee.** If you write us a check that is returned, cancelled or dishonored, or if we ACH your bank account (in accordance with the terms of the Franchise Agreement) and your account has insufficient funds or is inaccessible, you must pay us an insufficient funds fee.
6. **Interest on Late Payments.** All amounts that you owe us for any reason will bear interest accruing as of their original due date at 1.5% per month or the highest commercial contract interest rate the law allows, whichever is less. We may debit your bank account automatically for transaction charges and interest.
7. ~~Default Operation Costs~~ Monthly Management Fee (in the event of your abandonment, default, or termination). If: (1) you ~~are in default~~ abandon or fail actively to operate your Studio; (2) you ~~fail to comply with any provision~~ fail to comply with any provision of the Franchise Agreement or any System Standard and ~~have do not cured~~ do not cure the ~~default~~ failure within the applicable cure period; or (3) the Franchise Agreement is terminated and we are deciding whether to exercise our option to purchase the Studio, we have the right (but not the obligation): (i) to enter ~~your Studio,~~ the Premises to make any modifications we deem necessary to protect the Proprietary Operating Assets, ~~to cure any default under the Franchise Agreement or;~~ (ii) to remove any equipment, signage, or other materials featuring the Marks; (iii) to cure any defaults under the lease ~~for the premises;~~; and (iv) to assume all of your rights under the lease. We additionally have the right (but not the obligation) to enter the Premises and assume your Studio’s management for any period of time we deem appropriate. If we (or a third party we designate) assume your Studio’s management, you must pay us our then-current monthly management fee, plus our (or the third party’s) direct out-of-pocket costs and expenses. These amounts are in addition to any Royalty, Brand Marketing Fund contributions, and other amounts which may be due to us or our affiliates..
8. Additional and/or Replacement Training Fee. Any successor or replacement Operating Partner (defined in Item 15) or Designated Manager (defined in Item 15) may be required to complete the Training Program no more than 90 days after being appointed (see Item 11). Further, if you (or your Operating Partner) or your Designated Manager (if applicable), or any manager and/or assistant manager required by us, fail to satisfactorily complete the Training Program then we

reserve the right to require such individual to attend additional training and you may be required to pay us our then-current training fee for such additional training. You are responsible for travel and living expenses, including ~~making lease payments~~;wages, transportation, food, lodging, and workers' compensation insurance incurred by you or your personnel to attend such training. You are also responsible for the travel and living expenses and out-of-pocket costs we incur in sending our trainer(s) to your Studio to conduct training, including ~~the right to assign or sub-lease. We shall also~~ food, lodging and transportation.

9. Annual Meeting Registration Fees. You (or your Operating Partner) and any applicable Designated Manager are required to attend any scheduled annual meeting of franchise owners. You will be required to pay our then-current registration fee. If you do not attend, we will charge you the default fee for failing to attend. You are responsible for travel and living expenses, including wages, transportation, food, lodging, and workers' compensation insurance incurred by you or your personnel to attend such training.

10. Advanced Manager Training Program Fee. After you have ~~the right to remove your equipment and signage. If we choose to enter and manage your~~ opened your Studio for business ~~in the case of your breach of the Franchise Agreement, you must pay us a monthly fee. We~~, we may offer you (or your Operating Partner) and any applicable Designated Manager, based on the factors that we determine, the opportunity to attend an advanced manager training program. If you elect to attend such training, you may be required to pay us our then-current training fee. You are responsible for travel and living expenses, including wages, transportation, food, lodging, and workers' compensation insurance incurred by you or your personnel to attend such training.

~~7.11.~~ Approved Mentorship Studio Training Program. After the Opening Date, based on the factors we determine, we may offer you (or your Operating Partner) and any applicable Designated Manager the opportunity to attend non-mandatory training at a franchisee-owned Studio that we ~~have these rights whether or not your Franchise Agreement is terminated~~ certified as an "Approved Mentorship Studio." Alternatively, a franchisee from an Approved Mentorship Studio may visit your Studio. If we offer such training involving an Approved Mentorship Studio and you elect to participate in such training, you may be required to pay us our then-current fee. You are responsible for travel and living expenses, including wages, transportation, food, lodging, and workers' compensation insurance incurred by you or your personnel to attend such training at an Approved Mentorship Studio and, as applicable, those of any franchisee that may visit your Studio from an Approved Mentorship Studio.

~~8.12.~~ Technology Fee. ~~We require you to use: (a) the scheduling software program designated and described in the Operations Manual; (b) our proprietary software to maintain a website for your Studio hosted by our Approved Supplier; (c) our key performance indicator program accessible through the franchisee only portal of our website; and (d) the email platform we designate. We~~ require you to pay a fee to us, or a service provider we designate (which may be one of our affiliates), for technology-related services, including website or email hosting, help desk support, software or website development, enterprise solutions and other services associated with your Computer System and/or any Franchise System Website (a "Technology Fee"). The ~~technology fee~~ Technology Fee is payable monthly, which we will ACH from your bank account on the 1st day of each month beginning 60 days before your Studio opens. The email portion of the ~~technology fee~~ Technology Fee includes ~~4~~ up to four users; ~~you will be required to pay an additional \$7.50 per~~

~~month for each email user in excess of 4.~~ If you want access to technologies other than email before opening, then the ~~technology fee~~ Technology Fee will accrue at the monthly rate from such time. If we travel to your Studio to provide any technological support and/or installation services, you must also reimburse us for the costs we incur for such site visit, including travel, food, and lodging. We may periodically ~~increase~~ modify the ~~technology fee~~ Technology Fee.

13. **Marketing Cooperatives.** We may establish a marketing cooperative in a geographic area in which three or more Studios are located (“Marketing Cooperative”). The Marketing Cooperative’s members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. Any Studio we or our affiliates own will have the same voting power as franchised Studios. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We may collect Marketing Cooperative fees and transfer those fees to the Marketing Cooperative, or the Marketing Cooperative may collect the fees directly, as we determine. We may designate, approve or develop standards and specifications for Marketing Cooperative suppliers. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative’s members are responsible for its administration and determination of contribution levels. All Marketing Cooperatives will be governed by written documentation we designate or approve. Such documentation is available for Marketing Cooperative member review. We may form, modify, change, dissolve, or merge Marketing Cooperatives. ~~Renewal~~ As of the date of this Disclosure Document, there are no Marketing Cooperatives.

9.14. **Successor Franchise Fee.** If you are approved to ~~renew~~ acquire a successor franchise upon the expiration of your Franchise Agreement, you will sign our then-current forms of renewal addendum and franchise agreement (which may contain terms and conditions materially different from those in the form of Renewal Addendum and Franchise Agreement attached to this Disclosure Document) and pay us a ~~renewal~~ successor franchise fee. The ~~renewal~~ successor franchise fee is due upon ~~renewal~~ the execution of the ~~Franchise Agreement~~ successor franchise agreement and is payable by wire transfer.

10.15. **Transfer Fee.** You must pay us a transfer fee if you sell or transfer ownership of your Studio, or if you assign or sell your controlling interest in the Studio to another party. You must pay us this transfer fee in a lump sum by wire transfer at the time you sign the conditional consent to transfer. If the transferee is referred to you by a broker, you must also pay the broker’s fees. You do not have to pay a transfer fee if you transfer your individual interest in the Franchise Agreement to a corporation, limited liability company, partnership or similar entity in which you own a controlling interest. If we terminate our conditional consent to the transfer or the transferee’s franchise agreement for certain reasons (for instance, if the transfer does not occur or the transferring parties fail to meet the conditions to our consent), and the transferring parties sign a general release, then we will refund the transfer fee. However, if the transferee has already attended any portion of initial training, we will only refund 50% of the transfer fee.

11.16. **Transfer Fee Deposit.** In the event of a transfer, you must pay us a fee deposit of \$3,500 when you sign the conditional consent to transfer. We will refund the deposit to you, less any amounts which may be due under the Franchise Agreement, within 30 days following the effective date of the transfer or the date on which you and the transferee have complied with all terms in our agreement and conditional consent to transfer, whichever is later.

- ~~12.17.~~ **Inventory.** Although not currently required, we expect to designate our affiliate, WAVE, as ~~an~~ approved designated supplier of certain inventory items that franchisees must use at their Studios, and if we do so, we may designate WAVE as the only approved supplier for those inventory items.
- ~~13.18.~~ **Royalty Underpayments (audit).** If an ~~inspection~~examination or audit of your books and records reveals that any payments due or made to us were based upon understated amounts, then, ~~upon our demand, you must immediately~~ within fifteen (15) days after receiving the examination report, you must pay us an amount equal to the payment that would have been due or paid in the absence of understated amounts, minus the payment actually due or made, plus ~~18%~~applicable interest, calculated on an annual basis, from the date the disputed amount was originally due until the correct amount is paid. If the understatement is 2% or more, then you will also reimburse us for any costs and expenses, including accounting and attorneys' fees, in connection with the ~~inspection~~examination or audit.
- ~~14.19.~~ **Defense or Enforcement Costs.** If we are successful in any action based on your breach of the Franchise Agreement, we will be entitled to have you pay our reasonable attorneys' fees, court costs, expenses of litigation and all other costs associated with any other appropriate remedies.
- ~~15.20.~~ **Indemnification.** You must indemnify, ~~defend us and hold us,~~ our affiliates, ~~and our and their respective stockholders, members, owners, principals, directors, officers, employees, representatives and agents, harmless~~ from ~~any and all losses, expenses, judgments, claims, reasonable attorneys' fees and damages~~ related to the your Studio, the Franchise Agreement or ~~from your breach of the Franchise Agreement. You must notify us in writing within 5 calendar days of any lawsuit, complaint or proceeding filed by or against you regarding the operation of the Studio and, upon request, must furnish us with copies of all documents related to the lawsuit, complaint or proceeding.~~
- ~~16.21.~~ **Collection Costs.** If you withhold ~~monies~~amounts owed to us ~~in the absence of a court order permitting you to do so and we pursue collection of such amounts,~~ you must pay to us all ~~reasonable~~of our costs and expenses, including arbitration and court costs, attorneys' fees, ~~reasonable~~the value ~~for~~of our employees' time, witness fees and travel expenses ~~incurred in pursuing the~~connection with our collection ~~of the withheld monies~~efforts.
- ~~17.22.~~ **Arbitration and Proceeding Costs.** The prevailing party of any arbitration or ~~other proceeding will~~litigation shall be entitled to ~~its~~recover from the other party all costs and expenses, including arbitration and court costs, witness fees, and reasonable attorneys' fees ~~and costs~~.
- ~~23.~~ **Liquidated Damages.** You will be required to pay us ~~this fee~~the amount of damages that we would suffer due to the loss or interruption of the revenue stream we otherwise would have derived from your continued payment of Royalties, Brand Marketing Fund contributions, and Marketing Cooperative contributions, less any cost savings, through the remainder of the term of this Agreement (the "Liquidated Damages") if we terminate the Franchise Agreement based on your default or if you terminate the Franchise Agreement without cause. ~~Royalties and Marketing Fund contributions before its expiration. Liquidated Damages will be calculated by multiplying (1) the number of calendar months in the Measurement Period by (2) the aggregate of the equal to the combined monthly average of Royalties and, Brand Marketing Fund contributions percentages by~~

~~(3) the average monthly gross receipts of the Studio, and any other fees under this Agreement (without regard to any fee waivers, or other reductions) payable during the 12 full calendar~~36 months ~~immediately~~ preceding the ~~date of early termination date. If you have not operated your Studio for at least 12 months preceding~~, multiplied by the ~~termination date, Royalties and Marketing Fund contributions~~ lesser of (i) 36 or (ii) the number of full months remaining in the term. The present value of the total calculated at a discount rate of 8%, assuming payment at the end of each month, will be ~~calculated based~~ our Liquidated Damages. In addition to Liquidated Damages, we reserve all other remedies we have under the Franchise Agreement.

~~18.24. Alternative Supplier Evaluation.~~ If you would like us to consider approving a supplier that is not then approved, you must submit your request in writing before purchasing any items or services from that supplier. We will not be obligated to respond to your request, and we may require that you pay us a fee to compensate us for the time and resources we spend in evaluating the proposed supplier. Approval of a supplier may be conditioned on ~~the average monthly gross receipts of all Studios during our last fiscal year.~~ any factors we determine, including requirements relating to product quality, prices, consistency, reliability, financial capability, labor relations, and standards of service.

**ITEM 7. ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT  
(FRANCHISE AGREEMENT)**

Type of Expenditure	Amount*	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee <sup>1</sup>	\$39,900	Lump sum	Upon signing Franchise Agreement	Us
Real Property and Utility Security Deposits <sup>2</sup>	<del>\$2,050-\$4,300</del> - \$6,600	As arranged	As arranged, generally <del>2</del> two months before opening or when lease is executed	Landlord and utility providers
Leasehold Improvements (net of landlord tenant allowances) <sup>3</sup>	<del>\$29,700-\$117,000</del> \$66,800 - \$155,400	As arranged	As arranged	Landlord and <del>Approved Suppliers</del> designated suppliers and contractors and us (if applicable)
Site Survey Fee <sup>4</sup>	\$2,500	Lump sum	No later than 10 days after the date that you sign an approved lease for your Premises	Us

Type of Expenditure	Amount*	Method of Payment	When Due	To Whom Payment is to be Made
<del>Equipment<sup>4</sup></del> <u>Equipment<sup>5</sup></u>	<del>\$29,700-</del> <del>\$38,800</del> <u>28,300 -</u> <u>\$46,300</u>	Lump sum	<del>8</del> <u>Eight</u> weeks before opening	<del>Approved</del> <u>Designate</u> <u>d</u> Suppliers
Furniture and <del>Decor<sup>5</sup></del> <u>Decor<sup>6</sup></u>	<del>\$4,900-</del> <u>\$ - \$5,700</u>	Lump sum	<del>2-3</del> <u>Two to three</u> weeks before opening	<del>Approved</del> <u>Designate</u> <u>d</u> Suppliers
Computer <del>Hardware and Software<sup>6</sup></del> <u>System<sup>7</sup></u>	<del>\$5,300-</del> <del>\$6,100</del> <u>150</u> <u>- \$5,950</u>	As arranged	<del>4-6</del> <u>Four to six</u> weeks before opening	Us and <del>Approved</del> <u>Suppliers</u> <u>designated</u> <u>suppliers</u> or other third-party suppliers
<del>Initial Training<sup>7</sup></del> <u>Training Program<sup>8</sup></u>	<del>\$1,350-</del> <u>\$ - \$2,700</u> (travel, meals, lodging and other expenses)	As incurred	As incurred	Third-party providers
Grand Opening Spend <del>Fee<sup>8</sup></del> <u>Requirement<sup>9</sup></u>	\$15,000	As arranged	<del>No later than</del> <del>10</del> <u>Between 60 days</u> <u>before and 30</u> days after <del>the date that you sign an approved lease for your Studio premises opening</del> (or <del>10 days</del> <u>within six months</u> after you purchase an existing Studio <del>).</del>	<del>Us</del> <u>Advertisers and</u> <u>third-party suppliers</u>
<del>Signs<sup>9</sup></del> <u>Signs<sup>10</sup></u>	<del>\$4,000-</del> <del>\$8,000</del> <u>700</u> <u>- \$10,500</u>	Lump sum	<del>6-8</del> <u>Six to eight</u> weeks before opening	<del>Approved</del> <u>Designate</u> <u>d</u> Suppliers
Business Licenses and <del>Permits<sup>10</sup></del> <u>Permits<sup>11</sup></u>	<del>\$100-</del> <u>\$ - \$1,000</u>	As arranged	<del>6-8</del> <u>Six to eight</u> weeks before opening	Government agencies or other licensing authorities
<del>Insurance<sup>11</sup></del> <u>Insurance<sup>12</sup></u>	<del>\$800-</del> <del>\$900</del> <u>2,700 -</u> <u>\$6,300</u>	As arranged	At signing of lease	<del>Approved</del> <u>Supplier</u> <u>Designated</u> <u>supplier</u>
Miscellaneous Opening <del>Costs<sup>12</sup></del> <u>Costs<sup>13</sup></u>	<del>\$300-</del> <u>\$ - \$1,000</u>	As incurred	As incurred	Suppliers
Additional Funds (3 months) <sup>13</sup> <u>14</u>	<del>\$10,500-</del> <del>\$17,400</del> <u>\$11,162 -</u> <u>\$29,726</u>	As arranged	First <del>3</del> <u>three</u> months of operation	Landlord, utilities providers, and other suppliers
TOTAL ESTIMATED INITIAL <del>INVESTMENT<sup>14</sup></del> <u>INVESTMENT<sup>15</sup></u>	<del>\$143,600-</del> <del>\$258,100</del> <u>\$189,162 -</u> <u>\$328,576</u>			

## NOTES:

1. **Initial Franchise Fee.** When you sign a Franchise Agreement to develop a single Studio, you must pay us an Initial Franchise Fee of \$39,900. You must pay the Initial Franchise Fee as a lump sum by wire transfer. The Initial Franchise Fee is fully earned by us when paid by you.

If you are signing the Franchise Agreement under an Area Development Agreement under which you or your affiliate previously paid a Development Fee, then, as described in Item 5, you may not be required to pay an Initial Franchise Fee at the time you execute the Franchise Agreement.

2. **Real Property Deposits and Utility Deposits.** If you do not own retail space adequate to open your Studio, you must lease or rent the retail space from a third party. Studios are typically located in light industrial and commercial areas, and require approximately 1,100 to 1,800 square feet. Estimated monthly lease payments range from \$1,800 to \$4,100 (including common area maintenance payments) depending on the size, condition, and location of the leased premises. Your landlord may require a security deposit before leasing the premises to you, which is typically equal to ~~4~~one month's rent. ~~Some utility companies also may require a security deposit before commencing services.~~ We estimate the total amount of utility security deposits to range from approximately \$250 to \$500.

3. **Leasehold Improvements (net of landlord tenant allowances).** The cost of construction build-out before occupying the leased premises for your Studio ~~is~~, including the cost of design and architectural services ~~depends~~ performed by one of our designated suppliers for construction services, will vary depending on the size of your Studio, the state, city or area in which your Studio is located, the specific location and condition of the premises, the demand for the premises among prospective lessees, the site's previous use, and the nature and extent of improvements required. Typically, costs are higher in large metropolitan areas or if you choose premises with square footage in excess of the high range of 1,800 square feet. The range disclosed in the chart includes the construction management fee you must pay us in the event we approve an exception to the requirement that you use one of our ~~Approved Suppliers~~ designated suppliers for construction. ~~The~~In addition, the range disclosed in the chart is the range of costs after deducting any landlord allowances (tenant improvements, rent deduction and the like), which may or may not be granted by your landlord. Your construction costs may be higher depending on all of the factors described in this note.

4. **Site Survey Fee.** No later than 10 days after the date that you sign an approved lease the Premises, you must pay to us a non-refundable site survey fee equal to \$2,500, in the form of a lump sum payment by ACH.

- 4.5. **Equipment.** You must purchase from our ~~Approved Suppliers~~ designated suppliers specific fitness training equipment for ~~the operation of the~~ your Studio as ~~detailed~~ specified by us in the Operations Manual. ~~The range of estimated costs represents the equipment recommended for an open concept Studio and a 3-room Studio, or otherwise.~~

- 5.6. **Furniture and Decor.** You must purchase ~~from our Approved Supplier~~ furniture and fixtures for your Studio as specified by us in the Operations Manual or otherwise. The cost will depend on

supplier financing terms (if available), the brands purchased, the quality of the items purchased and other factors.

~~6.7.~~ **Computer Hardware and Software System.** Before opening your Studio, we typically require you to purchase ~~1~~one computer workstation and related equipment and our designated and other software programs. Your minimum requirements for these items are designated in the Operations Manual and in Items 8 and 11 of this Disclosure Document. You must pay us a \$499 set-up fee for the set-up of certain required software programs and the ~~technology fee~~Technology Fee for ~~the~~ 2~~two~~ months before opening (~~\$405~~330 per month), each of which is included in the estimate range stated in the Table.

~~7.8.~~ **Initial Training Program Expenses.** You must pay your own transportation, meals, lodging and any other living expenses for you and any other persons attending the ~~Initial~~Training Program outlined in Item 11 of this Disclosure Document. The amount you spend per individual will depend on the distance traveled and the type of accommodations you choose. ~~The estimate contemplates attendance by you and~~ 2~~one~~ other ~~people~~person traveling to our Support Center office in Colorado for approximately 5~~five~~ days. The estimates do not include any wages or salary you may choose to pay yourself or others while attending ~~Initial~~the Training Program.

~~8.9.~~ **Grand Opening Spend Fee.** ~~No later than 10 days after the date that you sign an approved lease for your Studio premises (or 10 days after the date you purchase an existing Studio), you~~ Requirement. You must ~~pay to us the Grand Opening Spend Fee of~~ spend \$15,000 ~~by ACH in advertising. The Grand Opening Spend Fee is in addition to your Local Marketing Spend Requirement. We will use the Grand Opening Spend Fee to advertise, market, and promote your Studio in accordance with a marketing plan that we determine in our sole discretion. We may require you to spend the Grand Opening Spend Fee directly (rather than pay us the Grand Opening Spend Fee), and if we so request, you will advertise, market, and promote, and promoting your Studio in accordance with an advertising and marketing plan we approve before the opening of your Studio (the "Grand Opening Spend Requirement") as follows: (1) you must spend \$10,000 beginning 60 days prior to the opening of your Studio; and (2) you must spend \$5,000 within the first 30 days after your Studio opens. Notwithstanding the foregoing, if you purchase an existing Studio, the Grand Opening Spend Requirement must be spent within six (6) months after the date you take possession of the Studio. The Grand Opening Spend Fee is in addition to your Local Marketing Spend Requirement.~~ .

~~9.10.~~ **Signs.** The estimate includes our required interior signs and ~~1~~one exterior sign which bear the Marks. The cost of the signs varies depending on the type, size and location of the sign, and may also be affected by shipping costs, as well as local zoning and other ordinances and regulations and landlord restrictions. If you want additional exterior signs, your cost will be higher.

~~10.11.~~ **Business Licenses and Permits.** The cost includes the licenses and permits required to operate a Studio in your location. The license and permit requirements are specific to the state and city/town in which your Studio is located. Certain states may require that you file and post a bond, the estimated cost of which is not included in the table.

~~11.12.~~ **Insurance.** You must obtain insurance coverage from our ~~Approved Supplier with the limits required by us~~designated supplier as described in Item 8 of this Disclosure Document. Your

landlord may require additional insurance. Under our required insurance program, you pay 20% of the annual premium up front and the remaining premiums for the year in equal installments on a monthly basis. The estimate shown in the table reflects the initial 20% payment, which you will pay before your Studio opens. However, franchisees have the option of paying the entire annual premium up front. If you elect to pay your entire annual insurance premium up front, these figures will be higher.

12.13. **Miscellaneous Opening Costs.** This cost includes other start-up costs and expenses (including reasonable pre-opening salary costs for your employees) but does not include any advisor fees or bank financing costs you may incur.

13.14. **Additional Funds (first ~~3~~three months of operations).** The range of estimated costs represents your estimated initial start-up expenses (other than the amounts separately identified in the table), which include payroll costs (excluding a draw or salary for you or your manager if you are not the manager), lease payments, marketing expenses, uniform expenses, the costs of supplies, and other operating expenses. The ~~3~~three-month period is not intended, and should not be interpreted, to identify a point at which your Studio will break even. This estimated amount may vary based on a number of factors, including the extent to which you follow our methods and procedures, local economic conditions, the local market for your services, competition, sales levels, local wage rates (and the prevailing minimum wage rate in your jurisdiction), owner's salary, the extent of your actual participation in the Studio, your business acumen, your partners or shareholders (if applicable), and any other persons involved in the Studio. We relied on our and our affiliates' many years of business experience in selling and supporting Fitness Together<sup>®</sup>, Amazing Lash Studio<sup>®</sup>, and Elements Massage<sup>®</sup> franchises to compile these estimates.

14.15. **Total Estimated Initial Investment.** You should review these figures carefully with your professional advisors, including financial and legal advisors, before making any decision to purchase a Studio. The amounts may vary based on your geographic location. You should consider the costs of each of the items described in this Disclosure Document in your geographic location. Fees paid to us are not refundable under any circumstances, unless otherwise stated in the Franchise Agreement. Fees or costs due to any other entity are subject to the terms set under their agreements. Inflation, discretionary expenditures, fluctuating interest rates and other factors may affect your actual costs to open your Studio. You are responsible for all costs and variances from the estimated costs in this Item 7, or variances from any other estimates we may provide during any phase of the development of your Studio. The availability and terms of financing depend on the availability of financing generally, your creditworthiness, your available collateral, and lending policies of financial institutions. The estimate does not include any finance charge, interest, or debt service obligation, and may not include all state and local taxes. We do not currently finance any portion of the initial investment.

**YOUR ESTIMATED INITIAL INVESTMENT  
(AREA DEVELOPMENT AGREEMENT)**

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Development Fee <sup>1</sup>	\$79,800 to \$ <del>199</del> <u>299</u> ,000	Lump sum	Upon signing Area Development Agreement	Us
Additional Funds (3 months) <sup>2</sup>	\$0	Not applicable	Not applicable	Not applicable
<b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>3</sup></b>	\$79,800 to \$ <del>199</del> <u>299</u> ,000			

**NOTES:**

1. **Development Fee.** If we grant you the right to develop ~~2~~two or more Studios under an Area Development Agreement, you must pay us a one-time Development Fee upon executing your Area Development Agreement. Your Development Fee will depend on the number of Studios we grant you the right to develop within the Development Area and is calculated as follows: (1) \$79,800 if you sign an Area Development Agreement in which you agree to develop ~~2 studios;~~(2) two studios; (2) \$34,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop three to five studios; and (3) \$29,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop ~~3 to 5 studios;~~ (3) ~~\$24,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop 6 to 9 studios;~~ and (4) ~~\$19,900 multiplied by each Studio you agree to develop if you sign an Area Development Agreement in which you agree to develop 10 or six~~ more studios. Typically, an area developer is expected to develop ~~2~~two to 10 Studios and the range of the Development Fee in that case would be \$79,800 to \$~~199~~299,000. The Development Fee is due in a lump sum when you sign your Area Development Agreement. The Development Fee is fully earned by us upon your execution of the Area Development Agreement.
2. **Additional Funds (~~3 months~~Three Months).** Based on our and our affiliates' many years of business experience in selling and supporting Fitness Together<sup>®</sup>, Amazing Lash Studio<sup>®</sup>, and Elements Massage<sup>®</sup> franchises, we estimate that you will not require any additional funds for the first three months of operating your development business. However, as described in Note 3 below, you will incur fees and expenses in opening each Studio you commit to develop under the Area Development Agreement. Those additional funds are reflected in the table above reflecting the initial investment necessary to commence operation of a Studio.
3. **Total Estimated Initial Investment.** This amount is in addition to the fees and expenses you will incur in opening each Studio you commit to develop under the Area Development Agreement. Fees

paid to us are not refundable under any circumstances. We do not currently finance any portion of the initial investment for an Area Development Agreement.

## **ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

### **Product Specifications and Designated/Approved Suppliers**

You must purchase or lease the brands, types, and models of fixtures, furniture, equipment, components of the Computer System, and signs that we approve for Studios as meeting our specifications and standards for quality, design, appearance, function, and performance (“Operating Assets”). You must comply with all of our System Standards for the purchase of all Operating Assets, and other products used or offered for sale at your Studio.

We also have the right to designate specific suppliers for the products and services used and sold in Studios. If we have approved or designated suppliers for any such item, you must obtain those items exclusively from the suppliers we have approved or designated. We may designate ourselves, our affiliates or a third party as an approved or designated supplier, or as the sole approved or designated supplier of any item.

Currently, we have designated suppliers for advertising and promotional materials and other stationery supplies, design, architecture and construction services, furniture and fixtures, fitness equipment, Studio insurance, music services, software (including scheduling/point-of-sale software and customer-relationship management (“CRM”) software), uniforms and apparel, signs, and hotel accommodations.

Although not currently required, we expect to designate our affiliate, WAVE, as ~~General~~

~~To maintain the quality, consistency, and goodwill of the Franchise System, you must comply with and maintain our System Standards. a designated supplier of certain inventory items that franchisees must use at their Studios, and if we do so, we may designate WAVE as the sole designated supplier for those inventory items.~~

You must acquire all other Operating Assets in accordance with our System Standards for suppliers, including purchasing such Operating Assets from suppliers we have approved in advance. We can modify, amend and change our System Standards, the Operations Manual or any other standards and specifications at any time, and will notify you of any such modifications. Notifications may be made by various means, including written or electronic correspondence, verbal or telephone communication, amendments or updates to the Operations Manual, bulletins and similar means of communications.

We estimate that the cost of your purchases from designated or approved suppliers, or according to our standards and specifications will range from approximately 70% to 75% of the total cost of establishing, and approximately 29% to 42% of the total cost of operating, your Studio.

Some of our officers own an interest in one of our parent companies that has WAVE as one of its subsidiaries. ~~We may designate specific products or services that you must purchase. You may be permitted to purchase a product or service from a vendor of your choice and, in those cases, we may, but are not obligated to, provide you with a list of preferred vendors. However, we may require that you purchase the products or services only from certain manufacturers, vendors, distributors, suppliers~~

and producers we approve, which may be us or our affiliates (collectively, “Approved Suppliers”) and you will be required to purchase those products or services only from the Approved Suppliers and no other supplier or vendor.

To the extent we have designated Approved Suppliers for products or services, you must purchase those products or services only from the Approved Suppliers (which may be 1 supplier for any given product or service) under terms, in the manner, and from the source designated by Franchisor or any of its affiliates. We currently have designated Approved Suppliers for advertising and promotional materials and other stationery supplies, digital marketing services, design, architecture and construction services, furniture and fixtures, fitness equipment, Studio insurance, music services, software (including scheduling/point-of-sale software and customer relationship management (“CRM”) software), uniforms and apparel, signs, and hotel accommodations. During the term of the Franchise Agreement, we may require you to purchase other items or services only from Approved Suppliers (which might include us or our affiliates). Except as stated below, neither we nor our affiliates are currently an Approved Supplier of any goods and services, though we may become an Approved Supplier for additional goods and services in the future.

*Approval of Alternative Suppliers.* With respect to products or services for which we have designated 1 or more Approved Supplier(s), you may request that we permit you to purchase from an alternative supplier other than an Approved Supplier by submitting a written request for our approval. We do not charge you a fee for evaluating the requested supplies or supplier. We will typically provide a response to the written request within 30 days from our receipt of the request. We may require that samples of the product produced by the proposed alternative supplier be delivered to us for review and testing. We do not make available to our franchisees our criteria for approving suppliers. We may withhold approval of a supplier for any reason. We will not approve a new supplier or continue to approve any supplier unless the supplier has agreed that we have a right to inspect the supplier’s premises and products. If any inspection discloses a supplier’s failure to maintain our specified criteria for products or services, we may revoke our approval by providing you written notice of the revocation. If an exclusive supplier already has been designated for the equipment, products, services, supplies, or materials proposed to be offered by a new vendor, your request for a new vendor likely will be rejected without further review or investigation.

### Advertising

All advertising and promotional materials, signs, and other items we designate for use in your Studio must bear the Marks in the form, color, location and manner we specify, and you must obtain all such materials from Approved Suppliers. Your advertising and promotional materials must meet our standards and specifications as described in our Operations Manual. You may prepare and use your

~~own advertising and promotional materials only with our advance written approval. We will provide a written response to your request for approval within 30 days after we receive it.~~

~~We require you to use our social media program for the management of social media including Facebook, Google, mapping management and other social technologies that we periodically integrate.~~

~~Except as described above, neither we nor our affiliates are currently a designated or approved supplier of any products or services.~~

### **Alternative Products and Suppliers**

~~If you wish to use any item or service that we have not yet evaluated or (for items that we require you to purchase from designated or approved suppliers) if you wish to purchase or lease any such item from a supplier that we have not yet approved, you must submit a written request for approval to us. You must not purchase or lease any such item unless the supplier has been approved in writing by us. We will typically provide a response to a written request within 30 days. We are not required to approve any particular supplier. We may condition our approval of a supplier on requirements relating to product quality, prices, consistency, reliability, financial capability, labor relations, and standards of service. We may require you to pay any costs or expenses we incur in connection with the evaluation of your proposed supplier. We may, with or without cause, revoke our approval of any supplier at any time.~~

~~You must prominently display a statement in your Studio that clearly indicates your Studio is independently owned and operated by you and that you are not our agent. In addition, you must display our standard franchise opportunity sign in a highly visible area of your Studio.~~

~~You agree to play only the types of music and display only the types of visual entertainment, at the decibel levels and using the equipment and in the manner that we prescribe at your Studio.~~

### **Insurance**

Throughout the term of the Franchise Agreement (including any renewal periods) you are required to maintain certain minimum amounts and types of insurance coverage as we periodically specify in the Operations Manual or otherwise in writing. ~~Except for worker's compensation insurance, which you may obtain from your payroll provider or any reputable insurer maintaining a minimum rating of A by A.M. Best, and owned-auto insurance, which you may obtain from any reputable insurer maintaining a minimum rating of A by A.M. Best, you must purchase insurance from our Approved Supplier which represents insurance carriers with a performance rating of A or higher as rated in the most recent edition of Best's Insurance Reports. Currently we require for each Studio, at a minimum, the following types of insurance and minimum coverage limits: (a) general liability limits not less than \$1,000,000 per occurrence (\$2,000,000 in the aggregate); (b) professional liability coverage due to errors or omissions in the performance of services at your Studio with limits not less than \$1,000,000 per occurrence (\$2,000,000 in the aggregate); (c) hired and non-owned auto liability limits not less than \$1,000,000 per occurrence; (d) owned-auto combined single liability limits not less than \$100,000; (e) sexual abuse and~~

~~molestation limits not less than \$100,000 per occurrence (\$300,000 in the aggregate); (f) cyber liability limits not less than \$1,000,000 in the aggregate; (g) employment practices liability limits not less than \$100,000 in the aggregate; (h) property insurance limits in amounts that adequately protect your business personal property, fixtures, improvements and business interruption and extra expense exposures; and (i) worker's compensation insurance (in compliance with state and local laws).~~

We require you to purchase all insurance policies from a designated vendor and on the terms and according to the specifications we approve, including but not limited to general liability, professional liability, sexual abuse and molestation, cyber-liability, motor vehicle liability, property, worker's compensation, and employment practices liability policies. Other than employment practices coverage, the policies must be occurrence policies, and not claims-made policies. All policies must contain the minimum coverage we prescribe from time to time and must have deductibles not to exceed the amounts we specify. We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverages (including reasonable excess liability insurance) at any time. These insurance policies must be purchased from licensed insurers having a rating of "A/VIII" or higher by the then-current edition of Best Insurance Reports published by A.M. Best Company (or other similar publication or criteria we designate).

The types of coverage and minimum coverage limits we specify are for our benefit and are not intended to be relied upon by you as a recommendation as to the types of coverage and coverage limits which are or might be appropriate for your particular Studio. Additional types of coverage and higher coverage limits might be appropriate based upon, for example, the location of your Studio, and we recommend that you consult with your insurance advisor regarding the appropriate types of coverage and coverage limits sufficient to protect your Studio.

Before you open your Studio, and then ~~a minimum of annually~~ routinely or at our request, you must provide us or our designee with copies of ~~each certificate~~ your certificates of insurance ~~(including those of each of your employees, if then required) together with,~~ insurance policy endorsements, or other evidence ~~of payment of~~ that you are maintaining our requiring insurance coverages and paying premiums. The certificates must show the minimum limits of coverage required by us and must provide that the insurance cannot be canceled, terminated, materially amended or modified without providing us and any other additional insureds 30 ~~days~~ days' advanced written notice. Each insurance policy for your Studio must designate as additional insured parties, us and, ~~if requested by us,~~ any ~~of our affiliates or Area Directors or other parties~~ we may periodically designate.

#### ~~Products, Equipment, Furniture and Fixtures and Supplies~~

~~You will at all times maintain sufficient products, equipment, furniture and fixtures and supplies to permit your Studio to operate at maximum capacity. Some of these items may only be available from 1 source, and we or our affiliates may be that source. Items that you are not required to purchase from~~

~~an Approved Supplier can be purchased from any supplier, so long as the suppliers and supplies you purchase meet our System Standards and other specifications and quality standards.~~

### Purchase Arrangements

~~Although not currently required, we expect to designate our affiliate, WAVE, as an Approved Supplier of certain inventory items that franchisees must use at their Studios, and if we do so, we may designate WAVE as the only Approved Supplier for those inventory items.~~

We have negotiated purchase arrangements with certain ~~Approved Suppliers~~designated suppliers for the benefit of the Franchise System. We or our affiliates may derive revenue or profit from your dealings with ~~the Approved Suppliers~~such designated suppliers in the form of rebates, cash payments, discounts, promotional allowances, and/or other payments. We have these types of arrangements only with the ~~Approved Suppliers~~designated suppliers disclosed in this Item 8. ~~We also derive revenue on direct purchases that you make from us or from our affiliates.~~ We retain all of the rebates, commissions or other consideration we are paid, and have the right to use these amounts without restriction (unless we or our affiliates agree otherwise with the supplier) for any purpose we or our affiliates deem appropriate. ~~We do not provide material benefits to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.~~

### Revenue from Third-Party Suppliers Based on Franchisee Purchases

The third-party ~~Approved Suppliers~~designated suppliers from whom we receive rebates, cash payments, discounts, or other consideration as a result of your purchase of certain equipment, supplies, products and services are listed below.

*Customer Relationships Software.* In the fiscal year ended December 31, 2018, we received ~~\$3,327,452~~ from our ~~Approved Supplier~~designated supplier of customer relationships management software.

*Insurance.* You must purchase insurance from our ~~Approved Supplier~~designated supplier which represents various insurance carriers. We receive 10% of the total commissions that this ~~Approved Supplier~~designated supplier receives from the insurance carriers from whom they obtain your required insurance coverage. In the fiscal year ended December 31, ~~2019~~2018, we received payments of ~~\$8,406,422~~ from this ~~Approved Supplier~~designated supplier, all of which we contributed toward expenses associated with our annual franchisee ~~conference~~meeting.

### Revenue We or Our Affiliates Receive from Franchisee Purchases

We or our affiliates may derive revenue based on your purchases, including from payments made to us or our affiliates by suppliers that we designate or approve for our franchisees. In the fiscal year ended December 31, 2019, we or our affiliates derived revenue from required purchases by ~~you~~franchisees as follows:

~~Technology Fee.~~ Technology Fee. We received revenues of \$482,026 from our franchisees' use of the required software programs and websites, which was 10.1% of our total revenues of \$4,752,325. You must pay us a set-up fee and a monthly fee to use the required point-of-sale and other management information software programs required to operate your Studio. The monthly fee is included in the technology fee payable to us. A portion of the monthly technology fee is remitted to the licensors of the software programs and we retain a portion of the monthly fee. ~~In the fiscal year ended December 31, 2018, we received revenues of \$490,848 from our franchisees' use of the required software programs and websites, which was 10.8% of our total revenues of \$4,528,384.~~

Our affiliates did not receive any revenues from ~~our~~ franchisee purchases during the fiscal year ended December 31, ~~2019~~2018.

~~Except as described above, neither we nor any of our affiliates are currently an Approved Supplier of any other product or service. We are not aware of any rebates paid by Approved Suppliers to our area directors based on required purchases by franchisees, and we prohibit area directors from receiving such rebates.~~

~~We estimate that the cost of your purchases from designated or approved suppliers, or according to our standards and specifications will range from approximately 89% to 92% of the total cost of establishing, and approximately 29% to 42% of the total cost of operating, your Studio.~~

~~Some of our officers own an interest in one of our parent companies that has WAVE as one of its subsidiaries. Currently, there are no purchasing or distribution cooperatives in the Franchise System.~~

**ITEM 9. FRANCHISEE'S OBLIGATIONS**

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document.**

Obligation	Section in Franchise Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	<del>2.1, A., 2.B., 2., 2.4, 7.2.C.</del> Area Development Agreement – 2.B	5, 7, 8, 11, 12
b. Pre-opening purchase/leases	<del>4.5, 4.7, 5.4, 5.5, 7.5(e), 7.5(e), 7.5(g), 7.5(n), 7.6(i), 8.6</del> <del>2.B., 2.D., 2.E., 2.F., 2.H., 3.C., 4.A., 8.A., 9.A.</del>	5, 7, 8, 11

Obligation	Section in Franchise Agreement	Disclosure Document Item
c. Site development and other pre-opening requirements	<del>5.4, 5.5, 7.3, 7.6(i)</del> <u>2.D., 2.E., 2.F., 2.H.</u> Area Development Agreement – 2.B	5, 7, 8, 11
d. Initial and ongoing training	<del>5.2, 5.3, 7.5(d), 7.6(a)</del> <u>2.H., 4.A., 4.B., 4.C., 8.A., 8.H., 12.C., 14.B.</u>	6, 7, 11
e. Opening	<del>7.3(b)</del> <u>2.H.</u> Area Development Agreement – 1.B, 2.D	5, 7, 11
f. Fees	<del>4, 5.2, 5.B., 2.D., 3, 7.A., 3(a), 7.B., 3(b), 7.5(h), C., 3.D., 3.E., 3.G., 4.A., 4.C., 8.1(c), E., 8.4, M., 8.6, 10.3, 10.6(b), 10.7, 11.1(m), 11.1(p)</del> <u>N., 9.A., 9.B., 9.D., 9.E., 9.F., 12.C., 12.D., 12.F., 13.A., 14.C., 15.B., 15.E., 16.D., 17.D., 17.F.</u> Area Development Agreement – 3	5, 6, 7, 8, 11
g. Compliance with standards and policies/ Operations Manual	<del>4.9, 5.4, 7.5, 7.6</del> <u>2.D., 4.A., 4.D., 5.B., 8.A., 8.B., 8.F., 8.H., 8.I., 8.L, 9.F., 10, 17.K., 19</u>	1, 8, 11, 13, 14, 15, 16
h. Trademarks and proprietary information	<del>6, 1.C., 5.A., 5.B., 5.C., 5.D., 5.E., 7.5(b), 7.5(e), 7.6, 12.4</del> <u>A., 8.A., 9.F., 14.B., 15.C.</u> Area Development Agreement – 4	8, 11, 13, 14, 16
i. Restrictions on products/services offered	<del>7.5(c), 7.5(k), 7.6, 8.6</del> <u>2.C., 7.A., 8.A., 8.B., 8.D., 8.E., 8.K., 8.L., 8.N.,</u>	8, 11, 16
j. Warranty and customer service requirements	<del>7.5(m) and 7.6(s)</del> <u>4.D., 8.A., 8.F. 8.L.</u>	<del>8,</del> 11, 16
k. Territorial development and sales quotas	<del>2.3</del> <u>1.C., 1.D.</u> Area Development Agreement – 2.D	12
l. Ongoing product/service purchases	<del>4.5, 4.7, 5.4, 7.5(c), 7.5(e), 7.5(f), 7.5(g), 7.5(m), 7.6(i), 8.6</del> <u>4.A., 4.C., 8.A., 8.B., 8.C., 8.D., 8.E., 8.J., 8.M., 8.N., 9.B., 9.D., 9.E.,</u>	6, 8, 11
m. Maintenance, appearance and remodeling requirements	<del>3.2(h), 7.5(e), 7.6(i), 7.6(u), 7.6(v), 7.6(x)</del> <u>2.E., 2.H., 4.C., 8.A., 8.B., 8.C., 12.C., 13.A., 13.B.</u>	8, 11, 17
n. Insurance	<del>7.4, 7.6(c)</del> <u>8.I., 8.J.</u>	6, 7, 8
o. Advertising	<del>4.11, 7.6(h), 8.5</del> <u>B., 8.A., 8.C., 8.F., 8.K., 9.A., 9.B., 9.C., 9.D., 9.E., 9.F, 10.B., 16.A.</u>	6, 8, 11
p. Indemnification	<del>9</del> <u>5.E., 16.D.</u> Area Development Agreement – 8.B	6

Obligation	Section in Franchise Agreement	Disclosure Document Item
q. Owner's participation/management/staffing	<del>5.2, 7.1, 7.5(d), 7.6(a) - (c)</del> <u>.A., 1.B., 1.H., 4.A., 8.A., 8.H., 8.I., 12.F., 14.C.</u> Area Development Agreement – 1.D	15
r. Records and reports	<del>7.5(e), 7.5(g), 7.5(l), 7.3.G., 4.C., 6(o), 7.6(w)</del> <u>.A., 8.A., 8.F., 10, 11.A., 11.B., 12.C., 14.B., 19</u> Area Development Agreement – 2.E	N/A
s. Inspections and audits	<del>7.5(h), 7.5(l)</del> <u>4.C., 8.B., 8.G., 11.A., 11.B.</u>	6
t. Transfer	<del>11</del> <u>12</u> Area Development Agreement – 6	6, 17
u. <del>Renewal</del> <u>Successor Franchise</u>	<del>3.2</del> <u>13.A., 13.B.</u>	6, 17
v. Post-termination obligations	<del>10.4, 10.5, 12.2, 12.4</del> <u>6.A., 6.B., 15.A., 15.B., 15.C., 15.D., 15.E., 15.F., 15.G., 15.H., 15.I.</u> Area Development Agreement – 7.B, 7.C	6, 17
w. Non-competition covenants	<del>12.1, 12.2, 12.4</del> <u>7.A., 15.F., 17.B.</u> Area Development Agreement – 5, 7.C	17
x. Dispute resolution	<del>14</del> <u>17.F., 17.G., 17.H., 17.I., 17.J., 17.L.</u> Area Development Agreement – 9	17
y. Other: Licenses	<del>7.3, 7.5, 7.6(c)</del> <u>2.H. 8.F., 8.I.</u>	1, 7

## ITEM 10. FINANCING

We do not offer direct or indirect financing. We do not guarantee your note, lease or obligation.

## ITEM 11. FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING

Except as listed below, we are not required to provide you with any assistance.

### Pre-Opening ~~Assistance (Franchise Agreement)~~ Obligations.

Before you open your Studio, we or our ~~authorized representative will assist you with the following~~ designee will:

1. Review your proposed site for compliance with our site selection guidelines and accept or not accept the site and your proposed lease. (Sections 2.A. and 2.B. of Franchise Agreement);
2. If you have signed an Area Development Agreement, we will review sites you propose for a Studio and, if approved, issue you a Franchise Agreement. We are obligated to use reasonable efforts to provide you with our decision within 30 days of our receipt of all requested information and materials regarding the proposed site. (Section 2.B. of Area Development Agreement);
3. Give you mandatory and suggested specifications for the development of your Studio, including requirements for dimensions, design, image, interior layout, decor, fixtures, equipment, signs, furnishings, and color scheme. (Section 2.D. of Franchise Agreement);
4. Provide you access to our Operations Manual. (Section 4.D. of the Franchise Agreement);
5. Provide the Training Program to you (or your "Operating Partner," if you operate as a legal business entity and as such term is defined in Item 15) and your Designated Manager (as defined in Item 15), if any. (Section 4.A. of Franchise Agreement); and
6. Provide you with a list of Operating Assets. (Section 2.E. of Franchise Agreement).

### Post-Opening ~~1.~~ Obligations

During the operation of your Studio, we or our designee:

1. May provide general guidance to you from time to time regarding your Studio's operation, as we deem appropriate, based on your reports or our inspections. (Section 4.C. of Franchise Agreement); and
2. Will administer the Brand Marketing Fund and, at your request, provide an annual unaudited statement of contributions and disbursements for the Brand Marketing Fund within 120 days after the end of the previous fiscal year. (Section 9.D. of Franchise Agreement).

During the operation of your Studio, we may, but are not obligated to, provide assistance in setting a maximum or minimum price that you may charge for products and services offered by your Studio. (Section 8.K. of Franchise Agreement)

~~Site Selection Assistance.~~ Although we or a third party may assist you in finding a site, it is your sole responsibility to locate suitable premises for your Studio. We will make the final determination to approve or not approve any site that you propose to us. We and Construction

~~You must review and approve any lease for your Studio premises. Our review of your identify and secure a site for your Studio's Premises within a non-exclusive Search Territory (as defined in Item 12) specified in your Franchise Agreement. We do not typically own the Premises for your Studio or lease is for our benefit and the benefit of the Franchise System. We make no guaranty or assurance that any particular site or area in which you have expressed an interest will be available, and your obligations under the Franchise Agreement are not conditioned upon securing any particular site or a site in a particular area. it to you. If you have signed an Area Development Agreement, you must find all sites for your Studios in your Development Area, and our then-current site criteria will apply when considering each proposed site in your Development Area. When you identify a proposed site, you must submit to us a complete report containing the documents and information we require, including a description of the site, and a letter of intent or other evidence confirming your favorable prospects for obtaining the proposed site. Our review and approval is conditioned on a variety of factors, including the site's demographics, location, and proximity to other businesses, the character of the neighborhood, the size and appearance of the premises to be leased, and other characteristics and criteria that may change. Upon executing the Franchise Agreement, you must begin searching for a site for your Studio, making diligent efforts to work with us (or a third party that we may designate) to review site information, view locations and review letters of intent, so that you can locate a We will use reasonable efforts to accept or not accept the proposed site within 30 days after receiving your report. You must obtain our written approval for your proposed site and sign a lease in a timely manner. Although there is no deadline by which you are required to select a site, you must an approved Lease (as defined below) within 180 days after your sign your Franchise Agreement. You must open your Studio within one year after you sign the Franchise Agreement or we may terminate the Franchise Agreement. (Sections 2.2, 7.2 and 7.3(b) of the Franchise Agreement)~~

~~You and your legal and~~

~~Before signing any lease, sublease, or other advisors are solely responsible document for negotiating the terms of Premises (the lease for your Studio premises, including negotiating the terms of our required "Lease"), you must obtain our written approval. The Lease must contain certain provisions we require, pursuant to the form of Lease Rider attached as Exhibit 6F to the Franchise Agreement. You (and not any of your) It is your sole responsibility to obtain a fully executed Lease Rider when executing your Lease. You must furnish to us a copy of the executed Lease within 10 days after its execution.~~

You must develop, construct and decorate the Premises at your own expense according to plans and specifications approved by us and in accordance with the requirements of the Lease and applicable law. It is your responsibility to ensure all required construction plans and specifications comply with the Americans with Disabilities Act ("ADA") and all other applicable ordinances, building codes, permit requirements, and Lease requirements and restrictions, and that the Premises complies with such laws and regulations. You must hire a service provider that we designate to assist you with the construction-management process. Additionally, no later than 10 days after you sign an approved Lease for the Premises,

you must pay to us a non-refundable site survey fee equal to \$2,500, in the form of a lump sum payment by ACH.

You must send us your development and construction plans and specifications for review for compliance with our design requirements and obtain our approval before you begin construction. You must send us any revisions of plans or specifications before such revisions are implemented. You must obtain and install the Operating Assets that we approve or designate for Studios only from suppliers we designate or approve (which may include or be limited to us and/or our affiliates ~~or owners~~) must be the tenant on the lease for your Studio's premises. Any review of your lease by us or by our legal counsel is for our benefit and.

### Opening Your Studio

You may not open your Studio for business without our written authorization, which will be conditioned upon the following: (i) we notify you in writing that your Studio meets our standards and specifications; (ii) you (or your Operating Partner) and any manager or assistant manager we require have satisfactorily completed the Training Program (as defined below); (iii) you have paid us all initial fees and other amounts you owe us; (iv) you have provided us certificates for all required insurance policies; (v) you obtain all required supplies and opening inventory for your Studio; (vi) you have obtained waivers of all construction liens and similar encumbrances; (vii) you hire a minimum of six massage therapists; (viii) you submit a completed trade area survey and a proposed advertising and marketing plan for approval (as further described below); and (ix) you meet all regulatory and licensing requirements to operate your Studio.

We will send a training team (which may be comprised of only one person) for up to five days (which may not ~~for your benefit. (Section 7.2 of~~ be consecutive) to your Studio to assist you with final suggestions on your Studio and provide on-site advice, guidance, and initial operations support.

We estimate that it will be approximately six to 12 months from the time you sign the Franchise Agreement) to the time your Studio begins operations. This time period may be shorter or longer depending on the modifications that must be made to the site to accommodate your Studio and other factors, such as delays or difficulties in obtaining financing, building permits, zoning and local ordinances, weather conditions, shortages of materials or delayed installation of equipment, fixtures or signs. You must open your Studio within 12 months after signing the Franchise Agreement or we may terminate the Franchise Agreement.

### Advertising and Marketing

Grand Opening Spend Fee. You must spend \$15,000 in advertising, marketing, and promoting your Studio in accordance with an advertising and marketing plan we approve before the opening of your Studio (the "Grand Opening Spend Requirement") as follows: (1) you must spend \$10,000 beginning 60 days prior to the opening of your Studio; and (2) you must spend \$5,000 within the first 30 days after your Studio opens. Notwithstanding the foregoing, if you purchase an existing Studio, the Grand Opening Spend Requirement must be spent within six months after the date you take possession of the Studio. The Grand Opening Spend Fee is in addition to your Local Marketing Spend Requirement described below.

Local Marketing Spend Requirement. You must spend a minimum of two percent (2%) of the Gross Receipts of your Studio each year toward approved advertising, marketing and promotional programs for your Studio within an area reasonably surrounding your Studio (the "Local Marketing Spend Requirement"). Your Local Marketing Spend Requirement excludes any contributions you make to the

Brand Marketing Fund (as described below), but any contributions you make to a Marketing Cooperative (as described below) will count toward your Local Marketing Spend Requirement. Your required Marketing Cooperative contributions could, by themselves, exceed the Local Marketing Spend Requirement.

At least 90 days before you open your Studio (or if you are purchasing an existing Studio, at least 30 days before taking possession of the Studio), you must submit to us a completed trade area survey and submit to us for approval an advertising and marketing plan describing your pre-opening advertising plan and your plan for the first three months after the Studio's opening or purchase. You will not be permitted to open and/or operate your Studio until we receive the completed trade area survey and approve this advertising and marketing plan. Subsequent to such period, and during the term of your Franchise Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Local Marketing Spend Requirement.

~~We do not typically own or lease any Studio sites.~~

~~2. Site Design and Layout Specifications. We, or at our option, our Approved Supplier will provide you with specifications and guidelines for the design and layout of a typical Studio, as well as the typical leasehold improvements necessary to complete the build-out of your Studio premises. You must obtain our written approval before making any alterations to the design and layout of the Studio or make replacements or alterations to the equipment, furniture and fixtures or signs we require that you use in opening and operating your Studio. (Sections 5.5, 7.3(a) and 7.6 of the Franchise Agreement)~~

~~3. Equipment, Furniture and Fixtures, Inventory and Supplies. We will provide you with specifications and guidelines for the equipment, furniture and fixtures, inventory and supplies necessary to open your Studio, a portion of which currently must be purchased from our Approved Suppliers (but may in the future be required to be purchased from us), as described in Item 8 of Advertising Standards. Your advertising, promotion, and marketing must be completely clear, factual, and not misleading and conform to the highest standards of ethical advertising, the System Standards, and any marketing and the advertising and marketing policies that we prescribe from time to time. You agree to send us samples of all advertising, promotional and marketing materials that we have not previously approved at least 14 days before you intend to use them. If we do not approve of the materials within seven days of our receipt of such materials, then they shall be deemed disapproved. You may not use any advertising, promotional, or marketing materials that we have not approved or have disapproved. You must participate in and market any promotion we require.~~

Brand Marketing Fund. We have established an advertising and marketing fund (the "Brand Marketing Fund") for the marketing, recruiting, advertising, and promotional programs and materials we deem appropriate. You must make periodic contributions to the Brand Marketing Fund equal to the greater of 2% of the Gross Receipts of your Studio or \$500 per month; provided, however, you will not be required to contribute more than \$1,000 per month to the Brand Marketing Fund. As of the issuance date of this Disclosure Document, ~~These specifications and guidelines are contained in the Operations Manual or elsewhere as we may designate. Other required equipment, furniture and fixtures, inventory and supplies may be purchased from any supplier, so long as the supplier and the items purchased meet our specifications. We do not deliver or install any items. Some Approved Suppliers may perform~~

installation services; in other cases you will be responsible for installation or obtaining installation services from a third party. (Sections 4.5 and 5.4 of the Franchise Agreement)

4. ~~Operations Manual.~~ We will make available online our Operations Manual or other manuals or written materials we have or may designate for use in the Franchise System (and appropriate updates and revisions) (as more fully described below). (Section 7.5 of the Franchise Agreement)

5. ~~Training.~~ As more fully described below, after you sign a lease for your Studio premises and before you open your Studio, we or our designee will provide initial training (“Initial Training”), at no cost, to you (or your owners) and your managers who have responsibility for the day-to-day operations of your Studio. Any replacement manager (or employee having responsibility for the day-to-day operations of your Studio) must also attend and complete the Initial Training to our satisfaction. You are responsible for all travel, living, and miscellaneous expenses for all individuals who attend Initial Training. (Section 5.2 of the Franchise Agreement)

6. ~~Grand Opening.~~ As more fully described below, we will use the \$15,000 Grand Opening Spend Fee you pay us to advertise, market, and promote your Studio in accordance with a marketing plan that we determine in our sole discretion. (Section 8.2 of Franchise Agreement)

7. ~~Opening Requirements and Support.~~ The typical length of time from the date you sign the Franchise Agreement to the opening of your first Studio is approximately 6 to 12 months. The amount of time it will take you to open your Studio will depend on factors such as the location of the business, condition of the leased space, contractor and construction schedules, the time it takes to obtain required licenses and permits, zoning requirements, weather, availability of equipment and supplies, the economy and other factors. The Franchise Agreement requires that your Studio be open and operating within 1 year after the effective date of the Franchise Agreement, unless otherwise approved by us in writing. If you do not open by the other franchisees may be contributing to the Brand Marketing Fund on different terms. Your required date, we may terminate the Franchise Agreement. If you purchase more than 1 Franchise Agreement contributions to the Brand Marketing Fund shall be payable at the same time, you must open each additional Studio within the period after the effective date of the Franchise Agreement as we may designate, typically within 2 years after the effective date of the 2<sup>nd</sup> Franchise Agreement and 3 years after the effective date of the 3<sup>rd</sup> Franchise Agreement. However, we have the right to designate such other periods of time as we may determine. (Section 7.3(b) of the Franchise Agreement)

We or our designee will provide, at no additional cost to you, 2 to 5 days of on-site assistance and support in connection with the opening and initial operations of your Studio. We will determine the duration of on-site assistance and support based on factors such as whether as the payment of the Royalty, based on Gross Receipts for the immediately preceding reporting period and are in addition to amounts you are a new or existing franchisee, how long the franchisee would like us to remain on-site, and the availability of our personnel. We have

~~discretion to determine the individuals who will provide this on-site support. If, upon the arrival of the support team at your Studio, we determine that you are not ready to open your Studio, or if we determine that you require or would benefit from more than 5 days of on-site opening support, you will be responsible for the reasonable travel and living expenses incurred by our support team in providing the postponed or additional assistance. (Section 5.2 of the Franchise Agreement)~~

~~You may not open your Studio for business until we notify you that you have properly equipped your Studio; you and your employees and other personnel have successfully completed the applicable training to our satisfaction; you have paid all amounts due to us and our Approved Suppliers and other vendors; you have obtained all required licenses and permits to operate your Studio; you have obtained our required minimum insurance coverage for your Studio and have provided us with a certificate of insurance and evidence that you have paid your insurance premium, and if you are an individual, you transfer ownership of your Studio to an entity. (Section 7.3(b) of the Franchise Agreement)~~

~~**Pre-Opening Assistance (Area Development Agreement).** After you sign an Area Development Agreement, but before you open a Studio, we or our authorized representative will assist you with the following:~~

~~1. **Site Selection Assistance.** Review sites you propose for the development of a Studio and, if approved, issue you a Franchise Agreement. We are obligated to use reasonable efforts to provide you with our decision within 30 days of our receipt of all requested information and materials regarding the proposed site. (Section 2.B of Area Development Agreement) In determining whether to approve the sites you propose for future Studios and the Protected Areas (defined in Item 12) for those Studios, our then-current standards will apply to spend for your Local Marketing Spend Requirement.~~

~~**Post-Opening Assistance.** During the operation of your Studio, we or our authorized representative (which may be an affiliate of ours) will perform for you the following services:~~

~~1. **Equipment, Products and Materials.** We, or our Approved Suppliers, will make equipment, products and materials available to you at the prices disclosed in the Operations Manual, or other prices we designate, as may be periodically amended. (Sections 4.4 and 5.4 of the Franchise Agreement)~~

~~2. **Operational Advice and Support.** Periodically, we will provide you with operational support, assistance and consultation in person, by telephone, or otherwise, as we determine is appropriate. This advice may be based on periodic inspections of your Studio we or our authorized representatives perform. (Section 5.6 of the Franchise Agreement)~~

~~3. **Marketing and Advertising Support.** Periodically, we will provide you with recommendations and guidelines for advertising and promoting your Studio (as more fully described below). (Section 5.6 of the Franchise Agreement)~~

~~4. Computer Software. We will provide you the computer software required for conducting point of sale transactions, management information processes and activities and other business activities for a monthly technology fee of \$405 per month plus an additional \$7.50 per month per email user in excess of 4. (Section 4.7 of the Franchise Agreement)~~

~~5. Operations Manual. We will make available online our Operations Manual or other manuals or written materials we have or may designate for use in the Franchise System (and appropriate updates and revisions) (as more fully described below). (Section 7.5(b) of the Franchise Agreement).~~

~~We are not obligated to provide you any post-opening assistance under the Area Development Agreement.~~

### Advertising

~~Marketing Fund. You must contribute the greater of 2% of your Studio's gross receipts or \$500 per month to the Marketing Fund (subject to a maximum monthly contribution of \$1,000). We have the right to collect for deposit into the Brand Marketing Fund any advertising, marketing, or similar allowances paid to us by suppliers to the Franchise System who instruct us to use the allowances for advertising or marketing purposes. -We may incorporate the Brand Marketing Fund or operate it through a separate entity as we deem appropriate. -We have no fiduciary obligations to you in connection with our administration of the Brand Marketing Fund. -We do not use any of the funds contributed to the Brand Marketing Fund principally to solicit new franchise sales. -If we or our affiliates own any Studios, those Studios make contributions to the Brand Marketing Fund on the same basis as you and our other franchisees.~~

We designate all programs to be financed by the Brand Marketing Fund and have sole control over the creative concepts, materials, and endorsements prepared and used and their geographic, market, and media placement and allocation. -The Brand Marketing Fund may ~~pay~~ be used for any purpose to promote the Franchise System, the Marks, the patronage of Studios and the Fitness Together brand, including the costs of: (1) preparing and producing video, audio, and written materials (including marketing and promotional materials and local ~~store~~studio marketing advertisements we prepare) and electronic media; (2) administering national, regional ~~and~~ multi-regional, and local marketing ~~and~~ recruiting, advertising, and promotional programs, including purchasing space in print publications, direct mail, radio and other media advertising and ~~for~~using advertising, promotion, and marketing agencies and other advisors ~~who~~to provide assistance; (3) supporting public relations, market research, and other marketing, recruiting, advertising, promotion, and marketing promotional activities; (4) developing and maintaining ~~websites~~website(s) for the Franchise System; (5) administering online marketing, recruiting, advertising, and marketing promotional campaigns (including search engine, social media, email, and display ad campaigns); and (6) developing and maintaining application software designed to run on computers and similar devices, including tablets, smartphones and other mobile devices, as well as any evolutions or "next generations" of any such devices.

~~The Marketing Fund will advertise in printed materials, on radio or television for local, regional or national circulation, and via digital media. We and/or our regional or national advertising agency will produce all advertising and marketing.~~

We determine the use of the funds contributed to the Brand Marketing Fund, including allocating a portion of any Brand Marketing Fund contributions to any national, regional, multi-regional, or local marketing, recruiting, advertising, and promotional programs we may establish in the future. -We are not required to spend any particular amount on marketing, recruiting, advertising or promotion in the area in which your

Studio will be located. In addition, we are not required to ensure that [Brand](#) Marketing Fund expenditures for or affecting any geographic area be proportionate or equivalent to [Brand](#) Marketing Fund contributions by Studios operating in that area, or that any Studio benefits from the development or placement of [marketing, recruiting, advertising, and marketing, or promotional](#) materials directly or in proportion to its [Brand](#) Marketing Fund contributions. ~~We intend for the Marketing Fund to promote the applicable Marks, patronage of Studios, and the Fitness Together brand generally. We may use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense.~~ We also may forgive, waive, settle, and compromise all claims by or against the [Brand](#) Marketing Fund. Except as specifically provided in [the your](#) Franchise Agreement, we assume no other direct or indirect liability or obligation to you for collecting amounts due, or maintaining, directing, or administering the [Brand](#) Marketing Fund.

[The Brand Marketing Fund is accounted for separately from our other funds and we do not use the Brand Marketing Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Brand Marketing Fund and its programs, including conducting market research, preparing marketing, recruiting, advertising, and promotional materials, and collecting and accounting for Brand Marketing Fund contributions. The Brand Marketing Fund may spend in any fiscal year more or less than the total Brand Marketing Fund contributions in that year, borrow from us or others \(paying reasonable interest\) to cover deficits, or invest any surplus for future use. If we terminate the Brand Marketing Fund, we will spend all unspent amounts on marketing activities specified by the Franchise Agreement.](#)

[We are not required to audit the Brand Marketing Fund, but we will prepare an annual unaudited statement of monies collected and costs incurred by the Brand Marketing Fund and furnish the previous fiscal year's statement to you upon written request, within 120 days after the end of our previous fiscal year.](#)

[In the fiscal year ended December 31, 2019, contributions to the Brand Marketing Fund were spent as follows: 50.5% for production; 14.7% for media placement; 11.2% for administrative expenses; and 23.6% on other expenses \(consisting of 21.2% for public relations; and 2.4% for research and test marketing\).](#)

[Marketing Cooperatives. We may, but are not obligated, to designate any geographic area in which three or more Studios are located as an area in which to establish a marketing cooperative \("Marketing Cooperative"\). The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We may collect Marketing Cooperative fees and transfer those fees to the Marketing Cooperative, or the Marketing Cooperative may collect the fees directly, as we determine. We may designate, approve or develop standards and specifications for Marketing Cooperative suppliers. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative's members are responsible for its administration and determination of contribution levels. All Marketing Cooperatives will be governed by written documentation we designate or approve and such documentation is available for Marketing Cooperative member review. We may form, modify, change, dissolve, or merge Marketing Cooperatives. We will not use funds contributed to a Marketing Cooperative to solicit new franchise sales.](#)

[As of the issuance date of this Disclosure Document, there are zero Marketing Cooperatives in existence.](#)

Franchise System Website. We may establish, acquire, or host any website(s) for recruitment purposes or to advertise, market, and promote Studios, the products and services that they offer and sell, and/or a Studio franchise opportunity (a “Franchise System Website”). We may (but are not required to) provide you with a webpage on a Franchise System Website that references your Studio. If we provide you with a webpage on a Franchise System Website, you must: (1) provide us the information and materials we request to develop, update, and modify your webpage; (2) notify us whenever any information on your webpage is not accurate; and (3) if we give you the right to modify your webpage, notify us whenever you change the content of your webpage and obtain our approval. We will own all intellectual property and other rights in all Franchise System Websites, including your webpage and all information it contains (including the domain name, any associated email address, any website analytical data, and any personal or business data that visitors supply). If we provide you with a webpage on a Franchise System Website, we reserve the right to charge you a fee for such webpage as part of the Technology Fee. We periodically may update and modify any Franchise System Website (including your webpage).

Even if we provide you a webpage on a Franchise System Website, we will only maintain this webpage while you are in full compliance with your Franchise Agreement and all System Standards we implement (including those relating to Franchise System Websites). If you are in default of any obligation under your Franchise Agreement or our System Standards, then we may temporarily remove your webpage from any Franchise System Website (or all Franchise System Websites) until you fully cure the default. We will permanently remove your webpage from all Franchise System Websites upon the Franchise Agreement’s expiration or termination.

We reserve the right to require you to obtain from us and use an email address associated with our registered domain name. If we require you to obtain and use such an email address, you must do so according to our then-current terms and conditions, which may include additional monthly fees.

Except as provided above, or as approved by us in writing or in the Operations Manual, you may not develop, maintain or authorize any Online Presence (as defined in Item 13) that mentions your Studio, links to any Franchise System Website or displays any of the Marks, or engage in any promotional or similar activities, whether directly or indirectly, through any Online Presence. If we approve the use of any such Online Presence in the operation of your Studio, you will develop and maintain such Online Presence only in accordance with our guidelines, including our guidelines for posting any messages or commentary on other third-party websites. We will own the rights to each such Online Presence. At our request, you agree to grant us access to each such Online Presence, and to take whatever action (including signing assignment or other documents) we request to evidence our ownership of such Online Presence, or to help us obtain exclusive rights in such Online Presence.

Franchisee Committees. We have established and receive input and feedback regarding advertising and marketing from a marketing advisory committee (the “Marketing Advisory Committee”) consisting of franchisees. -There is no formal method for selecting the franchisees who serve on the Marketing Advisory Committee. The Marketing Advisory Committee serves in an advisory capacity only and does not have operational or decision-making power. -We may alter the function and/or composition of the Marketing Advisory Committee at any time, and may otherwise form, change or dissolve the Marketing Advisory Committee.

~~We account for the Marketing Fund separately from our other funds and do not use the Marketing Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Marketing Fund and its programs,~~

~~including conducting market research, preparing advertising, promotion, and marketing materials, and collecting and accounting for Marketing Fund contributions. The Marketing Fund is not our asset and we do not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing Fund or for any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. If we terminate the Marketing Fund, we will spend all unspent amounts on marketing services.~~

~~We prepare annual unaudited financial statements for the Marketing Fund that are available to you upon written request 120 days after the end of the Marketing Fund's fiscal year. We are not required to audit the Marketing Fund but may do so at our discretion.~~

~~In the fiscal year ended December 31, 2018, the Marketing Fund contributions were utilized as follows: 72.2% for production; 5.8% for media placement; 12.3% for administrative expenses; and 9.7% on other expenses (consisting of 5.7% for public relations and 4.0% for research and test marketing).~~

~~Marketing Cooperatives. We may designate a geographic area in which 3 or more Studios are located as an area in which to establish a Marketing Cooperative. The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative's members are responsible for its administration, determination of contribution levels, and the collection of contributions from members. All Marketing Cooperatives will be governed by written documentation generated and/or designated by us. Such documentation is available for Marketing Cooperative member review. All material decisions of the Marketing Cooperative, including contribution levels, will require the affirmative vote of at least 51% of all Studios operating within the Marketing Cooperative's area (including those that we and our affiliates operate, if any), with each Studio receiving 1 vote. We may form, modify, change, dissolve, or merge Marketing Cooperatives. Funds contributed to a Marketing Cooperative will not be utilized to solicit new franchise sales.~~

~~Grand Opening Spend Fee. No later than 10 days after the date that you sign an approved lease for your Studio premises (or 10 days after the date you purchase an existing Studio), you must pay to us a Grand Opening Spend Fee of \$15,000 by ACH. The Grand Opening Spend Fee is in addition to your Local Marketing Spend Requirement. We will use the Grand Opening Spend Fee to advertise, market, and promote your Studio in accordance with a marketing plan that we determine in our sole discretion. We may require you to spend the Grand Opening Spend Fee directly (rather than pay us the Grand Opening Spend Fee), and if we so request, you will advertise, market, and promote your Studio in accordance with an advertising and marketing plan we approve before the opening of your Studio.~~

~~Local Marketing Spend Requirement. You must pay us the Local Advertising Fee of \$800 per month. In addition, you must spend a minimum of 2% of the gross receipts of your Studio toward approved advertising, marketing and promotional programs for your Studio within an area reasonably surrounding your Studio (the "Local Spend Amount"). We will refer to the Local Advertising Fee and your Local Spend Amount together as the "Local Marketing Spend Requirement." Your Local Marketing Spend Requirement excludes any contributions you make to the Marketing Fund, but any contributions you make to a Marketing Cooperative will count toward your Local Spend Amount. Your required Marketing Cooperative~~

~~contributions could, by themselves, exceed the Local Spend Amount. We currently collect the Local Advertising Fee on the 15th day of each month for the preceding month. We may change the day of the month on which we collect the Local Advertising Fee. We or our affiliates may be an Approved Supplier of local advertising, marketing and promotional programs for your Studio.~~

~~Your Advertising and Marketing Materials; Website. Your (and your Marketing Cooperative's) advertising, promotion, and marketing must be clear, factual and not misleading, conform to the highest standards of ethics and comply with all advertising and marketing policies that we periodically prescribe. You cannot use any advertising or marketing materials unless we have prepared the materials on your behalf, or unless and until you receive our written approval of the materials. We will respond to you within 30 days of receiving any request for approval of your marketing and advertising materials.~~

~~At least 90 days before you open your Studio, you must submit to us a completed trade area survey and submit to us for approval an advertising and marketing plan describing your pre-opening advertising plan and your plan for the first 3 months after the opening or purchase. You will not be permitted to open and/or operate your Studio until we receive the completed trade area survey and approve this advertising and marketing plan. Following such period, and during the term of your Franchise Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Local Marketing Spend Requirement.~~

~~Restrictions on advertising apply to any and all advertising materials and information relating to us, you, your Studio or the Franchise System, including what you plan to use on a website or in social media and to any changes to any website and social media information.~~

~~Studio Website. You must pay us or a party we designate a fee to establish and maintain a website for your Studio. This fee is currently included in the technology fee specified in Item 6 (\$405 per month), but we reserve the right to charge you additional fees for the Studio Website. If you own more than 1 Studio, you must maintain a separate website for each of your Studios. You must use our Approved Suppliers to set up, design and host your Studio website. We retain the right to require you to cease maintaining your Studio website and participate, at your cost, in a website that we, at our option, maintain for all Studios. Your Studio website, including any pictures or other media you may post on the Studio Website, must comply with all applicable laws, such as laws governing copyright.~~

~~Social Media. We require you to use our social media program for the management of social media including Facebook, Google, mapping management and other social technologies that we periodically integrate. You may use any social media website or any other Internet community that we approve. You must follow our guidelines when using social media. You may be required to obtain our approval of any message you compose for or post on social media website. We may revoke our approval to use any social media website at any time. Your use of social media, including any pictures or other media you may post, must comply with all applicable laws, such as laws governing copyright.~~

~~In October 2008, we established the Franchisee Leadership Council, consisting of members of Franchisor's management and franchisees. The Franchisee Leadership Council provides feedback and advice to us, but does not have decision-making authority. The Franchisee Leadership Council has not incorporated or otherwise organized under state law. It does not have its own address telephone number, email address or web address.~~

## **Computer Systems**

~~General. Our required computer systems (including the hardware and software programs described below) will allow you to generate and store a variety of information, including the amount of sales generated by your Studio, client profiles, client scheduling information, and payroll information. In order to operate your computer, you will need a high-speed internet connection and a keyboard, mouse, color monitor and laser or ink-jet color printer. You must keep your computer in good working order and must provide any upgrades necessary at your cost. We and our affiliates and authorized representatives will have direct and independent access to your computer and other systems, and the information and data generated by your computer systems. There are no contractual limitations on our and our affiliates' right to access this information and data.~~

#### Computer Hardware.

You agree to purchase and use the computer hardware, sales and scheduling software, point-of-sale system, other operating software, applications, platforms and existing or future technology components we specify from time to time (the "Computer System"). We may replace or modify all or components of the Computer System from time to time and you agree to implement our replacements or modifications after you receive notice from us at your expense. We might periodically require you to purchase, lease, and/or license new or modified components of the Computer System and to obtain service and support for the Computer System. You must obtain and install the Computer System, and ensure that the Computer System is functioning properly, before your Studio opens. You must pay for any proprietary software, applications or other technology that we, our affiliates or third-party designees license to you and for other maintenance and support services that we, our affiliates or third-party designees provide during your Franchise Agreement's term. We or our affiliates may condition your license or use of any proprietary software, applications or other technology that we or our affiliates designate, develop or maintain, on your signing a license agreement or similar document that we or our affiliates approve to regulate your use of, and our and your respective rights and responsibilities with respect to, such software, applications or other technology. The Computer System must give us and our affiliates access to all information generated by the Computer System, including pricing and client information for your Studio. At our request, you agree to sign a release with any vendor of your Computer System providing us with unlimited access to your data. You are solely responsible for acquiring, operating, maintaining and upgrading: (1) the Computer System; (2) the connectivity of your Computer System (including the point-of-sale system); and (3) third-party interfaces between the Computer System and our and any third party's computer system. You are solely responsible for any and all consequences if the Computer System is not properly operated, maintained, and upgraded. You also are solely responsible for protecting yourself from disruptions, Internet access failures, Internet content failures, and attacks by hackers and other unauthorized intruders and you waive any and all claims you may have against us as the direct or indirect result of such disruptions, failures or attacks.

We cannot estimate the future costs of the Computer System (or replacements or modifications) and the cost to you of obtaining the Computer System (including software licenses) or replacements or modification may not be fully amortizable over the remaining term of your Franchise Agreement. Nonetheless, you must incur such costs.

The minimum computer hardware requirements are specified in the Operations Manual or otherwise in writing by us. ~~We typically require you to have 1one computer workstation.~~ Some of the minimum requirements include the Windows 10 operating system, a Core I5 Intel processor, ~~8-GB~~8GB random access memory, and a 500 GB hard drive. ~~You may use any brand of computer hardware that meets these specifications and may acquire your computer hardware from any source. We also require you to have 2two to 3three iPads and certain peripherals, such as printers.~~ We estimate that the cost to purchase the

minimum computer hardware, software, iPads, and peripherals will be approximately \$5,~~300~~150 to \$~~6,100~~5,950, which includes the required software and software set-up fee described below.

#### Computer Software:

We require you to use the designated software ~~program~~programs described in the Operations Manual or otherwise in writing by us.- Currently, before you open your Studio, you must pay us a \$499 set-up fee to configure the required software programs. ~~You must also pay us a monthly technology fee (\$405 per month). (See Item 6). You must obtain CRM software from our Approved Supplier, which currently charges a startup fee of \$997 and an ongoing fee of \$299 per month. You may be required to enter into a license, lease or similar agreement (typically a “clickwrap” style agreement) in order to obtain the right to use designated software programs. You must also pay us a monthly Technology Fee (currently \$330 per month) starting two months prior to the opening of your Studio. (See Item 6).~~

~~Computer Hardware and Software Upgrades. During the term of your Franchise Agreement, you must maintain, repair and upgrade any hardware component or software program periodically in order to maintain compatibility with the components and programs we require, including upgrading your software based on periodic releases provided by the licensor of the computer systems and programs. There is no annual minimum cost for optional or required maintenance, updating, upgrading, and support contracts for your computer system. We have no obligation to provide ongoing maintenance, repairs, upgrades or updates to your hardware components or software programs. You must obtain and use any computer system components that we may later specify, and/or obtain service and support, as we require. There are no contractual limitations on the frequency and cost of this obligation. We need not reimburse you for any of these costs.~~

#### Operations Manual

~~We will make available online our Operations Manual or other manuals or written materials we have or may designate for use in the Franchise System (and appropriate updates and revisions) for use in operating your Studio. These manual(s) and materials contain mandatory and suggested specifications, standards and procedures, rules and other criteria related to the operation and marketing of your Studio. The manuals and materials may consist of CDs, DVDs, webinars and/or other written and intangible materials, all of which constitute our proprietary and confidential information. You may not copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or make them available to any unauthorized person. The Operations Manual and such other manuals and materials will remain our sole property and must be kept in a secure place on the Studio premises. We may provide the confidential manuals in any manner we choose, including by electronic or hard copy. We may update the Operations Manual and other manuals to implement new or different operating requirements and fees applicable to you. You must comply with all requirements, terms and conditions of the Franchise Agreement, Operations Manual and other written policies supplied to you by us.~~

~~The~~You must obtain CRM software from our designated supplier, which currently charges a startup fee of \$997 and an ongoing fee of \$299 per month.

#### Operations Manual

After you sign the Franchise Agreement, we will provide you one copy of our manual for the operation of Studios, which may include one or more separate manuals, as well as information available on an internet site, other electronic media, bulletins and/or other written materials (collectively, the “Operations Manual”).

The Operations Manual contains the System Standards, other specifications, standards and procedures that we suggest, and information on your other obligations under your Franchise Agreement. We may modify the Operations Manual at any time. We may post some or all of the Operations Manual on a restricted website or extranet to which you will have access. If we do so, you will monitor and access the website or extranet for any updates to the Operations Manual.

We consider the contents of the Operations Manual to be proprietary, and you must treat them as confidential. You may not at any time copy, duplicate, record, or otherwise reproduce any part of the Operations Manual and you may not disclose the Operations Manual to any person other than any employee of yours who needs to know its contents. You must keep your copy of the Operations Manual current and in a secure location at your Studio.

A copy of the table of contents of our the Operations Manual is included attached as Exhibit JI to this Disclosure Document. ~~Our current~~The Operations Manual ~~has a total~~consists of 284 pages.

## **Training**

~~Training Initial Training. We or our designee will provide Initial Training to you (or your owners) and your managers who have responsibility for the day to day operations of your Studio. You (or your owners) and your manager (or, if you do not have a manager, the individual who will have management responsibility for the day to day operations of your Studio) must complete Initial Training to our satisfaction before your Studio opens, but not later than 4 weeks before the scheduled opening. If, after your Studio has commenced operation, your manager (or employee having responsibility for the day to day operations of your Studio) is terminated, resigns, or is otherwise no longer employed at your Studio, you must appoint a replacement manager (or employee having responsibility for the day to day operations of your Studio) and he or she must also attend and complete the Initial Training to our satisfaction within 90 days following the termination, resignation, or other departure. We have the discretion to determine whether or not any individual has successfully completed Initial Training. You must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training.~~

~~Initial Training will be conducted both online and at a location we designate, currently at our Support Center in Colorado. Classes are typically scheduled to be conducted monthly and the portion at our Support Center generally last 3 business days. Although we do not currently do so, we reserve the right to conduct additional training in a Studio. The primary instructional material is the Operations Manual. The topics covered, instructional materials, hours of classroom and/or hands on training, and the training program instructors are subject to change.~~Program. We will provide initial training on the operations of a Studio to you (or your Operating Partner) and your Designated Manager (if applicable) (the "Training Program") at no additional registration fee if all such persons attend the Training Program at the same time. If we provide any portion of the Training Program more than one time, we may charge you our then-current training fee (currently, \$500 per attendee, plus costs) for any training that we have previously provided to at least one trainee associated with you. We may also elect not to provide any portion of the Training Program more than once. You may invite additional employees to attend the Training Program if space allows, though we reserve the right to charge you our then-current training fee for each additional individual. We reserve the right to require any additional managers and/or assistant managers of your Studio to attend the Training Program. We reserve the right to limit the number of additional attendees for the Training Program. You may also request that we provide any portion of the Training Program on-site at your Studio, and we will determine whether to provide such portion of the Training Program on-site. If we

provide any portion of the Training Program on-site at your Studio, we reserve the right to charge our then-current training fee.

We will provide the Training Program at the times and locations we determine. We reserve the right to vary the Training Program based on the experience and skill level of the individual(s) attending. You (or your Operating Partner) and your Designated Manager (if applicable) must satisfactorily complete the Training Program no later than four weeks before the Opening Date. If you (or your Operating Partner) or your Designated Manager (if applicable), or any manager and/or assistant manager required by us, fail to satisfactorily complete the Training Program then we reserve the right to require such individual to attend additional training and you may be required to pay us our then-current training fee for such additional training. Additional training will be provided at a time and location of our choice. If you (or your Operating Partner), or any manager and/or assistant manager required by us (including any applicable Designated Manager), are unable to satisfactorily complete the additional required training, we reserve the right to terminate your Franchise Agreement.

If you appoint a new Operating Partner or Designated Manager, he or she may be required to attend the then-current Training Program within 90 days of the appointment date and you may be required to pay us our then-current training fee, unless we determine that you are sufficiently trained to provide a comparable substitute training program to such new Operating Partner or Designated Manager. If we permit you to train any Operating Partner or Designated Manager yourself, you must provide such training according to our then-current standards and specifications, and we must determine that such Operating Partner or Designated Manager has been adequately trained prior to providing any services at your Studio. If we determine that any Operating Partner or Designated Manager that you trained is not sufficiently trained to provide services at your Studio, we may require such person attend our Training Program and you may be required to pay us our then-current training program fee. If we determine that you are (or your Operating Partner is) sufficiently trained to provide a comparable substitute training program to any Designated Manager, we may elect not to make the Training Program available to such person until the next time our Training Program would otherwise be offered.

The materials used in the Training Program include the Operations Manual as well as other presentation materials, including PowerPoint presentations. Erica Emerson, our Senior Manager of Learning & Development and who has a B.S. degree in Kinesiology with a concentration in education, directs the Training Program. Ms. Emerson additionally has a certification in adult learning theory & practice. Ms. Emerson has over 13 years of experience in the subjects taught and has more than two years of experience with us.

The following individuals may also assist with the Training Program:

- Ali Fisher, who is our Senior Marketing Manager, and who has more than four years of experience in the subjects taught and more than four years of experience with us.
- John Pantera, who is our Vice President of Operations, and who has more than 17 years of experience in the subjects taught and more than two years of experience with us.

The

~~In addition to the Initial Training, we or our designee will provide, at no additional cost, 1 to 5 days of on-site assistance and support in connection with the opening and initial operations of your Studio. We will determine the duration of on-site assistance and support based on factors such as whether you are a new or~~

existing franchisee, how long the franchisee would like us to remain on-site, and the availability of our personnel.

Initial Training currently consists of the following [is a summary of our Training Program](#):

### TRAINING PROGRAM

Subject	Hours of Classroom/ <u>Home Study</u> Training	Hours of On-The-Job Training	Location
<del>Staffing/Scheduling/Management-Training-Resources</del> <a href="#">Pre-Training Program Calls about Sales, Marketing, Services, Staffing</a>	<del>48.0</del>	0	Home Study
<del>Sales &amp; Marketing Overview</del>	<del>3.0</del>	<del>0</del>	<del>Home Study</del>
<del>Services Overview</del>	<del>2.0</del>	<del>0</del>	<del>Home Study</del>
Introductions	1.0	0	Colorado Support Center
Operational Excellence	<del>32.0</del>	0	Colorado Support Center
Standards/Proprietary Systems	<del>42.0</del>	0	Colorado Support Center
Sales Training	<del>412.0</del>	0	Colorado Support Center
Employee Hiring & Management	<del>26.0</del>	0	Colorado Support Center
Marketing	<del>34.0</del>	0	Colorado Support Center
<del>Software</del>	<del>2.0</del>	<del>0</del>	<del>Colorado Support Center</del>
Metric & Profitability Training	3.0	0	Colorado Support Center
Operating Plan Creation	2.0	0	Colorado Support Center
<b>Total Hours</b>	<del>3340.0</del>	<b>0</b>	

[Personnel Training](#). You are responsible for providing a training program concerning the operation of your Studio in accordance with our System Standards for all your employees other than the attendees of the Training Program. All employees must pass the program, to your satisfaction, prior to providing services at your Studio. We reserve the right to approve the length and content of all training programs you provide to your employees and to require specific mandatory training for certain job positions to ensure compliance with our System Standards.

Annual & Regional Meetings; Other Training Courses, Program, and Events. We may require you (or your Operating Partner) and/or certain other managers and employees of your Studio (including any applicable Designated Manager) to attend or otherwise complete various training courses (including but not limited to electronic training courses), trade shows, ongoing education or certification programs, and/or webinars at the times and locations designated by us, including courses and programs provided by third parties we designate.

~~In addition to Additional Training and Conferences. We may require you to attend any refresher training we make (or that we authorize a third party to make) available to our franchisees. You must attend any annual conferences or seminars that we may require at a location we designate. You shall pay all costs to attend any refresher training, conferences or seminars.~~ these training courses, programs, and events, you (or your Operating Partner) and any applicable Designated Manager are required to attend any scheduled annual meeting of franchise owners. You will be required to pay our then-current registration fee. If you do not attend, we will charge you the default fee (see Item 6) for failing to attend. We may additionally require you (or your Operating Partner) to attend regional meetings for franchise owners. These annual and regional meetings will be held when we determine at locations we designate.

Advanced Manager Training Program. After you open your Studio for business, we may offer you (or your Operating Partner) and any applicable Designated Manager, based on the factors that we determine, the opportunity to attend an advanced manager training program. If we offer such training and you elect to attend such training, you may be required to pay us our then-current training fee (currently, \$99 per trainee).

Approved Mentorship Studio Program. Before or after you open your Studio, based on the factors we determine, we may offer you (or your Operating Partner) and any applicable Designated Manager the opportunity to attend non-mandatory training at a franchisee-owned Studio that we have certified as an “Approved Mentorship Studio.” Alternatively, a franchisee from an Approved Mentorship Studio may visit your Studio. If we offer such training involving an Approved Mentorship Studio and you elect to participate in such training, you may be required to pay us our then-current fee (currently, we do not charge a fee).

Travel and Living. You must pay all travel and living expenses (including, wages, transportation, food, lodging, and workers’ compensation insurance) that you (or your Operating Partner) or any employee or manager (including any applicable Designated Manager) incurs during any and all meetings and/or training courses and programs, including those incurred in attending training at an Approved Mentorship Studio. You are also responsible for the travel and living expenses and out-of-pocket costs we incur in sending our trainer(s) to your Studio to conduct training, including food, lodging and transportation, including those of any franchisee that may visit your Studio from an Approved Mentorship Studio.

General Guidance. We may periodically advise you regarding your Studio’s operation based on your reports or our inspections. We may guide you, in the form of our Operations Manual, with respect to: (1) standards, specifications, and operating procedures and methods that Studios use, including, facility appearance, client-service procedures, and quality control; (2) equipment and facility maintenance; (3) inventory management and working with suppliers; (4) advertising, marketing and branding strategies; and (5) administrative, accounting, reporting and record retention. We may also provide guidance via telephonic conversations and/or consultation at our offices. If you request, and we agree to provide, additional or special guidance, assistance, or training, we may charge you our then-applicable fee, including our personnel’s per diem charges and travel and living expenses. We reserve the right to periodically visit the Premises and evaluate your Studio.

## ITEM 12.

~~Training Staff. Eric Goetsch, who is our Vice President of Operations and who has a B.S. degree in Exercise Science, currently is the lead instructor of the training program. He is a certified Personal Trainer and certified Strength and Conditioning Specialist with the National Strength and Conditioning Association. Mr. Goetsch has over 13 years of experience with us and more than 17 years of experience in the subjects taught.~~

The following individuals may also assist with the training program:

- ~~• Katy Dean, who is our Vice President of Marketing, and who has 9 years of experience with us and more than 16 years of experience in the subjects taught.~~
- ~~• Katy Neville, who is our Senior Manager of Operations, and who has more than 1 year of experience with us and 7 years of experience in the subjects taught.~~
- ~~• Erica Emerson, who is our Marketing Manager, and who has more than 1 year of experience with us and 10 years of experience in the subjects taught.~~

## **TERRITORY**

### **Franchise Agreement**

~~You will operate your Studio at a specific location that we approve. During the term of the Franchise Agreement (as long as you are not in default of the Franchise Agreement) we will not, and we will not grant to any other person the right to, establish or operate a Studio within a 1-mile radius of your Studio (the "Protected Area").~~

~~You will select a specific defined territory we approve ("Territory") within which you will search for and select a site which we must approve for your Studio. There is no minimum Territory size. The Territory is the area in which you will focus your efforts to find a location we approve for your Studio. The Territory will be specified in your Franchise Agreement and any change to the Territory must be made by amending the Franchise Agreement, before beginning the site selection process in the amended Territory. We identify the Territory in order to facilitate the orderly development of the market. You will not receive any territorial rights to the Territory. The Territory is not your Protected Area. Typically, your Protected Area will be substantially smaller than the Territory.~~

~~You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control within the Territory. Our approval of your Studio site is conditioned on a variety of factors, including site demographics, location (including proximity to other businesses), neighborhood character, the size and appearance of the premises to be leased, and other characteristics and criteria that may periodically~~

~~change. We confirm demographic data about territories and locations utilizing a mapping software we license from a third party.~~

~~Unless we otherwise agree in writing, you must operate your Studio only at the location approved by us, and you must provide all authorized one-on-one and personal small group physical training services and products only at your Studio location. Once it is open, you may not relocate the Studio without our advance written consent, which we will not unreasonably withhold. The conditions under which we will approve a relocation of your Studio include the same factors we consider when approving your initial site. You must select the site for your Studio from within the non-exclusive “Search Territory” identified in Exhibit B to your Franchise Agreement. The Search Territory will be agreed upon by you and us before your execution of the Franchise Agreement and may range from a portion of a city or an unincorporated area to a single or multi-county area. You have no rights in the Search Territory other than the right to identify a proposed site for your Studio but after you locate a site acceptable to us, we will grant you a “Protected Area” around that site as described below.~~

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. However, if you remain in compliance with the Franchise Agreement we will not own or operate, or authorize any person or entity to own or operate, Studios in the “Protected Area” identified in Exhibit B of the Franchise Agreement (the “Protected Area”) during the term of the Franchise Agreement. If the location of your Studio has not been identified at the time you sign your Franchise Agreement, your Protected Area will be assigned to you at the time that your Studio’s Premises is determined. We will typically define the boundaries of a Protected Area as a circle with the Studio at its center and a radius of 1.5 miles. But, in some cases (for instance in densely populated urban areas), we may define the boundaries of your Protected Area by political subdivisions, streets, ZIP codes, or other similar designations, and the Protected Area in that case may be less than a circle with a 1.5-mile radius. We determine the boundaries of each Protected Area on a case-by-case basis based on various factors, such as: the population in the surrounding area; traffic volume and traffic patterns; proximity to retail centers, residential areas, businesses and other potential customer sources; and other site-specific data we determine. If you are signing a Franchise Agreement in connection with an Area Development Agreement, our then-current criteria will apply when determining the Protected Area under that particular Franchise Agreement.

You cannot relocate your Studio without our prior written approval. In considering a request to relocate your Studio, we consider factors such as the proposed site’s demographics, location, proximity to other businesses, the character of the neighborhood, the size and appearance of the premises to be leased, and other characteristics and criteria that may change. ~~If we approve a relocation of your Studio, you will be responsible for paying any associated costs, including our reasonable costs incurred in connection with approving the relocation. You will also be required to sign a relocation addendum which will include our form of general release. If you cease to operate your Studio for more than 30 days before relocation, we may terminate the Franchise Agreement and require you to sign our then-current franchise agreement for the new location.~~If we grant you the right to relocate your Studio, you must comply with all of the site selection and lease requirements set forth in your Franchise Agreement. All of the costs associated with relocating your Studio will be solely your responsibility.

~~We may change your Protected Area boundaries or other characteristics when you renew, transfer or assign a controlling interest in, the Franchise Agreement. Your rights in the Protected Area do not depend on you achieving a sales volume, market penetration or other contingency. The Franchise Agreement does not provide you with any options, rights of first refusal or similar rights to acquire additional franchise agreements. If you want to own and operate additional Studios, you must purchase 1 additional franchise agreement per Studio. Each additional franchise agreement will dictate the terms and conditions under which you may own and operate any additional Studio.~~

~~So long as you are not in default under your Franchise Agreement, you have the Protected Area described above. We reserve all other rights with respect to the Studio and related Territory and Protected Area. Those rights include the right to offer, sell or distribute in your Territory and Protected Area, through alternative distribution channels (including in retail stores, on the internet or via similar future information technology, or otherwise) any proprietary products or other products that are part of, or which become part of, the Franchise System, such as fitness equipment, small wares and other products that use the Marks or other marks that we may develop. We may establish and operate Studios, and grant others the right to operate Studios, in any closed market or other facility serving a captive market (such as department stores, shopping malls, airports, train stations and other modes of mass transportation, public facilities, college and school campuses, hotels, resorts, condominium and cooperative facilities, office buildings, convention centers, government facilities, and any other public attraction or venue or mass gathering events or locations), within or outside of the Protected Area. In addition, we have the right to purchase or be purchased by, or merge or combine with, any competitive business or other business, even if the business has locations within the Protected Area. Any such activities in which we engage will be without compensation to you. The alternative distribution channels may be available to us as the result of being the franchisor of the Franchise System or as the result of other brands we may control, which may compete with your Studio. You may also face competition from other Studios operated by us or by other franchisees.~~

~~You may advertise your Studio and solicit clients from any area, so long as you provide services only at the Studio location we have approved. You are not required to compensate any individual or entity in connection with this advertising and solicitation. We and our other franchisees reserve the same right to solicit, accept and provide personal training and nutrition program services to clients who live or work within your Protected Area, without compensating you.~~

~~You have the right to use other channels of distribution, such as direct mail, email and internet (but only through the website you maintain through us) to make sales within and outside of your Protected Area, provided that we have approved any marketing materials you use. Other than your rights described above with respect to your Protected Area, we (and our affiliates) retain all rights with respect to the placement of Studios and other businesses using the Marks, the sale of similar or dissimilar products and services, and any other activities, without compensation to you. These rights include:~~

1. The right to establish and operate, and allow others to establish and operate, other Studios and other businesses using the Marks or the Franchise System, at any location outside the Protected Area, and on any terms and conditions we approve;
2. the right to establish and operate, and allow others to establish and operate, additional concepts or businesses providing products or services similar to those provided at Studios anywhere in the world, including within your Protected Area, under any trade names, trademarks, service marks and commercial symbols other than the Marks;
3. the right to establish, and allow others to establish, other distribution channels (including, the internet or retail stores) wherever located or operating, including within your Protected Area, regardless of the nature or location of the clients, and regardless of the trade names, trademarks, service marks or commercial symbols used by such business, which may include the Marks and/or any other trade names, trademarks, service marks or commercial symbols that are the same as or different from Studios, and which may sell products and/or services that are identical or similar to, and/or competitive with, those that Studios customarily sell under any terms and conditions we approve;
4. offer and sell (and grant others to offer and sell) goods and services to clients located anywhere, including in your Protected Area;
5. the right to establish and operate, and allow others to establish and operate, other Studios and other businesses using the Marks or the Franchise System, at Captive Market Locations. “Captive Market Locations” are airports or other transportation terminals, sports facilities, parks and recreation areas, medical campuses, college and university campuses, corporate campuses, a department within an existing retail store, hotels, or other similar types of locations that have a restricted trade area located within the geographic boundaries of the Protected Area.
6. the right to acquire, to merge, or be acquired by (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction) a business providing products and services similar to those provided at Studios, even if such business operates, franchises and/or licenses Competitive Businesses (as defined in Item 17); and
7. engage in all other activities not expressly prohibited by your Franchise Agreement.

You may not sell any products or services offered by Studio or using the Marks to customers wholesale or through alternative channels of distribution, including the internet or retail stores.

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~~As of the date of this Disclosure Document, neither we nor any of our affiliates own or operate, nor do we or our affiliates have plans to own or operate, businesses under a trademark different from the Marks that will sell similar goods or services to those offered by franchisees in the Franchise System; however, we reserve the right to do so.~~

## Area Development Agreement

While you are in compliance with the Area Development Agreement and all your Franchise Agreements, we will not establish or license others to establish Studios within your Development Area during the term of the Area Development Agreement. ~~You are not required to achieve certain sales volume, market penetration or other contingencies in order to maintain your protection for the Development Area, but your failure to comply with the Development Schedule will be a material breach of the Area Development Agreement, which may result in our terminating the Area Development Agreement.~~ granting similar development or franchise rights to others within the Development Area, reducing the size of the Development Area, or reconfiguring the Development Area, in each case as we determine.

The Area Development Agreement grants you the right to acquire franchises to develop, own and operate Studios within the designated “Development Area” that will be described in Exhibit A attached to the Area Development Agreement.

The boundaries of the Development Area will be described by map coordinates, city limits, counties, states, or other boundaries when appropriate. We will determine in our discretion the Development Area we will offer to you before you sign the Area Development Agreement. We determine the size of the Development Area based on multiple factors, including demographics, traffic patterns, competition, your capacity to recruit and provide services in the Development Area, and site availability among other economic and market factors.

We and our affiliates retain the right to: (1) establish, operate and allow others to establish and operate, Studios using the Marks and ~~the Fitness Together franchise system~~ Franchise System, at any location outside the Development Area on terms and conditions we deem appropriate; (2) establish, operate and allow others to establish and operate other ~~exercise and workout~~ fitness studios, anywhere in the world, that may offer products and services that may be identical or similar to products and services offered by Studios, but under trade names, trademarks, service marks and commercial symbols other than the Marks; (3) operate or license others to operate Studios that we or our designee acquires from a franchisee as a result of the exercise of our right of first refusal or right to purchase as provided in the Franchise Agreement, ~~and;~~ (4) ~~establish, operate and allow others to establish and operate other businesses and distribution channels (including the Internet~~ or retail stores), wherever located or operating and regardless of the nature or location of the customers with whom these other businesses and distribution channels do business, that operate under the Marks or any other trade names, trademarks, service marks or commercial symbols that are the same as or different from Studios, and that sell products or services that are identical or similar to, or competitive with, those that Studios customarily sell. ~~In addition, we specifically retain the right under the Area Development Agreement to (1; and (5) establish, operate, and allow others to establish and operate businesses using the Marks or any other trade names, trademarks, service marks or commercial symbols at Captive Market Locations (which, under the Area Development Agreement, are airports or other transportation terminals, sports facilities, parks and recreation areas, medical campuses, college and university campuses, corporate campuses, a department within an existing retail store, hotels, or other similar types of locations that have a restricted trade area located within the geographic boundaries of the Development Area). In addition, we specifically retain the right under the Area Development Agreement to: (a) acquire the assets or ownership interests of one or more businesses including Competitive Businesses (as defined in Item 17), and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses)~~

are located or operating (including in the Development Area), ~~(2); (b)~~ be acquired (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction), by any Competitive Business, even if this business operates, franchises or licenses these businesses in the Development Area, ~~(3); (c)~~ operate or grant a third party the right to operate any Studios that we or our designees acquire as a result of an exercise of a right of first refusal or purchase right under a Franchise Agreement; and ~~(4d)~~ engage in all other activities not expressly prohibited by the Area Development Agreement.

You will not receive an exclusive territory under the Area Development Agreement. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. We will not, however, establish or license others to establish Studios within your Development Area during the term of the Area Development Agreement while you are in compliance with its terms and those within your Franchise Agreements as described above.

You may not engage in any promotional or similar activities, directly or indirectly, through or on the Internet, catalog sales, telemarketing or other direct marketing campaigns, without our consent.

We are not required to pay you if we exercise any of the rights specified above inside or outside your Development Area.

**ITEM 13. TRADEMARKS**

The Franchise Agreement grants you a non-exclusive license to use the Marks. All of the primary Marks described below are registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”) and all required affidavits and renewals for the Marks have been filed.

<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>
Fitness Together	2373930	August 1, 2000
1 Client, 1 Trainer, 1 Goal	2478909	August 21, 2001
Fitness Together and Design	3760855	March 16, 2010
Fitness Together 1 Client, 1 Trainer, 1 Goal and Design	3761267	March 16, 2010
Nutrition Together	3804781	June 15, 2010
PACK	4146178	May 22, 2012

Currently, there are no effective determinations of the USPTO, the Trademark Trial and Appeal Board, or the trademark administrator of any state or any court, nor any pending infringement, opposition or cancellation proceedings or material litigation, involving the Marks. There are currently no effective agreements that significantly limit our right to use, license or sublicense the Marks. Neither we nor our affiliates know of any infringing uses or superior prior rights that could materially affect your use of the Marks.

Your use of the Marks and any goodwill ~~associated with the Marks~~ established by that use are solely for our benefit. You have no ownership or other interest in the Marks. You may not at any time contest, or

~~assist any other person in contesting~~, the validity, ownership, distinctiveness or enforceability of the Marks. You must follow our rules when you use the Marks and the Marks are the only marks you may use to identify your Studio, ~~except that you agree to identify yourself as its independent owner and operator in the manner we prescribe~~. You may not use any Mark or any part of any Mark as part of any corporate or ~~trade~~ legal business name; with any prefix, suffix, or other modifying words, terms, designs, or symbols ~~(other than logos we have licensed to you)~~; ~~in selling any unauthorized services or products~~; as part of ~~a~~ any ~~website~~, domain name ~~or~~, e-mail address, social media account, other online presence or presence on any electronic ~~address you maintain on the internet~~, medium of any kind (“Online Presence”), ~~except in accordance with our guidelines~~; ~~in advertising the worldwide web, or any other similar proprietary transfer, sale, or common carrier electronic delivery system~~; ~~to advertise other disposition of your Studio or sell any unauthorized service~~ ~~an ownership interest in you without our prior consent~~; or in any other manner ~~unless that we have not expressly authorized by us~~ in writing.

~~You must identify yourself as the independent owner of your Studio as directed or required by us.~~ You may not take any action that will harm the Franchise System, other Studios or the goodwill associated with the Marks. We and our agents will have the right to enter and inspect your Studio to make sure you are complying with our standards ~~and directives concerning~~, ~~including but not limited~~ the proper use ~~and display~~ of the Marks.

You must modify or discontinue using any Mark ~~and/or use additional or substitute Marks~~, at your expense, if we require you to do so. We need not reimburse you for your ~~direct~~ any costs or expenses ~~related to changing your Studio’s signs or replacing proprietary supplies~~ ~~associated with making such changes~~, for your lost revenue, or for your ~~promotion~~ expenses of ~~the promoting~~ modified or ~~newly required~~ substitution Marks.

You must notify us immediately of any apparent infringement of, or challenge to, your use of any Mark and may not communicate information about such an infringement or challenge with any person other than us, ~~our affiliates~~ your counsel, or our counsel. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and exclusively control any litigation or USPTO ~~proceeding~~, or other administrative proceeding arising out of any infringement, challenge or claim ~~related to the Marks or otherwise concerning any Mark~~. We will ~~indemnify~~ reimburse you ~~against any losses or for all~~ damages or expenses incurred by you ~~as a result of~~ in responding to any ~~successful claim of trademark infringement brought by a third party that is related solely to~~ proceeding disputing your authorized use of ~~the Marks~~ any Mark in accordance with the terms of your ~~franchise agreement~~ Franchise Agreement. We will not pay any of your attorneys’ fees if you hire your own attorney. ~~You must cooperate with us in any litigation.~~ At our option, we may defend and control the defense of any proceeding arising from your use of any Mark under your Franchise Agreement. You must sign documents, ~~render assistance, and perform acts as~~ and take any other reasonable action that, in the opinion of our counsel, may be necessary or advisable ~~to protect and maintain our interests in any litigation or Patent and Trademark Office or other proceeding or otherwise~~ to protect and maintain our interests in the Marks.

Upon expiration or termination of your Franchise Agreement, you will have no further right to use the Marks and you must immediately discontinue using the Marks.

## **ITEM 14. PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

### **Our Patents and Copyrights**

There are no patents or copyrights currently registered or pending owned by us or our affiliates that are material to the Franchise System ~~although we do claim copyright protection for our Franchise Agreement, the Operations Manual, other manuals or writings related to operating the Studio, training materials, and various sales, promotional and other materials we periodically produce or create (the “copyrighted material”). We have not registered the copyrighted material with the United States Registrar of Copyrights, but need not do so to protect it. You may use the copyrighted materials or any future copyrights or patents we may claim or obtain in the operation of your Studio only as we direct and specify.~~

~~Currently, there are~~ There is no presently effective ~~determinations~~ determination of the USPTO, the United States U.S. Copyright Office, ~~the Trademark Trial and Appeal Board, or the trademark administrator (Library of any state Congress), the USPTO,~~ or any court, ~~nor any pending infringement, opposition or cancellation proceedings or material litigation, involving the copyrighted material affecting our copyrights.~~ There ~~are~~ is no currently ~~no~~ effective ~~agreements~~ agreement that significantly ~~limit~~ limits our right to use, ~~and/or~~ license ~~or sublicense the copyrighted material.~~ Neither we nor our affiliates know of any infringing uses or superior prior rights that could materially affect your use of the copyrighted material.

~~You must notify us immediately of any apparent infringement or challenge to your use of any copyrighted material or any copyrights or patents we may claim or obtain in the future. You may not communicate information about such an infringement or challenge with any person other than us, our affiliates or our counsel. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and exclusively control any litigation or USPTO or other administrative proceeding arising out of any infringement, challenge or claim related to the copyrighted material or any our copyrights or patents we may claim or obtain in the future. We are not obligated to protect you against infringement or unfair competition claims arising out of your use of the copyrighted material or any copyrights or patents we may claim or obtain in the future, nor are we required to participate in your defense or indemnify you. However, we might choose to do so if, in the opinion of our legal counsel, such action is necessary or appropriate under the circumstances.~~

~~You must modify or discontinue using any of the copyrighted materials or other items or processes that may be covered by a claim of copyright, or covered by a registered copyright or patent in the future, at~~

~~your expense, if we require you to do so. We need not reimburse you for your direct expenses related to such modification or discontinuance of use or for your lost revenue.~~

~~We possess certain proprietary confidential information consisting of the methods, techniques, formats, specifications, procedures, information, systems, business management methods, sales, and promotion techniques and knowledge and experience in the operation of Studios. We will disclose this information to you during Initial Training, other training programs we may periodically offer, in the Operations Manual and [the Franchise Agreement](#), or otherwise during the term of your Franchise Agreement. Information about your Studio's clients (e.g., names, addresses, phone numbers, e-mail addresses, and so forth) is also our confidential information. You will, [to protect any rights you](#) have no right or interest in or to the confidential information, other than to use it in the operation of your Studio and its use in any other business venture would constitute unfair competition. The confidential information is proprietary, includes our trade secrets, and is disclosed to you solely on the condition that you not use the confidential information in any other business, you use it solely for the purpose of operating your Studio, you maintain the absolute confidentiality of the confidential information during and after the term of your Franchise Agreement, that you not make any unauthorized copies of the confidential information disclosed in writing or tangible form, and that you adopt and implement all reasonable procedures we periodically prescribe to prevent unauthorized use or disclosure of the confidential information. We have the perpetual right to use any material, such as photos or videos, that you or your owners post to social media websites, without paying you any fee or royalty.~~

~~You must take reasonable steps to protect us, the Franchise System, the Proprietary Assets, the Marks and any other confidential and proprietary information we possess against any misappropriation or other action by any third party that could damage us, the Franchise System, the Proprietary Assets, the Marks and any other confidential and proprietary information we possess, and immediately notify us of any misappropriation or other such action. We are not obligated to take any action against any unauthorized use of our Proprietary Assets, Marks or confidential information. We are not obligated to indemnify you for claims brought by a third party arising [to use the copyrights or to defend you against claims arising](#) from your use of our Proprietary Assets, Marks and confidential and proprietary information. [the copyrights. We have no actual knowledge of any infringements that could materially affect the ownership, use or licensing of the copyrights.](#)~~

~~The Operations Manual and any other materials we provide you for the purpose of operating your Studio belong to us and are loaned to you for the term of your Franchise Agreement. You must return all of these confidential materials to us when your Franchise Agreement expires or is terminated for any reason. You must keep the confidential materials updated and they must be located on the Studio's premises. If there is dispute regarding the correct terms or interpretation of any provisions of the Operations Manual or other manuals or materials we provide to you that you are required to keep updated, the terms of our master copies of such materials will control. We will be entitled to equitable~~

~~remedies, such as injunctive relief, in order to protect our Franchise System, the Proprietary Assets, the Marks and any other confidential and proprietary information we possess.~~

We do claim copyright protection and proprietary rights in the original materials used in the operation of Studios, including the Operations Manual, bulletins, correspondence and communications with our franchisees, training, advertising and promotional materials, and other written materials relating to the operation of Fitness Together businesses and the Franchise System (“Copyrighted Materials”). We treat all of this information as trade secrets and you must treat any of this information we communicate to you confidentially. You may not use any of our Copyrighted Materials without our written permission. This includes display of the Copyrighted Materials on any Online Presences.

### **Confidential Information**

You will have access to proprietary and confidential information relating to the development and operation of Studios (the “Confidential Information”), including: (i) training and operations materials, including the Operations Manual; (ii) the System Standards and other methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating Studios; (iii) market research, promotional, marketing and advertising strategies and programs for Studios; (iv) strategic plans, including expansion strategies and targeted demographics; (v) knowledge of, specifications for and suppliers of, and methods of ordering, Operating Assets and other products and supplies; (vi) any computer software or similar technology which is proprietary to us or the Franchise System, including digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology; (vii) knowledge of the operating results and financial performance of Studios (other than your Studio); (viii) information generated by, or used or developed in, your Studio’s operation, including information relating to clients such as client names, addresses, telephone numbers, email addresses, buying habits, preferences, demographic information and related information, and any other information contained from time to time in the Computer System (“Client Information”); and (ix) any other information designated as confidential or proprietary by us.

You and your owners will not acquire any interest in any Confidential Information, other than the right to use the Confidential Information as we specify in operating your Studio during the term of your Franchise Agreement. Our Confidential Information is proprietary to us and our affiliates and includes trade secrets owned by us and our affiliates. You and your owners: (1) may not use the Confidential Information in any other business or capacity and the use of any Confidential Information in any other business or capacity would constitute an unfair method of competition; (2) must maintain the confidentiality of the Confidential Information during and after the term of your Franchise Agreement; (3) may not make unauthorized copies of any portion of the Confidential Information; (4) must adopt and implement all reasonable procedures that we prescribe to prevent the unauthorized use or disclosure of the Confidential Information, including restrictions on disclosure of the Confidential Information to persons who have signed confidentiality and non-solicitation agreements; and (5) will not sell, trade or otherwise profit in any way from the Confidential Information, except using methods approved by us.

### **Works Made-for-Hire**

All ideas, concepts, techniques, or materials relating to a Studio, whether or not protectable intellectual property and whether created by or for you or your owners or employees, must be promptly disclosed to us

and will be our sole and exclusive property, part of the Franchise System, and works made-for-hire for us. To the extent that any item does not qualify as a “work made-for-hire” for us, you shall assign ownership of that item, and all related rights to that item, to us and agree to take whatever action (including signing assignment or other documents) we request to evidence our ownership or to help us obtain intellectual property rights in the item.

#### **ITEM 15. OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

~~During the term of the Franchise Agreement, you must use the Studio premises solely to operate your Studio. You must operate your Studio on the days and for the number of hours as we may specify. You, your owner(s) or your fully trained manager(s) must devote full time and best efforts to the management and operation of the Studio. All individuals providing direct day-to-day supervision must have first satisfactorily completed our Initial Training. You must ensure that an individual who has successfully completed the Initial Training is on-site at your Studio at all times. You must devote such time as is necessary to effectively and efficiently operate your Studio.~~

~~If you are approved to develop multiple Studios, each Studio must have its own direct day-to-day supervisor, who must have satisfactorily completed our Initial Training. If the supervisor is an employee and the employee’s employment terminates for any reason, you will promptly designate a replacement manager, who must attend and satisfactorily complete our next scheduled Initial Training program. We do not impose requirements with respect to your employees; however, you and all of your employees must obtain any licenses required to operate the Studio, must comply with all applicable laws, and must not harm the goodwill associated with the Franchise System, the Proprietary Assets and the Marks. You must ensure that all trainers have adequate insurance, including professional liability insurance or the equivalent.~~

~~If you sign the~~  
**Franchise Agreement**

If you are signing the Franchise Agreement as a legal business entity, you must designate an individual with at least a 25% ownership and voting interest in you to act as your “Operating Partner”. The Operating Partner must be approved by us. Unless a separate Designated Manager is approved by us (described below), you (or your Operating Partner if you are an entity) must supervise your Studio on a full-time basis and exert best efforts to promote and enhance your Studio. Without our written consent, your entity may not engage in any business other than the operation of your Studio, unless we approve you to acquire and operate additional Studios pursuant to additional franchise agreements between us and you. Your Operating Partner must be empowered with full authority to act for you and we will be entitled to rely solely on the decision of the Operating Partner without discussing the matter with any other party. If your Operating Partner ceases to own at least a 25% ownership interest and voting interest in you, your Operating Partner resigns or otherwise indicates to us or to you that he or she wishes to cease acting as Operating Partner, or we disapprove of your Operating Partner at any time, you must designate a new Operating Partner within 30 days for our review and approval.

You are solely responsible for the management, direction and control of your Studio. However, you (or your Operating Partner if you are an entity) may elect not to supervise your Studio on a full-time basis; provided that you appoint a manager who has completed our then-current Training Program to work full-time at your Studio (your “Designated Manager”). Your Designated Manager must supervise the management and day-to-day operations of your Studio and continuously exert his or her best efforts to promote and enhance your Studio and the goodwill associated with the Marks. If you elect not to appoint a Designated Manager, your Designated Manager’s employment at your Studio is terminated, or we disapprove your Designated Manager at any time, you (or your Operating Partner) must immediately assume the full-time responsibilities of supervising the management and day-to-day operations of your Studio and continuously exert your best efforts to promote and enhance your Studio and the goodwill associated with the Marks pursuant to the terms of the Franchise Agreement. You must notify us of any changes to your Designated Manager’s employment as set forth in the Operations Manual.

You and such persons we designate, which may include the spouses of your owners (if you are signing the Franchise Agreement as a business entity) must execute the Guaranty and Assumption of Franchisee’s Obligations attached as Exhibit E to the Franchise Agreement, jointly and severally guarantying your and their performance under the Franchise Agreement and binding yourself and themselves to the Franchise Agreement and any ancillary agreements between you and us.

You must require persons who have access to our Confidential Information to execute confidentiality and non-solicitation agreements in the form attached as Exhibit D to the Franchise Agreement.

### **Area Development Agreement-**

If you must sign an Area Development Agreement, you are obligated, at all times, to faithfully, honestly and diligently perform your obligations and fully exploit the development rights granted to you. You may not subcontract, subfranchise, or delegate any of your obligations to any third parties.

~~Your employees, agents and independent contractors must enter into a confidentiality and non-solicitation agreement in the form attached to the Franchise Agreement as Exhibit 5.~~

~~If you are an entity, we do not require any manager you hire to have an equity interest in you. Although you may hire a manager to conduct the day-to-day operations of your Studio, you will still be obligated to comply with the terms of the Franchise Agreement and ensure that the Studio is properly operated.~~

~~If you are an individual, you must sign, and if you are an entity, each of your direct and indirect owners must sign, a Guaranty and Assumption of Obligations in the form attached as Exhibit 4 to the Franchise Agreement and Exhibit B to the Area Development Agreement.- The persons signing the Guaranty and Assumption of Obligations agree to personally assume and perform all of the franchisee’s obligations under the Franchise Agreement and all of the area developer’s obligations under the Area Development Agreement. In addition, the spouse spouses of the person your owners signing will be required to acknowledge and consent to the Guaranty and Assumption of Obligations.~~

~~If you are a corporation, limited liability company or partnership (or any other form of legal entity), all of your officers, directors, partners, shareholders and members and their spouses (and if you are an individual, your spouse) must agree to be bound by the non-competition and non-disclosure provisions of the Franchise Agreement.~~

#### **ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

~~You must perform all services and offer all products that we require or may in the future require for operating the Studio. You must not offer, sell or promote any products, services or other types of physical fitness services or programs under any of the Marks, except for services, products, and programs approved by us. You must sell or offer for sale at the Studio only services and products that we require or recommend and meet our current System Standards established in our Operations Manual. We have the right, without restriction, to periodically change any of the products, goods and services we require you to offer and sell.~~

~~We retain the right to establish both minimum and maximum prices that you may charge for products and services offered by your Studio, subject to applicable law. You must offer to customers any membership program that we require.~~

~~You must not install or maintain on the premises of the Studio any newspaper racks, video games, juke boxes, games, gaming machines, gum machines, rides, vending machines or other similar items without our written approval.~~

#### **Authorized Products and Services Generally**

You must sell or offer for sale all products and services we require using the method and manner of distribution we prescribe. You must conduct all services in accordance with our System Standards (and if we at any time determine that you fail to meet our System Standards for providing any products or services that we require, we may permanently or temporarily terminate your right to offer such products or services, in addition to all other remedies we have). You must sell and offer for sale only the products and services that we have approved for sale, and you must discontinue selling and offering for sale any products or services which we may disapprove at any time. You must purchase and use only the brands, types, or models of products, materials, supplies and services (including the Operating Assets and the Computer System) that we designate for operating your Studio.

#### **Memberships**

You must offer and sell Memberships as we require. You must comply with our System Standards regarding Memberships. All Memberships must be evidenced by a Membership Agreement and may not be for a term that extends beyond the expiration of your Franchise Agreement. We may provide you a form

of Membership Agreement, and if we do so, you will use the form of Membership Agreement that we provide to you, and you will not make any modifications in the forms without our prior written consent. You are responsible for ensuring that the Membership Agreements and your offer of Memberships comply with all applicable laws for your Studio. We own all information relating to clients and members of your Studio. We may contact any member(s) of your Studio at any time.

### Pricing

Subject to applicable law, we may periodically set a maximum or minimum price that you may charge for products and services offered by your Studio. If we impose a maximum price for any product or service, you may not charge more for the product or service than the maximum price we impose. If we impose a minimum price for any product or service, you may not charge less for such product or service than the minimum price we impose. You must comply with any advertising policy we adopt which will prohibit you from advertising any price for a product or service that is different than our suggested retail price. Although you must comply with any advertising policy we adopt, you will not be prohibited from selling any product or service at a price above or below the suggested retail price unless we impose a maximum price or minimum price for such product or service.

## ITEM 17. RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

### THE FRANCHISE RELATIONSHIP

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this Disclosure Document.

Provision		Section in franchise or other agreement	Summary
a.	Length of the franchise term	Franchise Agreement – <del>3.1.A.</del>	10 years
		Area Development Agreement – 1.B	Term ends on the scheduled opening date of the last studio as specified on the Development Schedule or the last day of the last development period, whichever occurs first.
b.	Renewal or extension of the term	Franchise Agreement – <del>3.213.A.</del>	One additional term of 10 years
		Area Development Agreement – <del>Not applicable</del>	<u>Not applicable</u>

Provision		Section in franchise or other agreement	Summary
c.	Requirements for franchisee to renew or extend	Franchise Agreement – <del>3.2</del> <a href="#">13.A., 13.B.</a>	You must: -1) provide written notice of your election to <del>renew</del> <a href="#">acquire a successor franchise</a> ; 2) not be in default; 3) <del>pay all monies due</del> ; 4) sign the then-current form of our franchise agreement (which may contain terms and conditions materially different from those in your original Franchise Agreement); <del>5</del> <a href="#">4</a> ) sign <del>our then-current form of a</del> general release; <del>6) attend refresher training</del> ; 7) <del>5</del> <a href="#">5</a> ) pay the <del>renewal</del> <a href="#">successor franchise</a> fee; and <del>8</del> <a href="#">6</a> ) update/remodel the Studio to our then-current standards.
		Area Development Agreement – <del>Not applicable</del>	<a href="#">Not applicable.</a>
d.	<a href="#">Termination by franchisee with cause</a>	<a href="#">Franchise Agreement – 14.A.</a>	<a href="#">You can terminate the Franchise Agreement after providing us notice.</a>
		<a href="#">Area Development Agreement</a>	<a href="#">Not applicable.</a>
e.	Termination by franchisee without cause	<del>Not applicable</del> <a href="#">Franchise Agreement</a>	Not applicable.
		<a href="#">Area Development Agreement</a>	<a href="#">Not applicable.</a>
f.	<a href="#">“Cause” defined for termination by franchisee – curable defaults</a>	<a href="#">Franchise Agreement – 14.A.</a>	<a href="#">We have 30 days to cure any material breach of the Franchise Agreement after you deliver written notice to us. If we cannot cure the material breach within 30 days, we have 30 days to give you reasonable evidence of our offer to cure with a reasonable time.</a>
		<a href="#">Area Development Agreement</a>	<a href="#">Not applicable.</a>
g.	<a href="#">“Cause” defined for termination by franchisee – non-curable defaults</a>	<a href="#">Franchise Agreement</a>	<a href="#">Not applicable.</a>
		<a href="#">Area Development Agreement</a>	<a href="#">Not applicable.</a>
e.h.	Termination by franchisor without cause	<del>Not applicable</del> <a href="#">Franchise Agreement</a>	Not applicable.
		<a href="#">Area Development Agreement</a>	<a href="#">Not applicable.</a>
f.i.		Franchise Agreement – <del>10.1, 10.2</del> <a href="#">14.B.</a>	We can terminate the Franchise Agreement after providing you notice.

Provision		Section in franchise or other agreement	Summary
	Termination by franchisor with cause	Area Development Agreement – 7.A	We may terminate only if you or your owners commit one of several violations. Under cross-default provision, we can terminate the Area Development Agreement if you or your approved affiliate fails to comply with any provision of any Franchise Agreement and does not cure such failure within the applicable cure period.
g.i.	“Cause” defined for termination by franchisor— curable defaults	Franchise Agreement – <del>10.1, 10.2</del> 14.B.	Curable defaults include: 1) 10 days to cure a failure to <del>pay or maintain the insurance we require;</del> 2) <del>three days to cure a misuse/unauthorized use</del> violation of <del>Mark</del> any health, safety, or sanitation law, ordinance, or <del>Proprietary Assets;</del> 2) <del>regulation, or unsafe operation of your Studio;</del> 3) 10 days to cure a violation of any law or regulation or failure to maintain any bond, license, or permit; 4) 10 days to cure a failure to pay us any due amounts; 5) 30 days to cure any breach of the Franchise Agreement other than those provided in “ <del>h</del> ” below; and <del>3</del> 6) cure period for a failure to <del>cure loan default</del> pay third-party supplier, as determined by <del>us or a</del> such third-party <del>lender</del> supplier.
		Area Development Agreement – 7.A	You have 10 days to cure monetary defaults, failure to furnish reports, financial statements, tax returns or any other documentation required, or any failure to observe, perform or comply with any other of the terms or conditions of the Area Development Agreement; and applicable cure period for defaults under Franchise Agreement or failure to pay any third-party obligations.

Provision	Section in franchise or other agreement	Summary
h.k. “Cause” defined for termination by franchisor — non-curable defaults	Franchise Agreement – <del>10.1</del> 14.B.	<p>Non-curable defaults include: 1) <del>unauthorized disclosure of confidential information; 2) commission of fraud</del> <u>material misrepresentations or engagement omissions in conduct which may harm</u> <u>acquiring the Marks, franchise or operating the goodwill associated with the Marks, or the Franchise System</u> <u>Studio</u>; 2) <u>failure to obtain lease approval or deliver the lease and lease rider as required</u>; 3) <u>failure to open the Studio within one year</u>; 4) <u>failure to satisfactorily complete the Training Program</u>; 5) <u>without our prior consent, abandonment for <del>2</del>two consecutive days, or 14 days during any twelve-month period, or expressing an intent to close or otherwise abandon</u>; 4) <del>insolvency or similar proceeding of you, your owner or an affiliate</del>; 5) <del>failure to satisfy a final judgment of \$5,000 or more or similar events</del>; 6) <u>the Studio</u>; 6) <u>unauthorized transfer</u>; 7) <del>conviction of felony or other crime that is likely to harm the Marks, the Proprietary Assets or the Franchise System and any related reputation or goodwill</del>; 7) <del>unethical conduct that is likely to harm the Marks, the Proprietary Assets or the Franchise System and any related reputation or goodwill</del>; 8) <del>failure to commence operations within 1 year</del>; 9) <del>failure to satisfactorily complete Initial Training or cheating at Initial Training</del>; 10) <del>underreporting gross receipts</del>; 11) <del>3 default notices from us within a 1-year period</del>; 12) <del>unauthorized transfer</del>; 13) <del>loss of right to occupy Studio premises</del>; 14) <u>Franchise System, or their associated goodwill and reputation</u>; 8) <u>dishonest or unethical conduct which adversely affects your Studio’s reputation or the goodwill associated with the Marks</u>; 9) <u>loss of right to occupy Premises</u>; 10) <u>unauthorized use or disclosure of confidential information</u>; 11) <u>you create or allow to exist a health or safety concern</u>; 12) <u>failure to pay taxes when due (unless contested in good faith)</u>; 13) <u>insufficient funds to pay amounts when due on three separate occasions within 12 month period</u>; 14) <u>underreporting Gross Receipts</u>; 15) <u>three breaches of the Franchise Agreement within a one year period or two or more breaches of the same obligation within a one year period</u>; 16) <u>insolvency or similar proceeding</u>; 17) <u>assets, property, or interests blocked under laws or regulations relating to terrorism or you or your owners otherwise violate such laws</u>; 18) <u>termination of any other agreement between you (or one of your owners) or your affiliates and us</u>; 15) <del>you create or allow to exist a health or safety concern; and 16 or our affiliates</del>; 19) <u>you fail to perform required background checks</u>; 20) <u>you fail to ensure your personal fitness trainers are licensed as required by law</u>; and 21) <u>you fail to report incidents which could impact the goodwill of the brand as required</u>.</p>

Provision	Section in franchise or other agreement	Summary
	Area Development Agreement – 7.A	Non-curable defaults under the Area Development Agreement include ceasing or threatening to cease to carry on the business; liquidation of your assets; failure to pay any debts or other amounts incurred by you in operating the business when these debts or amounts are due and payable; an assignment for the benefit of creditors; appointment of a trustee or receiver; <del>3</del> <u>three</u> or more repeated violations during any 12-month period; <del>2</del> <u>two</u> or more repeated violations during any <del>6</del> <u>six</u> month period; in the event you are an entity, liquidation or dissolution or amalgamation; or if you lose your charter by expiration, forfeiture or otherwise; material misrepresentations or omissions; conviction of a felony; dishonest or unethical conduct; unapproved transfers of the Area Development Agreement or an ownership interest in you.
i.	Franchisee’s obligations on termination/non-renewal	<p>Obligations include: <u>comply with confidentiality provisions, comply with trade secret provisions; pay all amounts due to us and our affiliates; pay us liquidated damages if the Franchise Agreement is terminated by you without cause or because of your default; cease selling memberships; pay all sums due products and services; cease using the Marks; de-identify; assign contact identifies and online presence to us or our designee; pay all costs and expenses incurred by us in enforcing the termination provisions of the Franchise Agreement; return all manuals copies of the Operations Manual and other confidential materials; assign the business telephone and fax numbers to us or our designee; notify clients; direct clients to another Studio information to us; return or securely dispose of personal information; comply with covenants not to compete; comply with non-solicitation and non-interference covenants;</u> transfer client list to us or our designee; if required by law, refund clients; cooperate with us to preserve client goodwill; <del>pay all damages and costs incurred by us in enforcing the termination provisions of the Franchise Agreement; comply with the covenants not to compete; comply with confidentiality provisions; and pay us liquidated damages if the Franchise Agreement is terminated by you without cause or because of your default.</del></p> <p>Under the Area Development Agreement, you must: cease using the Marks and franchise system; return all proprietary materials, forms, documents and information; comply with confidentiality requirements; and comply with all post-termination non-compete and non-solicit covenants.</p>
jm.	Assignment of contract by franchisor	<p>Franchise Agreement – <del>5.7(g), 11.8</del></p> <p><del>12</del><u>Area Development Agreement – 6.A.</u></p> <p>No restriction on our right to transfer or assign. We may transfer or assign without your approval.</p>

Provision		Section in franchise or other agreement	Summary
		<a href="#">Area Development Agreement – 6.A</a>	
k.n.	“Transfer” by franchisee— defined	Franchise Agreement – <del>11.1</del> <a href="#">12.B.</a>	Includes transfer of the interests or rights in the Franchise Agreement <del>or</del> the Studio, <a href="#">the Studio’s assets</a> , or if you are an entity, the transfer of <del>a controlling</del> <a href="#">any direct or indirect</a> ownership interest in you.
		Area Development Agreement – 6.B	Includes transfer of your interest in the Area Development Agreement, any of your rights under the Area Development Agreement, the development rights, and any direct or indirect ownership interest in you (regardless of its size), any approved Affiliate, or any of your owners (if such owners are legal entities)
o.	<a href="#">Franchisor approval of transfer by franchisee</a>	<a href="#">Franchise Agreement – 12.B.</a>	<a href="#">We have the right to approve all transfers. You cannot transfer without our written consent.</a>
		<del>Franchise Agreement – 11.1</del> Area Development Agreement – 6.B	We have the right to approve all transfers but will not unreasonably withhold our consent. You cannot transfer without our written consent.

mp	Conditions for franchisor approval of transfer	Franchise Agreement – <del>11.1</del> <u>12.C.</u>	<p>Your Studio must be open for business. <del>All of your obligations have been discharged or assumed by</del> You must submit an application and provide us with information we request about the transferee; <del>all fees owed to us have been paid;</del> you pay us a deposit fee of \$5,000 (refundable, less amounts due, within 30 days of transfer); the transferee <del>qualifies and signs</del> cannot be involved in a Competitive Business; you provide executed versions of documents between you and the transferee to effect the transfer with requested information; you and the transferee sign all documents we require, including a general release, a covenant that you will comply with non-competition obligations (see “u”), and a covenant that you will comply with all post-termination obligations (see “l”); you are not in default of any agreement with us 60 days before your transfer request and until the transfer’s effective date; the transferee must complete our Training Program; you obtain landlord consent (if required by lease); the transferee must sign our then-current form of franchise agreement; <del>transferee (or any other person we require under then-current franchise agreement) completes our Initial Training before taking possession;</del> transfer fee is paid; <del>new franchisee is not operating a Competitive Business;</del> we approve the terms and conditions of the transfer; you are not in default of any agreement with us; <del>if you or your owners finance any part of the purchase price, you will agree that transferee’s obligations under any promissory notes, agreements, or security interests are subordinate to transferee’s payment obligations to us, our affiliates, and third-party vendors under their Franchise Agreement;</del> transferee agrees to <del>renovate</del> <u>upgrade, remodel, and refurbish the</u> Studio to our then-current standards; <del>you (or your owners or any other guarantor under the Franchise Agreement) sign our then-current form of general release and non-disparagement agreement;</del> you obtain landlord consent (if required by lease); we have approved any new lease, sublease, or lease assignment transferring the Studio; you comply with all post-termination obligations (see “i” and “r”); you and transferee execute our form of Agreement and Conditional Consent to Transfer; you pay us a deposit of \$3,500 (refundable, less amounts due, within 30 days of transfer); you have paid any applicable third-party broker fees; and you transfer possession of Studio only after <del>and you transfer process completed,</del> or transferee obtains new, business licenses, insurance policies, and material agreements. The term “Competitive Business” means any business operating or granting franchises or licenses to others to operate <u>any business that offers one-on-one and/or personal small group personal fitness training in physical fitness studios or any other physical fitness or nutrition service business, or any business offering offers or selling sells products or educational materials, or conducting conducts workshops for services</u> that are the same as, similar to, or competitive with <u>products, educational materials, and workshops offered by the</u></p>
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Provision	Section in franchise or other agreement	Summary
		Franchise System <del>or other Studios</del> (other than a franchise operated under a franchise agreement with us or our affiliate).
	Area Development Agreement – 6.B	Transferee must meet qualifications; satisfactorily complete training and pay required fee; have no financial or other interest in a Competitive Business; enter into all then-current forms of agreement required by us; you must have fulfilled all your obligations; must execute general release; pay expenses and applicable fees
q.	Franchise Agreement – <del>11.5</del> <del>14</del> Area Development Agreement – <del>6.C</del>	<del>We have a right of first refusal to acquire your Studio or area development business</del> If you abandon or fail to actively operate your Studio, fail to comply with your Franchise Agreement or any System Standard without curing, or your Franchise Agreement is terminated and we are deciding whether to exercise our option to purchase your Studio, we have the right to: 1) enter the Premises to protect the Operating Assets, remove any equipment, signage, or other materials featuring the Marks, cure any defaults under the Lease, and assume your rights under the Lease; and/or 2) enter the Premises and assume your Studio’s management for any period of time we deem appropriate. We may assign these rights to any person or entity without your consent.
	Area Development Agreement	Not applicable.
r.	Franchise Agreement – <u>12.E.</u>	<u>We have a right of first refusal to acquire your Studio, substantially all of its assets, or an ownership interest in you or one of your owners.</u>
	Area Development Agreement – <u>6.C</u>	<u>We have a right of first refusal to acquire your area development business.</u>
s.	Franchise Agreement – <del>10.8</del> <u>15.E.</u>	Upon termination or expiration of the Franchise Agreement, we have a <del>60</del> <u>30</u> -day option to purchase the assets of your Studio for fair-market value and assume the Studio’s lease.
	Area Development Agreement – <del>Not applicable</del>	<u>Not applicable.</u>
t.	Franchise Agreement – <del>11.3</del> <u>12.F.</u>	<del>We will not unreasonably withhold our consent</del> Your personal representative has <u>nine months</u> to <del>the</del> transfer of your interest ( <u>or the Operating Partner’s or a controlling owner’s interest</u> ) in the Franchise Agreement to a <del>spouse, heirs or relatives, by blood or marriage</del> <u>third party</u> , provided that the transfer conditions described in “ <u>mp</u> ” above have been met. No <u>fee deposit or transfer fee</u> will be required. <del>If your heirs do not obtain our consent, your personal representative has 180 days to dispose if the transferee is a spouse or immediate family member of your interest.</del> <u>the transferor</u> ).

Provision		Section in franchise or other agreement	Summary
		Area Development Agreement – <del>Not applicable</del>	<a href="#">Not applicable.</a>
¶u.	Non-competition covenants during the term of the franchise	Franchise Agreement – <del>12.17.A.</del>	No involvement in any Competitive Business; no <del>unauthorized use</del> <a href="#">activities which might injure the goodwill</a> of <del>Proprietary Assets or the Marks and</del> Franchise System <del>format</del> ; and no <del>assistance or encouragement of</del> <a href="#">immediate</a> family members <del>from violating of you or your owners may violate</del> these covenants.
		Area Development Agreement – 5	No involvement in any Competitive Business; and no assistance or encouragement of family members from violating these covenants.
¶v.	Non-competition covenants after the franchise is terminated or expires	Franchise Agreement – <del>12.215.F.</del>	No involvement (direct or indirect), <del>provision of services</del> in Competitive Business for <del>2</del> <a href="#">two</a> years within a <del>3</del> <a href="#">three</a> -mile radius of your Studio or within <del>3</del> <a href="#">three</a> miles of another Studio. (Same terms apply after transfer.)
		Area Development Agreement – 7.C	No involvement (direct or indirect), provision of services in Competitive Business for <del>2</del> <a href="#">two</a> years within the Development Area or within <del>3</del> <a href="#">three</a> miles of another Studio. (Same terms apply after transfer.)
¶w.	Modification of the agreement	Franchise Agreement – <del>15.217.K.</del>	The Franchise Agreement can be modified only by written agreement between you and us. We can modify or change the Franchise System <del>through changes in</del> <a href="#">by modifying</a> the <del>confidential</del> Operations Manual, <del>other manuals</del> and System <del>Specifications and standards</del> <a href="#">Standards</a> .
		Area Development Agreement – 10.G	No modifications except in writing and signed by both you and us.
¶x.	Integration/merger clause	Franchise Agreement – <del>15.4, 15.5</del>	Only the terms of the Franchise Agreement and Area Development Agreement are binding (subject to state law). Any representations or promises outside of the Disclosure Document and Franchise Agreement or Area Development Agreement may not be enforceable.
		<del>Area Development Agreement – 10.G</del> <a href="#">17.M.</a>	
¶y.	Dispute resolution by arbitration or mediation	Franchise Agreement – <del>14.5</del>	Except for breach of your post-termination covenants, violation of the Lanham Act, or breach of trade secret, all disputes relating to the Franchise Agreement or Area Development Agreement or our relationship must be arbitrated within 50 miles of our then-current principal place of business (currently Englewood, Colorado).
		<del>17.F. Area Development Agreement – 9.A</del>	
		<a href="#">Area Development Agreement – 9.A</a>	
¶z.	Choice of forum	Franchise Agreement – <del>14.217.H.</del>	State or federal court in the place where our principal place of business is located (currently Englewood, Colorado) (subject to state law).
		<del>Area Development Agreement – 9.C</del>	

Provision	Section in franchise or other agreement	Summary
	<a href="#">Area Development Agreement – 9.C</a>	
wa	Choice of law Franchise Agreement – <del>14.1</del> <a href="#">17.G.</a> <del>Area Development Agreement – 9.B</del> <a href="#">Area Development Agreement – 9.B.</a>	The laws of the state in which our principal place of business is located (currently, Colorado) govern (subject to state law), except that disputes regarding the Marks will be governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) and any arbitration matter will be governed by the United States Federal Arbitration Act (9 U.S.C. Sections 1 et seq.).

Applicable state law might require additional disclosures related to the information contained in this Item 17. These additional disclosures, if any, appear in [Exhibit A](#).

### **ITEM 18. PUBLIC FIGURES**

We do not use any public figures to promote our Franchise System. However, we may use public figures in the future.

### **ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC’s Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

The financial performance figures contained in this Item 19 do not reflect the costs of sales, operating expenses or other costs or expenses that must be deducted from the gross revenue or gross receipts figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your Studio. Franchisees or former franchisees listed on Exhibits to this Disclosure Document may be a source of this information.

Table 1 describes ~~2019~~ **2018** Average Annual Revenue for [franchised](#) Studios in the Franchise System open as of January 1, ~~2019~~ **2018** (a total of ~~137~~ **142** Studios) ~~that operated for the entirety of~~, **2018**, and further describes the number and percentage that met or exceeded the average. Studios are categorized based upon annual revenue, which we require our franchisees to submit to us on a monthly basis and is defined in the same manner as ~~gross receipts~~ **“Gross Receipts”** are defined under the Franchise Agreement. **“Gross Receipts”** include all of your revenue and receipts, including those taken by cash, credit card, debit card, check, ~~trade, barter or exchange~~, electronic funds transfer, ~~or~~ **ACH, trade, barter or exchange. Gross Receipts also include:** (a) any other means of ~~credit, which are~~ **revenue** derived from the operations of your Studio, including the sale of memberships, ~~fitness services, gift cards which are not sold under our national gift card programs,~~ merchandise, ~~or any~~ **products or any other products or services** ~~that are~~ **sold** by you, whether sold at ~~your Studio location~~ **the Premises** or from an off-site location. ~~Gross receipts also~~

include Premises location; (b) all revenue from the sale or redemption of gift cards, in accordance with our then-current System Standards; and (c) the gross amount of ~~redemptions for gift cards sold under our national gift card program.~~ any business interruption or similar insurance payments. Gross receipts Receipts exclude: (i) sales, use or privilege taxes paid to the appropriate taxing authority; (ii) refunds made that are provided to clients, ~~and gross redemption amount of gift cards sold under any of our national gift card programs.~~ In addition, should your business be interrupted for any reason; and you are receiving business interruption insurance payments, ~~the gross amount of these payments will be considered to be gross receipts and will be subject to the Royalty~~ (iii) tips received from clients for payment to your employees.

Table 1  
(Franchised Studios open as of January 1, 2019 & Throughout 2019~~2018~~)

Category	No. of Studios	2018 Average Annual Revenue	Number that Met or Exceeded the Average	Percentage that Met or Exceeded the Average	Same Studio Average Annual Revenue Increase (2018 over 2017) <sup>1</sup>	2018 Median Revenue	2018 Highest Revenue	2018 Lowest Revenue
All Studios	137	-\$350,753	54	39.4%	0.9%	-\$314,819	\$1,029,533	-\$31,323
Not Using CRM Software for at least 6 Months <sup>2</sup>	37	-\$325,095	14	37.8%	3.4%	-\$261,040	-\$869,203	-\$31,323
Using CRM Software for longer than 6 Months as of Dec. 31, 2018	100	-\$360,246	34	34.0%	0.0%	-\$322,402	\$1,029,533	-\$79,700

Category	No. of Studios	2019 Average Annual Revenue	Number that Met or Exceeded the Average	Percentage that Met or Exceeded the Average	Same Studio Average Annual Revenue Increase (2019 over 2018) <sup>1</sup>	2019 Median Revenue	2019 Highest Revenue	2019 Lowest Revenue
All Studios	138	\$347,861	53	38.4%	0.3%	\$305,285	\$1,179,785	\$24,081
Not Using CRM Software for Greater than Six Months	32	\$329,774	11	34.4%	0.7%	\$276,520	\$1,021,344	\$24,081
Using CRM Software for greater than Six Months	106	\$353,321	40	37.7%	0.1%	\$318,903	\$1,179,785	\$74,510

Notes to Table 1:

1. The same-studio average annual revenue increase for all ~~137~~138 franchised Studios described in the table above for the 2019 calendar year versus the 2018 calendar year versus the 2017 calendar year was calculated by comparing annual revenue for the 2019~~2018~~ calendar year to the ~~2018~~2017 calendar year, on a same-studio basis, for each Studio, for those studios open at

least one year prior to the start of ~~2019~~2018. Because this category compares year-over-year revenue, we have not included ~~4~~four of the ~~137~~142 franchised Studios that were open as of January 1, ~~2019~~2018, because ~~it~~they did not operate during the entirety of ~~2019~~. ~~One franchised Studio closed on December 31, 2019; however, its data is included within the Table above~~2017.

2. During 2015, ~~the Company~~Franchisor introduced a new customer-relationship management software platform, which was used by ~~100 locations~~106 Studios at the end of ~~2019~~. ~~Excluding one Studio, all of~~ 2018. ~~All of these locations~~Studios were open and operating ~~for all of the throughout 2019~~2018 calendar year and had used the software for longer than ~~6~~six months as of December 31, ~~2019~~. ~~One franchised Studio closed on December 31, 2019; however, its data is included within this grouping of 106 Studios~~2018.

Table 2 provides further details for those ~~100 studios~~106 franchised Studios that were open as of January 1, ~~2019 and throughout 2019 (except as otherwise noted)~~,2018, and used the CRM software for longer than ~~6~~six months ~~as of December 31, 2018~~. Studios are categorized based upon annual revenue, ~~which we require our franchisees to submit to us on a monthly basis and is defined in the same manner~~ (as gross receipts are defined under the Franchise Agreement, ~~characterized above~~).

Table 2  
(Franchised Studios open as of January 1, ~~2019 & Throughout 2019~~, 2018, and used CRM software for longer than ~~6~~Six months ~~as of December 31, 2018~~)

Category	Top-third	Middle-third	Bottom-third	All Studios
No. of Studios	33	34	33	100
2018 Average Annual Revenue	-\$555,019	-\$323,235	-\$203,606	-\$360,246
Number that Met or Exceeded the Average	12	16	18	34
Percentage that Met or Exceeded the Average	36.4%	47.1%	54.5%	34.0%
Same Studio Average Annual Revenue Increase (2018 over 2017) <sup>(1)</sup>	4.1%	-1.6%	-7.5%	0.0%
2018 Median Revenue	-\$512,611	-\$322,402	-\$214,308	-\$314,819
2018 Highest Revenue	-\$1,029,533	-\$371,242	-\$271,935	-\$1,029,533
2018 Lowest Revenue	-\$373,208	-\$273,341	-\$79,700	-\$79,700
2018 Leads <sup>(2)</sup>	158	133	112	134
Number that Met or Exceeded the Average	13	12	14	36
Percentage that Met or Exceeded the Average	39.4%	35.3%	42.4%	36.0%

2018 Median Leads	142	107	105	114
2018 Lead to Consult Ratio <sup>(3)</sup>	42.3%	42.5%	38.9%	41.4%
Number that Met or Exceeded the Average	21	18	18	55
Percentage that Met or Exceeded the Average	63.6%	52.9%	54.5%	55.0%
2018 Median Lead to Consult Ratio	44.3%	44.3%	41.1%	44.3%
2018 Consults <sup>(4)</sup>	67	57	43	56
Number that Met or Exceeded the Average	15	15	14	41
Percentage that Met or Exceeded the Average	45.5%	44.1%	42.4%	41.0%
2018 Median Consults	56	53	39	50
2018 Consult to New Client Ratio <sup>(5)</sup>	56.1%	46.7%	38.5%	48.3%
Number that Met or Exceeded the Average	19	20	21	57
Percentage that Met or Exceeded the Average	57.6%	58.8%	63.6%	57.0%
2018 Median Consult to New Client Ratio	60.3%	51.6%	43.3%	53.9%
2018 New Clients <sup>(6)</sup>	37	26	17	27
Number that Met or Exceeded the Average	15	17	18	44
Percentage that Met or Exceeded the Average	45.5%	50.0%	54.5%	44.0%
2018 Median New Clients	37	26	18	22

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Category	Top third	Middle third	Bottom third	All Studios
No. of Studios	36	35	35	106
2019 Average Annual Revenue	\$ 549,221	\$ 313,383	\$ 191,764	\$ 353,321
Number that Met or Exceeded the Average	13	18	21	0
Percentage that Met or Exceeded the Average	36.1%	51.4%	60.0%	0.0%
Same Studio Average Annual Revenue Increase (2019 over 2018)	3.0%	0.9%	-9.2%	0.1%
2019 Median Revenue	\$ 471,214	\$ 315,212	\$ 206,719	\$ 318,903
2019 Highest Revenue	\$ 1,179,785	\$ 362,924	\$ 255,706	\$ 1,179,785
2019 Lowest Revenue	\$ 363,533	\$ 264,457	\$ 74,510	\$ 74,510
2019 Leads	127	109	113	117
Number that Met or Exceeded the Average	16	13	15	0
Percentage that Met or Exceeded the Average	44.4%	37.1%	42.9%	0.0%
2019 Median Leads	112	88	97	98
2019 Lead to Consult Ratio	41.0%	29.3%	40.1%	37.1%
Number that Met or Exceeded the Average	21	21	14	106
Percentage that Met or Exceeded the Average	58.3%	60.0%	40.0%	100.0%
2019 Median Lead to Consult Ratio	38.0%	34.6%	37.7%	38.0%
2019 Consults	52	32	45	43
Number that Met or Exceeded the Average	14	17	15	101
Percentage that Met or Exceeded the Average	38.9%	48.6%	42.9%	95.3%
2019 Median Consults	45	31	36	40
2019 Consult to New Client Ratio	57.5%	54.3%	44.2%	52.1%
Number that Met or Exceeded the Average	21	16	18	12
Percentage that Met or Exceeded the Average	58.3%	45.7%	51.4%	11.3%
2019 Median Consult to New Client Ratio	59.1%	54.2%	44.8%	52.4%
2019 New Clients	30	17	20	23
Number that Met or Exceeded the Average	17	16	15	99
Percentage that Met or Exceeded the Average	47.2%	45.7%	42.9%	93.4%
2019 Median new Clients	27	16	19	20

Notes to Table 2:

1. The same-studio average annual revenue increase for all ~~100~~106 franchised Studios described in the table above for the 2019 calendar year versus the 2018 calendar year ~~versus the 2017 calendar year~~ was calculated by comparing annual revenue for the 2019 calendar year to the 2018 calendar year ~~to the 2017 calendar year~~, on a same-studio basis, for each Studio open at least one year prior to the start of ~~2018~~2019. Because this category compares year-over-year revenue, we have not included ~~4~~four of the ~~100~~142 franchised Studios that were open as of January 1, ~~2018~~2019, because ~~it~~they did not operate during the entirety of 2019. As previously noted, one franchised Studio closed on December 31, 2019; however, its data is included within the Table above~~2017~~.

2. ~~2018~~2019 Leads are the number of client inquiries received by ~~the Studio~~Studios. A “client inquiry” means that an individual has contacted a Studio about trying the Studio’s fitness services.
3. ~~2018~~2019 Lead to Consult Ratio is the percentage of ~~2018~~2019 Leads that attended ~~the Studio~~Studios for a fitness consultation. It is calculated by dividing the number of ~~2018~~2019 Leads by the number of ~~2018~~2019 Consults (further described below in Note 4-)).
4. ~~2018~~2019 Consults is the number of ~~2018~~2019 Leads that attended ~~the Studio~~Studios for a fitness consultation.
5. ~~2018~~2019 Consult to New Client Ratio represents the percentage of those ~~2018~~2019 Consults that purchased additional sessions after attending a fitness consultation.
6. ~~2018~~2019 New Clients is the number of ~~2018~~2019 Consults that purchased a fitness package.

\* \* \*

We compiled this data using information submitted to us by our franchisees. We did not audit or otherwise verify the accuracy of the information submitted. These revenues ~~and gross profit~~ results are based upon historical data.

**Some studios have earned these amounts. Your individual results may differ. There is no assurance that you will earn as much.**

We are unaware of any particular characteristics (such as geographic location) in the Studios listed in the tables above that differ materially from the Studio being offered by this Disclosure Document. However, factors that might adversely impact average revenues for a given Studio include increased competition in the fitness industry, actions by franchisees that are out of our control that could adversely impact the Franchise System, and the status of our general economic environment. The negative impact of such factors would also adversely impact a franchisee’s net income, profits and earnings.

Written substantiation for the financial performance representation will be made available to prospective franchisees upon reasonable request.

Other than the preceding financial performance representation, Fitness Together Franchise, LLC, does not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting Robert Bell, Chief Financial Officer, 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112, (303) 663-0880, the Federal Trade Commission, and appropriate state regulatory agencies.

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**ITEM 20. OUTLETS AND FRANCHISEE INFORMATION**

**Table 1**  
**System-wide Outlet Summary**  
**For Years ~~2016~~2017 to ~~2018~~<sup>1</sup>2019<sup>1</sup>**

Outlet Type	Year	Outlets at the Start of the year	Outlets at the End of the Year	Net Change
Franchised Outlets	<del>2017</del> 2016	<del>167</del> 153	<del>153</del> 144	<del>-149</del>
	<del>2018</del> 2017	<del>153</del> 144	<del>144</del> 142	<del>-92</del>
	<del>2018</del> 2019	<del>144</del> 142	142	<del>-20</del>
Company-Owned Outlets	<del>2017</del> 2016	0	0	0
	<del>2018</del> 2017	0	0	0
	<del>2018</del> 2019	0	<del>0</del> 1	<del>0</del> +1
<b>Total Outlets</b>	<del>2016</del> 2017	<del>167</del> 153	<del>153</del> 144	<del>-149</del>
	<del>2018</del> 2017	<del>153</del> 144	<del>144</del> 142	<del>-92</del>
	<del>2018</del> 2019	<del>144</del> 142	<del>142</del> 143	<del>-2</del> +1

1/ The numbers are as of December 31<sup>st</sup> of each year.

**Table 2**  
**Transfers of Outlets from Franchisees to New Owners (other than Franchisor)**  
**For Years ~~2016~~2017 to ~~2018~~<sup>1</sup>2019<sup>1</sup>**

State	Year	Number of Transfers
Alabama	<del>2017</del> 2016	<del>0</del> 1
	2018	0
	2019	0
California	2017	<del>1</del> 0
	2018	0
	2019	1

State	Year	Number of Transfers
Florida	<del>2017</del> 2016	<del>0</del> 2
	<del>2017</del>	2
	2018	0
	<del>2016</del> 2019	<del>1</del> 0
Idaho	2017	0
	2018	0
	<u>2019</u>	<u>0</u>
Illinois	<del>2017</del> 2016	1
	<del>2017</del>	<del>1</del>
	2018	0
	<u>2019</u>	<u>0</u>
Maryland	<del>2017</del> 2016	0
	<del>2017</del>	<del>0</del>
	2018	1
	<u>2019</u>	<u>0</u>
Massachusetts	<del>2017</del> 2016	<del>2</del> 3
	<u>2018</u>	<u>3</u>
	<u>2019</u>	<u>2</u>
Michigan	2017	<del>3</del> 0
	2018	<del>3</del> 0
	<u>2019</u>	<u>1</u>
North Carolina	<del>2017</del> 2016	<del>2</del> 0
	<del>2017</del>	<del>0</del>
	2018	2
	<u>2019</u>	<u>1</u>
Rhode Island	<del>2017</del> 2016	0
	<del>2017</del>	<del>0</del>
	2018	1
	<u>2019</u>	<u>0</u>
South Carolina	<del>2017</del> 2016	<del>1</del> 0
	<del>2017</del>	<del>0</del>
	2018	0
	<u>2019</u>	<u>0</u>
Tennessee	<del>2017</del> 2016	<del>1</del> 0
	<del>2017</del>	<del>0</del>
	2018	0
	<u>2019</u>	<u>0</u>

State	Year	Number of Transfers
Virginia	<del>2017</del> <del>2016</del>	0
	<del>2017</del>	0
	2018	2
Wisconsin	<del>2017</del> <del>2016</del>	0
	<del>2017</del>	0
	2018	3
	<del>2016</del> <del>2019</del>	80
Total	2017	7
	2018	12
	<del>2019</del>	6

1/ The numbers are as of December 31<sup>st</sup> of each year.

**Table 3**  
**Status of Franchised Outlets**  
**For Years ~~2016~~2017 to ~~2018~~<sup>1</sup>2019<sup>1</sup>**

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
Alabama	<del>2017</del> <del>2016</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2017</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2019</del>	1	0	0	0	0	0	1
California	<del>2017</del> <del>2016</del>	65	0	0	0	0	10	5
	<del>2018</del> <del>2017</del>	5	0	0	0	0	0	5
	<del>2018</del> <del>2019</del>	5	0	0	0	0	0	5
Colorado	<del>2017</del> <del>2016</del>	65	0	0	0	0	10	53
	<del>2018</del> <del>2017</del>	53	0	0	2	0	0	32
	<del>2018</del> <del>2019</del>	32	0	0	10	0	0	2
Connecticut	<del>2017</del> <del>2016</del>	2	0	0	0	0	0	2
	<del>2018</del> <del>2017</del>	2	0	0	0	0	0	2
	<del>2018</del> <del>2019</del>	2	0	0	0	0	0	2
District of Columbia	<del>2017</del> <del>2016</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2017</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2019</del>	1	0	0	0	0	0	1
Florida	<del>2017</del> <del>2016</del>	6	0	0	0	0	0	6
	<del>2018</del> <del>2017</del>	6	0	0	0	0	0	6
	<del>2018</del> <del>2019</del>	6	0	1	0	0	0	5
Georgia	<del>2017</del> <del>2016</del>	3	0	0	0	0	0	3

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
Idaho	<del>2018</del> <del>2017</del>	3	0	0	0	0	0	3
	<del>2018</del> <del>2019</del>	3	<del>0</del> <u>1</u>	0	0	0	0	<del>3</del> <u>4</u>
	<del>2017</del> <del>2016</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2017</del>	1	0	0	0	0	0	1
Illinois	<del>2018</del> <del>2019</del>	1	<del>0</del> <u>1</u>	0	0	0	0	<del>1</del> <u>2</u>
	<del>2017</del> <del>2016</del>	<del>3</del> <u>2</u>	0	0	0	0	<del>1</del> <u>0</u>	2
	<del>2018</del> <del>2017</del>	2	<del>0</del> <u>1</u>	0	0	0	0	<del>2</del> <u>3</u>
Indiana	<del>2018</del> <del>2019</del>	<del>2</del> <u>3</u>	<del>1</del> <u>0</u>	0	0	0	0	3
	<del>2017</del> <del>2016</del>	0	0	0	0	0	0	0
	<del>2018</del> <del>2017</del>	0	<del>0</del> <u>2</u>	0	0	0	0	<del>0</del> <u>2</u>
Kansas	<del>2018</del> <del>2019</del>	<del>0</del> <u>2</u>	<del>0</del> <u>2</u>	0	0	0	0	2
	<del>2017</del> <del>2016</del>	2	0	0	0	0	0	2
	<del>2018</del> <del>2017</del>	2	0	0	0	0	0	2
Louisiana	<del>2018</del> <del>2019</del>	2	0	<del>0</del> <u>1</u>	0	0	0	<del>2</del> <u>1</u>
	<del>2017</del> <del>2016</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2017</del>	1	0	<del>0</del> <u>1</u>	0	0	0	<del>1</del> <u>0</u>
Maryland	<del>2018</del> <del>2019</del>	<del>1</del> <u>0</u>	0	<del>0</del> <u>1</u>	0	0	0	0
	<del>2017</del> <del>2016</del>	<del>6</del> <u>7</u>	<del>1</del> <u>0</u>	0	0	0	0	7
	<del>2018</del> <del>2017</del>	7	0	0	0	0	0	7
Massachusetts	<del>2018</del> <del>2019</del>	7	<del>0</del> <u>1</u>	0	0	0	0	<del>7</del> <u>8</u>
	<del>2017</del> <del>2016</del>	<del>49</del> <u>44</u>	0	<del>1</del> <u>0</u>	<del>1</del> <u>0</u>	0	<del>3</del> <u>1</u>	<del>44</del> <u>43</u>
	<del>2018</del> <del>2017</del>	<del>44</del> <u>43</u>	0	0	0	0	<del>1</del> <u>0</u>	43
Michigan	<del>2018</del> <del>2019</del>	43	0	0	0	0	0	43
	<del>2017</del> <del>2016</del>	5	0	0	0	0	0	5
	<del>2018</del> <del>2017</del>	5	0	0	0	0	0	5
Minnesota	<del>2018</del> <del>2019</del>	5	0	0	0	0	0	5
	<del>2017</del> <del>2016</del>	2	0	0	0	0	0	2
	<del>2018</del> <del>2017</del>	2	0	0	0	0	0	2
Missouri	<del>2018</del> <del>2019</del>	2	<del>0</del> <u>1</u>	0	0	0	0	<del>2</del> <u>3</u>
	<del>2017</del> <del>2016</del>	2	0	0	0	0	0	2
	<del>2018</del> <del>2017</del>	2	0	0	0	0	0	2
Nebraska	<del>2018</del> <del>2019</del>	2	0	0	0	0	0	2
	<del>2017</del> <del>2016</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2017</del>	1	0	0	0	0	0	1
New Hampshire	<del>2018</del> <del>2019</del>	1	0	0	0	0	0	1
	<del>2017</del> <del>2016</del>	1	0	0	0	0	0	1
	<del>2018</del> <del>2017</del>	1	0	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
New Jersey	<del>2017</del> 2016	<u>4</u> <del>3</del>	0	0	0	0	<del>1</del> <u>0</u>	3
	<del>2018</del> 2017	<u>3</u> <del>2</del>	0	0	0	0	0	3
	<del>2018</del> 2019	<u>3</u> <del>2</del>	0	0	0	0	0	3
New York	<del>2017</del> 2016	<u>3</u> <del>2</del>	0	0	<del>0</del> <u>1</u>	0	0	<del>3</del> <u>2</u>
	<del>2018</del> 2017	<del>3</del> <u>2</u>	0	0	<del>1</del> <u>0</u>	0	0	2
	<del>2018</del> 2019	<u>2</u> <del>1</del>	0	<del>0</del> <u>1</u>	0	0	0	<del>2</del> <u>1</u>
North Carolina	<del>2017</del> 2016	<del>12</del> <u>11</u>	0	0	<del>1</del> <u>0</u>	0	0	11
	<del>2018</del> 2017	<u>11</u> <del>10</del>	0	0	0	0	0	11
	<del>2018</del> 2019	<u>11</u> <del>10</del>	0	<del>0</del> <u>1</u>	0	0	0	<del>11</del> <u>10</u>
Ohio	<del>2017</del> 2016	<u>7</u> <del>6</del>	<del>0</del> <u>1</u>	0	0	0	0	<del>7</del> <u>8</u>
	<del>2018</del> 2017	<del>7</del> <u>8</u>	<del>1</del> <u>2</u>	0	0	0	0	<del>8</del> <u>10</u>
	<del>2018</del> 2019	<u>8</u> <u>10</u>	<u>2</u> <u>0</u>	0	0	0	0	10
Oklahoma	<del>2017</del> 2016	<u>5</u> <del>4</del>	0	0	<del>1</del> <u>0</u>	0	<del>0</del> <u>2</u>	<u>4</u> <del>2</del>
	<del>2018</del> 2017	<u>4</u> <del>2</del>	0	0	0	0	<del>2</del> <u>0</u>	2
	<del>2018</del> 2019	<u>2</u> <del>1</del>	0	0	0	0	0	2
Oregon	<del>2017</del> 2016	<u>1</u> <del>0</del>	0	0	0	0	0	1
	<del>2018</del> 2017	<u>1</u> <del>0</del>	0	0	0	0	0	1
	<del>2018</del> 2019	<u>1</u> <del>0</del>	0	0	0	0	0	1
Pennsylvania	<del>2017</del> 2016	<u>2</u> <del>1</del>	0	0	0	0	<del>0</del> <u>1</u>	<u>2</u> <del>1</del>
	<del>2018</del> 2017	<u>2</u> <del>1</del>	0	0	<del>0</del> <u>1</u>	0	<del>1</del> <u>0</u>	<u>1</u> <del>0</del>
	<del>2018</del> 2019	<u>1</u> <del>0</del>	0	0	<del>1</del> <u>0</u>	0	0	0
Rhode Island	<del>2017</del> 2016	<u>4</u> <del>3</del>	0	0	0	0	0	4
	<del>2018</del> 2017	<u>4</u> <del>3</del>	0	0	0	0	0	4
	<del>2018</del> 2019	<u>4</u> <del>3</del>	0	0	0	0	0	4
South Carolina	<del>2017</del> 2016	<u>1</u> <del>0</del>	0	0	0	0	0	1
	<del>2018</del> 2017	<u>1</u> <del>0</del>	0	<del>0</del> <u>1</u>	0	0	0	<u>1</u> <del>0</del>
	<del>2018</del> 2019	<u>1</u> <del>0</del>	0	<del>1</del> <u>0</u>	0	0	0	0
Tennessee	<del>2017</del> 2016	<u>5</u> <del>4</del>	0	0	0	0	0	5
	<del>2018</del> 2017	<u>5</u> <del>4</del>	0	0	0	0	0	5
	<del>2018</del> 2019	<u>5</u> <del>4</del>	0	0	0	0	0	5
Texas	<del>2017</del> 2016	<u>1</u> <del>0</del>	0	0	0	0	0	1
	<del>2018</del> 2017	<u>1</u> <del>0</del>	0	0	0	0	0	1
	<del>2018</del> 2019	<u>1</u> <del>0</del>	<del>0</del> <u>1</u>	0	0	0	0	<u>1</u> <del>2</del>
Utah	<del>2017</del> 2016	<u>1</u> <del>0</del>	0	0	0	0	0	1
	<del>2018</del> 2017	<u>1</u> <del>0</del>	0	0	0	0	0	1
	<del>2018</del> 2019	<u>1</u> <del>0</del>	0	0	0	0	0	1
Virginia	<del>2017</del> 2016	<u>9</u> <del>7</del>	0	0	<del>1</del> <u>0</u>	0	1	<u>7</u> <del>6</del>
	<del>2018</del> 2017	<u>7</u> <del>6</del>	0	<del>0</del> <u>2</u>	0	0	<u>1</u> <del>0</del>	<u>6</u> <del>4</del>
	<del>2018</del> 2019	<u>6</u> <del>4</del>	0	<u>2</u> <del>0</del>	0	0	0	4
Washington	<del>2017</del> 2016	<u>6</u> <del>4</del>	0	0	<del>1</del> <u>0</u>	0	<u>1</u> <del>0</del>	4

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
Wisconsin	<del>2018</del> 2017	4	0	0	0	0	0	4
	2018 <del>2019</del>	4	0	0	0	0	0	4
	<del>2017</del> 2016	8	0	0	<del>0</del> 2	0	0	<del>8</del> 6
	2017 <del>2018</del>	<del>8</del> 6	0	0	<del>2</del> 0	0	0	6
	2018 <del>2019</del>	6	0	0	0	0	0	6
Total	<del>2017</del> 2016	<del>167</del> 153	1	<del>1</del> 0	5	0	<del>9</del> 5	<del>153</del> 144
	2018 <del>2017</del>	<del>153</del> 144	<del>1</del> 5	<del>0</del> 5	<del>5</del> 2	0	<del>5</del> 0	<del>144</del> 142
	2018 <del>2019</del>	<del>144</del> 142	5	5	<del>2</del> 0	0	0	142

1/ The numbers are as of December 31<sup>st</sup> of each year.

**Table 4**  
**Status of Company-Owned Outlets**  
For years ~~2016~~2017 to ~~2018~~<sup>+</sup>2019<sup>1</sup>

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold To Franchisee	Outlets at End of Year
All States	<del>2017</del> 201	0	0	0	0	0	0
	2018 <del>201</del>	0	0	0	0	0	0
	2018 <del>201</del>	0	<del>0</del> 1	0	0	0	<del>0</del> 1
Total	<del>2017</del> 201	0	0	0	0	0	0
	2017 <del>201</del>	0	0	0	0	0	0
	2018 <del>201</del>	0	<del>0</del> 1	0	0	0	<del>0</del> 1

1/ The numbers are as of December 31<sup>st</sup> of each year.

**Table 5**  
**Projected Openings**  
as of December 31, ~~2018~~2019

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Arizona	<u>3</u>	<u>1</u>	<u>0</u>
Colorado	0	0	1

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Connecticut	1	<del>1</del> 0	0
<del>Georgia</del> Florida	<del>1</del> 3	1	0
<del>Idaho</del>	<del>1</del>	<del>1</del>	<del>0</del>
<del>Maryland</del>	<del>1</del>	<del>1</del>	<del>0</del>
Massachusetts	1	0	0
<del>Minnesota</del> New Jersey	1	1	0
Ohio	1	1	0
<del>Washington</del> Texas	<del>1</del> 3	1	0
<del>Virginia</del>	<del>1</del>	<del>1</del>	<del>0</del>
<b>Total</b>	<b>9</b> <u>13</u>	<b>8</b> <u>4</u>	<b>1</b>

Exhibit D1 lists the names of all current franchisees and the addresses and telephone numbers of their Studios as of December 31, ~~2018~~2019.

Exhibit D2 also list the name, city and state, and current business telephone number or the last known home telephone number of every franchisee who had a franchise agreement that was terminated, canceled or not renewed, or who otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year, or who has not communicated with us within 10 weeks of the issuance date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the Franchise System.

Exhibit D3 lists the name, city and state and telephone numbers of all franchisees who have signed franchise agreements, but who have not yet opened a Studio as of December 31, ~~2018~~2019.

During the last 3 fiscal years, current and former franchisees have signed confidentiality clauses. In some instances, current and former franchisees have signed provisions restricting their ability to speak openly about their experience with the Fitness Together Franchise System. You may wish to speak with current and former franchisees, but be aware that not all of them will be able to communicate with you.

In October 2008, we established the Franchisee Leadership Council, consisting of members of Franchisor's management and franchisees. The Franchisee Leadership Council provides feedback and advice to us, but does not have decision-making authority. The Franchisee Leadership Council has not incorporated or otherwise organized under state law. It does not have its own address telephone number, email address or web address.

## ITEM 21. FINANCIAL STATEMENTS

Attached as Exhibit E to this Disclosure Document are our audited financial statements as of December 31, ~~2016, December 31,~~ 2017, December 31, 2018, and December 31, ~~2018~~2019. Our fiscal year end is December 31.

## ITEM 22. CONTRACTS

Attached to this Disclosure Document are the following Exhibits:

- A State Addenda to the Disclosure Document and Franchise Agreement
- B Franchise Agreement and Exhibits
- C Area Development Agreement and Exhibits
- G Agreement and Conditional Consent to Transfer (including Sample of Release of Claims)
- H Form of Renewal Addendum (including Sample of Release of Claims)

~~I Form of General Release~~

## ITEM 23. RECEIPTS

Exhibit K of this Disclosure Document contains detachable documents acknowledging your receipt of this Disclosure Document and all exhibits.

**EXHIBIT A**

**STATE ADDENDA AND AGREEMENT RIDERS**

**ADDENDUM TO  
DISCLOSURE DOCUMENT FOR THE  
STATE OF ILLINOIS**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE  
DOCUMENT FOR THE STATE OF ILLINOIS ONLY.**

Illinois law governs the Franchise Agreement(s).

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Your rights upon Termination and Non-Renewal are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

**ADDENDUM TO  
DISCLOSURE DOCUMENT FOR THE  
STATE OF MARYLAND**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE  
DOCUMENT FOR THE STATE OF MARYLAND ONLY.**

1. The 5<sup>th</sup> sentence of the 4<sup>th</sup> paragraph of Item 12 of the Disclosure Document is amended to read as follows:

You will also be required to sign a relocation addendum which will include our form of general release; provided, however, that such general release will not apply to any claims arising under the Maryland Franchise Registration and Disclosure Law.

2. ITEM 17 OF THIS DISCLOSURE DOCUMENT IS AMENDED BY THE ADDITION OF THE FOLLOWING PARAGRAPHS TO THE END OF THE CHART.

We require you to sign a general release of claims as a condition of the relocation or the sale, transfer or renewal of the Franchise Agreement or Area Development Agreement. The general release will not apply to any claims that arise under the Maryland Franchise Registration and Disclosure Law.

The Franchise Agreement and Area Development Agreement require you to agree to a period of limitations less than 3 years. The period of limitations less than 3 years will not apply to any claims arising under the Maryland Franchise Registration and Disclosure Law.

A franchisee or developer may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

The provision in the Franchise Agreement and Area Development Agreement which provides for termination upon bankruptcy of the Franchisee may not be enforceable under federal bankruptcy law. (11 U.S.C. Section 101 et seq.)

**ADDENDUM TO  
DISCLOSURE DOCUMENT FOR THE  
STATE OF MINNESOTA**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE  
DOCUMENT FOR THE STATE OF MINNESOTA ONLY**

1. Item 13 of this Disclosure Document will be amended to add the following paragraph:

Under Minnesota Statute Section 80C.12, Subd. 1(g) – we must protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name. We do not indemnify against the consequences of your use of our Marks except in accordance with the requirements of the Franchise Agreement and the Operations Manual and, as a condition to indemnification, you must notify us in writing within 10 days, or within such shorter period as is necessary to avoid prejudice, after learning of any claim, and immediately tender the defense of the claim to us. If we accept the tender of defense, we have the right to control any litigation or proceeding resulting from any such claim including the right to compromise, settle or otherwise resolve the claim, or whether to appeal a final determination of the claim.

2. Item 17 of this Disclosure Document is amended by the addition of the following paragraphs to the end of the chart:

Minn. Stat. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Disclosure Document or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws or the jurisdiction.

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C. 14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the Franchise Agreement.

Minn. Rule Part 2860.4400J prohibits you from waiving your rights to a jury trial or waiving your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or consenting to liquidated damages, termination penalties or judgment notes.

Minn. Rule 2860.4400D. prohibits us from requiring you to assent to a general release.

**ADDENDUM TO  
DISCLOSURE DOCUMENT FOR THE  
STATE OF NORTH DAKOTA**

1. The following is added to the end of the “Remarks” section of Item 6, entitled “Liquidated Damages”:

Under North Dakota law, a requirement that you consent to liquidated damages in the event of termination of the Franchise Agreement is considered unenforceable; however, we and you will enforce this provision to the maximum extent the law allows.

2. The following is added to the end of the “Summary” sections of Item 17(c), entitled “Requirements for franchisee to renew or extend” and Item 17(m), entitled “Conditions for franchisor approval of transfer”:

However, any release required as a condition of renewal, sale and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

3. The following is added to the end of the “Summary” section of Item 17(r), entitled “Non-competition covenants after the franchise is terminated or expires”:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we and you will enforce the covenants to the maximum extent the law allows.

4. The “Summary” section of Item 17(u), entitled “Dispute resolution by arbitration or mediation” is deleted and replaced with the following:

To the extent required by the North Dakota Franchise Investment Law (unless such requirement is preempted by the Federal Arbitration Act), arbitration will be at a site to which we and you mutually agree.

5. The “Summary” section of Item 17(v), entitled “Choice of forum” is deleted and replaced with the following:

You must sue us in state or federal court in the place where our principal place of business is located (currently, Englewood, Colorado), except that to the extent required by the North Dakota Franchise Investment Law, you may bring an action in North Dakota.

6. The “Summary” section of Item 17(w), entitled “Choice of law” is deleted and replaced with the following:

Except as otherwise required by North Dakota law, the laws of the state in which our principal place of business is located (currently Colorado) govern, except that disputes regarding the Marks will be governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) and any arbitration matter will be governed by the United States Federal Arbitration Act (9 U.S.C. Sections 1 et seq.).

**ADDENDUM TO  
DISCLOSURE DOCUMENT FOR THE  
STATE OF RHODE ISLAND**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE  
DOCUMENT FOR THE STATE OF RHODE ISLAND ONLY**

1. Item 17 (u), (v) and (w) of the Disclosure Document are amended to add the following:

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the state laws of another state is void with respect to a claim otherwise enforceable under this Act.”

**ADDENDUM TO  
DISCLOSURE DOCUMENT FOR THE  
STATE OF VIRGINIA**

**THIS NOTICE WILL ACT AS AN AMENDMENT TO THE FRANCHISE DISCLOSURE  
DOCUMENT FOR THE STATE OF VIRGINIA ONLY**

1. In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Fitness Together Franchise, LLC for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to Item 17(h).

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

**STATE ADDENDA TO FRANCHISE AGREEMENT**

**ADDENDUM TO FRANCHISE AGREEMENT  
FOR ILLINOIS**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR ILLINOIS** (“this Addendum”) is entered into by and between **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company with its principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we,” “us” or “our”) and \_\_\_\_\_ (“you” or “your”), whose principal business address is \_\_\_\_\_.

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

**WHEREAS**, the offering or sales activity relating to the Franchise Agreement occurred in the State of Illinois, and the Fitness Together Studio will be located in the State of Illinois, and/or you are domiciled in the State of Illinois.

**NOW THEREFORE**, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. Notwithstanding anything contrary in the Franchise Agreement, in the event of a conflict between the provisions of the Franchise Agreement and the provisions of this Addendum, the provisions of this Addendum shall control. The parties agree that the Franchise Agreement remains fully effective in all respects except as specifically modified by this Addendum, and all the respective rights and obligations of you and us remain as written unless modified herein.

2. Section 14.1 of the Franchise Agreement is deleted and replaced with the following:

14.1 Governing Law. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE UNITED STATES FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER UNITED STATES FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES.

3. Section 14.2 of the Franchise Agreement is deleted and replaced with the following:

14.2 Jurisdiction and Venue. SUBJECT TO SECTION 14.5, YOU AND THE BOUND PARTIES AGREE THAT ALL ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED EXCLUSIVELY IN THE STATE OR FEDERAL COURT OF GENERAL JURISDICTION IN ILLINOIS IF REQUIRED UNDER THE ILLINOIS FRANCHISE DISCLOSURE ACT, AND WE AND YOU (AND EACH OWNER) IRREVOCABLY CONSENT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS.

4. The following language is added to the end of Section 14.3 of the Franchise Agreement:

HOWEVER, THIS SECTION SHALL NOT ACT AS A CONDITION, STIPULATION OR PROVISION PURPORTING TO BIND ANY PERSON ACQUIRING ANY FRANCHISE TO WAIVE COMPLIANCE WITH ANY PROVISION OF THE ILLINOIS FRANCHISE DISCLOSURE ACT AT SECTION 705/41 OR ILLINOIS REGULATIONS AT SECTION 200.609.

5. The following language is added to the end of Section 14.6 of the Franchise Agreement:

However, nothing contained in this Section shall constitute a condition, stipulation, or provision purporting to bind any person to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of the State of Illinois, to the extent applicable.

6. The following language is added as Section 17 of the Franchise Agreement:

**17. ILLINOIS FRANCHISE DISCLOSURE ACT**

Section 41 of the Illinois Franchise Disclosure Act states that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Act or any other law of Illinois is void.

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be affected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

**IN WITNESS THEREOF**, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

**FRANCHISOR:**

**FRANCHISEE:**

**FITNESS TOGETHER FRANCHISE, LLC**

\_\_\_\_\_  
(Name of Individual or Entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_  
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT  
FOR MARYLAND**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR MARYLAND** (“this Addendum”) is entered into by and between **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company with its principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we,” “us” or “our”) and \_\_\_\_\_ (“you” or “your”), whose principal business address is \_\_\_\_\_.

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

**WHEREAS**, the offering or sales activity relating to the Franchise Agreement occurred in the State of Maryland, and the Fitness Together Studio will be located in the State of Maryland, and/or you are domiciled in the State of Maryland.

**NOW THEREFORE**, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. We require you to sign a general release of claims as a condition of the relocation, renewal and/or assignment/transfer of the franchise. Pursuant to COMAR 02. 02. 08. 16L, the release will not apply to any claims that arise under the Maryland Franchise Registration and Disclosure Law.

3. The Franchise Agreement requires you to agree to a period of limitations less than 3 years. The period of limitations less than 3 years shall not apply to any claims arising under the Maryland Franchise Registration and Disclosure Law.

4. The Franchise Agreement requires prospective franchisees to disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law. Such representations are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

5. Section 10.1(d) of the Franchise Agreement which provides for the termination of your Agreement should you become bankrupt or insolvent may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.)

*(continued on next page)*

6. Section 14.2: Jurisdiction and Venue of the Franchise Agreement shall be amended to allow you to file a civil lawsuit in Maryland alleging a violation of the Maryland Franchise Registration and Disclosure Law.

Miscellaneous. This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

Counterpart Execution and Delivery by Facsimile. This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be affected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

**IN WITNESS THEREOF**, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

**FRANCHISOR:**

**FRANCHISEE:**

**FITNESS TOGETHER FRANCHISE, LLC**

\_\_\_\_\_  
(Name of Individual or Entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_  
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT  
FOR MINNESOTA**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR MINNESOTA** (“this Addendum”) is entered into by and between **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company with its principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we,” “us” or “our”) and \_\_\_\_\_ (“you” or “your”), whose principal business address is \_\_\_\_\_.

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, (the “Effective Date”) and wish to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum to comply with certain provisions required by the State of Minnesota; and

**WHEREAS**, the offering or sales activity relating to the Franchise Agreement occurred in the State of Minnesota, and/or the Fitness Together Studio will be located in the State of Minnesota.

**NOW THEREFORE**, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. Section 6 of the Franchise Agreement: Use of the Marks is amended to add the following paragraph:

Under Minnesota Statute Section 80C.12, Subd. 1(g) – we must protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name. We do not indemnify against the consequences of your use of our Marks except in accordance with the requirements of the Franchise Agreement and the Operations Manual and, as a condition to indemnification, you must notify us in writing within 10 days, or within such shorter period as is necessary to avoid prejudice, after learning of any claim, and immediately tender the defense of the claim to us. If we accept the tender of defense, we have the right to control any litigation or proceeding resulting from any such claim including the right to compromise, settle or otherwise resolve the claim, or whether to appeal a final determination of the claim.

3. Section 14.6 of the Franchise Agreement: Limitation of Claims is amended to add the following sentence:

Minnesota law provides that no action may be commenced under Minnesota Statute Section 80C.17 more than 3 years after the cause of action accrues.

4. Section 14.8 of the Franchise Agreement: Injunctive Relief is amended by deleting the last sentence of such section and replacing it with the following:

You agree that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing, and you hereby expressly waive any claim for damages caused by such injunction. A court will determine if a bond is required.

5. With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C. 14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non- renewal of the Franchise Agreement.

6. Minn. Rule Part 2860.4400J prohibits you from waiving your rights to a jury trial or waiving your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or consenting to liquidated damages, termination penalties or judgment notes.

7. The Franchise Agreement requires you to sign a general release of claims as a condition of the relocation, renewal and/or assignment or transfer of the franchise. Pursuant to Minn. Rule 2860.4400D, the general release of claims will not apply to any liability under Minnesota Law.

**Miscellaneous.** This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

**Counterpart Execution and Delivery by Facsimile.** This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be effected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

**IN WITNESS THEREOF**, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

**FRANCHISOR:**

**FRANCHISEE:**

**FITNESS TOGETHER FRANCHISE, LLC**

\_\_\_\_\_  
(Name of Individual or Entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_  
(Title of Signor, if applicable)

**RIDER TO THE  
FRANCHISE AGREEMENT  
FOR USE IN NORTH DAKOTA**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR NORTH DAKOTA** (“this Addendum”) is entered into by and between **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company with its principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, CO 80112 (“we,” “us” or “our”) and \_\_\_\_\_ (“you” or “your”), whose principal business address is \_\_\_\_\_.

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, (the “Effective Date”) and desire to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum.

**WHEREAS**, this Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because (a) you are a resident of North Dakota and the Fitness Together Studio that you will operate under the Franchise Agreement will be located or operated in North Dakota; and/or (b) any of the offering or sales activity relating to the Franchise Agreement occurred in North Dakota.

**NOW THEREFORE**, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. **RELEASES**. The following is added to the end of Section 2.4 (“Relocation of Your Studio”), Section 3.2 (“Renewal”), Section 11.1 (“Transfers”) of the Franchise Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

2. **LIQUIDATED DAMAGES**. The following language is added to the end of Section 10.7 of the Franchise Agreement:

We and you acknowledge that certain parts of this provision might not be enforceable under the North Dakota Franchise Investment Law. However, we and you agree to enforce the provision to the extent the law allows.

3. **RESTRICTIVE COVENANTS**. The following is added to the end of Section 12.2 (“Post-Termination Covenant Not to Compete”) of the Franchise Agreement:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows.

4. **GOVERNING LAW**. Section 14.1 of the Franchise Agreement is deleted and replaced with the following:

ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.),

OR OTHER UNITED STATES FEDERAL LAW, AND EXCEPT AS OTHERWISE REQUIRED BY NORTH DAKOTA LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED (CURRENTLY, COLORADO) WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES; EXCEPT THAT (1) ANY LAW REGULATING THE OFFER OR SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS SECTION, AND (2) THE ENFORCEABILITY OF THOSE PROVISIONS OF THIS AGREEMENT WHICH RELATE TO RESTRICTIONS ON YOU AND YOUR OWNERS' COMPETITIVE ACTIVITIES WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH YOUR BUSINESS IS LOCATED.

5. **CONSENT TO JURISDICTION**. The following is added to the end of Section 14.2 of the Franchise Agreement:

NOTWITHSTANDING THE FOREGOING, TO THE EXTENT REQUIRED BY THE NORTH DAKOTA FRANCHISE INVESTMENT LAW, AND SUBJECT TO YOUR ARBITRATION OBLIGATIONS, YOU MAY BRING AN ACTION IN NORTH DAKOTA FOR CLAIMS ARISING UNDER THE NORTH DAKOTA FRANCHISE INVESTMENT LAW.

6. **WAIVER OF PUNITIVE DAMAGES AND JURY TRIAL**. If and then only to the extent required by the North Dakota Franchise Investment Law, the first sentence of Section 14.3 of the Franchise Agreement is deleted.

7. **ARBITRATION**. The first paragraph of Section 14.5 of the Franchise Agreement is deleted and replaced with the following:

We and you agree that, except as set forth below, all controversies, disputes, or claims between us or any of our affiliates, and our and their respective shareholders, officers, directors, agents, and employees, on the one hand, and you (and your owners, guarantors, affiliates, and employees), on the other hand, arising out of or related to:

- (a) this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates);
- (b) our relationship with you;
- (c) the scope or validity of this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates) or any provision of any of such agreements (including the validity and scope of the arbitration provision under this Section 14.5, which we and you acknowledge is to be determined by an arbitrator, not a court); or
- (d) any System Standard;

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association (the "AAA"). The arbitration proceedings will be conducted by 1 arbitrator and, except as this Section otherwise provides, according to the AAA's then-current Commercial Arbitration Rules. All

proceedings will be conducted at a suitable location chosen by the arbitrator that is within 50 miles of our then-current principal place of business (currently, Englewood, Colorado); provided however, that to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration shall be held at a site at which we and you mutually agree. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the arbitrator's awards may be entered in any court of competent jurisdiction.

**IN WITNESS THEREOF**, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

**FRANCHISOR:**

**FRANCHISEE:**

**FITNESS TOGETHER FRANCHISE, LLC**

\_\_\_\_\_  
(Name of Individual or Entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_  
(Title of Signor, if applicable)

**ADDENDUM TO FRANCHISE AGREEMENT  
FOR RHODE ISLAND**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR RHODE ISLAND** (“this Addendum”) is entered into by and between **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company with its principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we,” “us” or “our”) and \_\_\_\_\_ (“you” or “your”), whose principal business address is \_\_\_\_\_.

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, (the “Effective Date”) and wish to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum to comply with certain provisions required by the State of Rhode Island; and

**WHEREAS**, you are a resident of Rhode Island and the Fitness Together Studio will be located or operated in Rhode Island, and/or the offering or sales activity relating to the Franchise Agreement occurred in the State of Rhode Island.

**NOW THEREFORE**, we and you agree that the Franchise Agreement is hereby modified, as follows:

1. This Addendum is intended to modify the Franchise Agreement. In the event of any conflict between a provision of the Franchise Agreement and this Addendum, the provision of this Addendum shall control. All terms which are capitalized in this Addendum and not otherwise defined, will have the meanings given to them in the Franchise Agreement. Except as amended by this Addendum, the Franchise Agreement is unmodified and in full force and effect in accordance with its terms.

2. Section 14 of the Franchise Agreement will be amended to add the following paragraph:

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the state laws of another state is void with respect to a claim otherwise enforceable under this Act.”

**Miscellaneous.** This Addendum and the Franchise Agreement as modified by this Addendum constitute the entire agreement of the parties with respect to their subject matter and may be amended only by a written agreement signed by both parties.

**Counterpart Execution and Delivery by Facsimile.** This Addendum may be executed in one or more counterparts, all of which shall, taken together, constitute one and the same agreement. The parties intend that delivery may be effected by facsimile transmission and that a facsimile copy which has been executed by the transmitting party shall constitute an original.

*(Signature Page Follows)*

**IN WITNESS THEREOF**, the parties have executed this Addendum as of the Effective Date of the Franchise Agreement.

**FRANCHISOR:**

**FITNESS TOGETHER FRANCHISE, LLC**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
(Name of Individual or Entity)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(Title of Signor, if applicable)

**THE FOLLOWING PAGES IN THIS EXHIBIT ARE  
STATE-SPECIFIC RIDERS TO THE  
AREA DEVELOPMENT AGREEMENT  
(MULTI-UNIT DEVELOPMENT)**

**RIDER TO THE FITNESS TOGETHER FRANCHISE, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN ILLINOIS**

**THIS RIDER** is made and entered into by and between **Fitness Together Franchise, LLC**, a Delaware limited liability company with our principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we”) and \_\_\_\_\_ a(n) \_\_\_\_\_, having its principal business address at \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, (the “Area Development Agreement”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) any of the offering or sales activity relating to the Area Development Agreement occurred in Illinois and the Studios that you will operate and develop under the Area Development Agreement will be located in Illinois, and/or (b) you are domiciled in Illinois.

2. **ILLINOIS LAW.** The following paragraphs are added to the end of the Area Development Agreement and supersede any conflicting provisions in the Area Development Agreement:

Illinois law governs the agreements between the parties to this franchise.

Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement that designates jurisdiction or venue outside the State of Illinois is void. However, a franchise agreement may provide for arbitration in a venue outside of Illinois.

Section 41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**FITNESS TOGETHER FRANCHISE,  
LLC**, a Delaware limited liability company

**DEVELOPER:**

\_\_\_\_\_  
[Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RIDER TO THE FITNESS TOGETHER FRANCHISE, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN MARYLAND**

**THIS RIDER** is made and entered into by and between **Fitness Together Franchise, LLC**, a Delaware limited liability company with our principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we”) and \_\_\_\_\_ a(n) \_\_\_\_\_, having its principal business address at \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, (the “Area Development Agreement”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) you are domiciled in Maryland, and/or (b) the Studios that you will operate and develop under the Area Development Agreement will be located in Maryland.

2. **TRANSFER BY YOU.** The following is added to the end of Section 6.B(6) (“Transfer By You”) of the Area Development Agreement:

However, any release required as a condition of renewal, sale and/or assignment/transfer will not apply to any claims or liability arising under the Maryland Franchise Registration and Disclosure Law.

3. **EVENTS OF TERMINATION.** The following sentence is added to the end of Section 7.A(4) (“Events of Termination”) of the Area Development Agreement:

This Section 7.A(4) may not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101 et seq.).

4. **CONSENT TO JURISDICTION.** The following is added to the end of Section 9.C (“Consent to Jurisdiction”) of the Area Development Agreement:

You may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

5. **LIMITATION OF CLAIMS.** The following sentence is added to the end of the first paragraph of Section 9.F (“Limitations of Claims”) of the Area Development Agreement:

You must bring any claims arising under the Maryland Franchise Registration and Disclosure law within 3 years after we grant you a franchise.

6. **ACKNOWLEDGMENTS.** The following is added to the end of the Area Development Agreement as new Section 10.J (under Section 10 “Miscellaneous”):

**J. ACKNOWLEDGEMENTS.** All representations requiring you to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability under the Maryland Franchise Registration and Disclosure Law.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**FITNESS TOGETHER, LLC**, a Delaware limited liability company

**DEVELOPER:**

\_\_\_\_\_  
[Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RIDER TO THE FITNESS TOGETHER FRANCHISE, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN MINNESOTA**

**THIS RIDER** is made and entered into by and between **Fitness Together Franchise, LLC**, a Delaware limited liability company with our principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we”) and \_\_\_\_\_ a(n) \_\_\_\_\_, having its principal business address at \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, (the “Area Development Agreement”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) the Studios that you will operate and develop under the Area Development Agreement will be located in Minnesota; and/or (b) any of the offering or sales activity relating to the Area Development Agreement occurred in Minnesota.

2. **TERMINATION OF AGREEMENT.** The following is added to the end of Section 7 of the Area Development Agreement.

However, with respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice of non-renewal of this Agreement.

3. **TRANSFER BY YOU.** The following is added to the end of Section 6.B(6) of the Area Development Agreement:

Any release required as a condition of renewal, sale and/or assignment/transfer will not apply to the extent prohibited by the Minnesota Franchises Law.

4. **GOVERNING LAW.** The following statement is added at the end of Section 9.B of the Area Development Agreement:

Nothing in this Agreement will abrogate or reduce any of your rights under Minnesota Statutes Chapter 80C or your right to any procedure, forum or remedies that the laws of the jurisdiction provide.

5. **CONSENT TO JURISDICTION.** The following language is added to the end of Section 9.C of the Area Development Agreement:

Notwithstanding the foregoing, Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400(J) prohibit us, except in certain specified cases, from requiring litigation to be conducted outside of Minnesota. Nothing in this Agreement will abrogate or reduce any of your rights under Minnesota Statutes Chapter 80C or your rights to any procedure, forum or remedies that the laws of the jurisdiction provide.

6. **WAIVER OF PUNITIVE DAMAGES, JURY TRIAL AND CLASS ACTION.** If and then only to the extent required by the Minnesota franchises law, Section 9.D of the Area Development Agreement is deleted.

7. **INJUNCTIVE RELIEF.** Section 9.E of the Area Development Agreement is deleted and replaced with the following:

Nothing in this Agreement bars either party's right to seek injunctive relief against conduct that threatens to injure or harm the other under customary equity rules, including applicable rules for obtaining restraining orders and preliminary injunctions. You agree that we may seek such injunctive relief. You agree that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing, and you hereby expressly waive any claim for damages caused by such injunction. A court will determine if a bond is required.

8. **LIMITATION OF CLAIMS.** The following is added to the end of the first paragraph of Section 9.F of the Area Development Agreement:

; provided, however, that Minnesota law provides that no action may be commenced under Minn. Stat. Sec. 80C.17 more than 3 years after the cause of action accrues.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**FITNESS TOGETHER FRANCHISE,  
LLC**, a Delaware limited liability company

**DEVELOPER:**

\_\_\_\_\_  
[Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RIDER TO THE FITNESS TOGETHER FRANCHISE, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN NORTH DAKOTA**

**THIS RIDER** is made and entered into by and between **Fitness Together Franchise, LLC**, a Delaware limited liability company with our principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we”) and \_\_\_\_\_ a(n) \_\_\_\_\_, having its principal business address at \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, (the “Area Development Agreement”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) the Fitness Together Studio that you will operate and develop under the Area Development Agreement will be located in North Dakota; and/or (b) any of the offering or sales activity relating to the Area Development Agreement occurred in North Dakota.

2. **RELEASES.** The following is added to the end of Section 6.B(6) (“Transfer By You”), of the Area Development Agreement:

Any release required as a condition of renewal and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.

3. **RESTRICTIVE COVENANTS.** The following is added to the end of Section 7.C(1) (“Non-Competition”) of the Area Development Agreement:

Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows.

4. **ARBITRATION.** The first paragraph of Section 9.A of the Area Development Agreement is deleted and replaced with the following:

We and you agree that, except as set forth below, all controversies, disputes, or claims between us or any of our affiliates, and our and their respective shareholders, officers, directors, agents, and employees, on the one hand, and you (and your owners, guarantors, affiliates, and employees), on the other hand, arising out of or related to:

- (a) this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates);
- (b) our relationship with you;
- (c) the scope or validity of this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates) or any provision of any of such agreements (including the validity and scope of the arbitration provision under this Section 9.A which we and you acknowledge is to be determined by an arbitrator, not a court); or
- (d) any System Standard;

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association. The arbitration proceedings will be conducted by one (1) arbitrator and, except as this Section otherwise provides, according to the then-current Commercial Arbitration Rules of the American Arbitration Association. All proceedings will be conducted at a suitable location chosen by the arbitrator in or within 50 miles of our then-current principal place of business (currently, Englewood, Colorado); provided however, that to the extent otherwise required by the North Dakota Franchise Investment Law (unless such a requirement is preempted by the Federal Arbitration Act), arbitration shall be held at a site at which we and you mutually agree. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the arbitrator's awards may be entered in any court of competent jurisdiction.

5. **GOVERNING LAW.** Section 9.B of the Area Development Agreement is deleted and replaced with the following:

ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER UNITED STATES FEDERAL LAW, AND EXCEPT AS OTHERWISE REQUIRED BY NORTH DAKOTA LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED (CURRENTLY, COLORADO) WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES; EXCEPT THAT (1) ANY LAW REGULATING THE OFFER OR SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS SECTION, AND (2) THE ENFORCEABILITY OF THOSE PROVISIONS OF THIS AGREEMENT WHICH RELATE TO RESTRICTIONS ON YOU AND YOUR OWNERS' COMPETITIVE ACTIVITIES WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH YOUR BUSINESS IS LOCATED.

6. **CONSENT TO JURISDICTION.** The following is added to the end of Section 9.C of the Area Development Agreement:

NOTWITHSTANDING THE FOREGOING, TO THE EXTENT REQUIRED BY THE NORTH DAKOTA FRANCHISE INVESTMENT LAW, AND SUBJECT TO YOUR ARBITRATION OBLIGATIONS, YOU MAY BRING AN ACTION IN NORTH DAKOTA FOR CLAIMS ARISING UNDER THE NORTH DAKOTA FRANCHISE INVESTMENT LAW.

7. **WAIVER OF PUNITIVE DAMAGES AND JURY TRIAL.** If and then only to the extent required by the North Dakota Franchise Investment Law, the first sentence of Section 9.D of the Area Development Agreement is deleted.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**FITNESS TOGETHER FRANCHISE,  
LLC**, a Delaware limited liability company

**DEVELOPER:**

\_\_\_\_\_  
[Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RIDER TO THE FITNESS TOGETHER FRANCHISE, LLC  
AREA DEVELOPMENT AGREEMENT  
FOR USE IN RHODE ISLAND**

**THIS RIDER** is made and entered into by and between **Fitness Together Franchise, LLC**, a Delaware limited liability company with our principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we”) and \_\_\_\_\_ a(n) \_\_\_\_\_, having its principal business address at \_\_\_\_\_ (“you”).

1. **BACKGROUND.** We and you are parties to that certain Area Development Agreement dated \_\_\_\_\_, (the “Area Development Agreement”) that has been signed concurrently with the signing of this Rider. This Rider is annexed to and forms part of the Area Development Agreement. This Rider is being signed because (a) you are domiciled in Rhode Island and the Studios that you will operate and develop under the Area Development Agreement will be located in Rhode Island; and/or (b) any of the offering or sales activity relating to the Area Development Agreement occurred in Rhode Island.

2. **GOVERNING LAW / CONSENT TO JURISDICTION.** The following is added at the end of Sections 9.B and 9.C of the Area Development Agreement:

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “a provision in a [area development agreement] restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this act.” To the extent required by applicable law, Rhode Island law will apply to claims arising under the Rhode Island Franchise Investment Act.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Rider on the dates noted below, to be effective as of the Effective Date of the Area Development Agreement.

**FITNESS TOGETHER FRANCHISE,  
LLC**, a Delaware limited liability company

**DEVELOPER:**

\_\_\_\_\_  
[Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**FRANCHISE AGREEMENT**



~~FRANCHISE AGREEMENT~~

**FITNESS TOGETHER FRANCHISE, LLC**

**FRANCHISE AGREEMENT**



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**FRANCHISEE**

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**EFFECTIVE DATE OF AGREEMENT**

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**TERRITORY**

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**STUDIO NO.**

**FITNESS TOGETHER FRANCHISE, LLC**

---

**FRANCHISE AGREEMENT OWNER**

---

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**STUDIO ADDRESS**

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**FITNESS TOGETHER FRANCHISE, LLC**

Exhibit G Automatic Bank Draft Authorization

Exhibit H Assignment of Contact Identifiers and Online Presences



## PURPOSE

### INTRODUCTION

~~A. We and our affiliates have, with considerable effort, developed methods (and continue to develop and modify) a system and franchise opportunity to establish, operate and promote one-on-one and personal small group physical fitness training studios, a nutrition program and related products and services (“Fitness Together Studios” or “Studios”) under the Marks (as defined below) offering various forms of physical individualized one-on-one and small group personal fitness services training, a nutrition program, and other related services and products. These methods include the (“Studios”).~~

~~B. We and our affiliates use and promote, and license of the “Fitness Together®” trademark, together with other valuable others to use and promote, certain trademarks, service marks, trade names, symbols, emblems, slogans, insignias, designs and logos, existing now or which may exist in the future (together, the “Marks”) for use in establishing, and other commercial symbols in operating and promoting Fitness Together Studios. Studios, which have gained and will continue to gain public acceptance and goodwill, and we may create, use, and license other trademarks, service marks, and commercial symbols to identify the Studios (collectively, the “Marks”).~~

~~A. We grant the right to others to establish and operate Studios C. Studios under the Marks according to our will offer the services and goods we authorize, and use our distinctive business formats, business system, methods, procedures, signs, designs, layouts, standards, specifications, methods, techniques, and operating and other procedures (“System Standards”), which constitute our unique Fitness Together franchise system (the “Franchise System”).~~

~~B. The distinguishing characteristics of the Franchise System include the Marks, the interior layout and design, color scheme, signage and equipment, copyrights, titles, symbols, emblems, slogans, insignia, designs, diagrams, artworks, worksheets, originals, manuals, techniques, rules, ideas, philosophies, illustrations, course materials, the confidential operations manual other manuals, technical bulletins, other written or videotaped materials and other materials and documents related to the operations of your Studio (such manuals, technical bulletins, other written or videotaped materials and other materials and documents related to the operations of your Studio are collectively referred to in this Agreement as, the “Operations Manual”), the System Standards, advertising and promotional materials, the Nutrition Together™ guide, the Fitness Program, other audio, video and written materials, and other aspects of the Franchise System we have developed and designated for use within the Franchise System, or may acquire or develop and designate for use within the Franchise System in the future the Marks, all of which we may enhance and improve, further develop (the “Proprietary Assets”).~~

~~You recognize and acknowledge the benefits to be derived, or otherwise modify from being identified and associated with us, and being able to utilize the Franchise System and concepts and, therefore, desire to establish a Studio at an approved location. We are willing to grant you the right to operate a Studio under the terms and subject to the conditions contained in this Agreement, time to time (collectively, the “Franchise System”).~~

~~C. You have been informed and hereby acknowledge that the successful operation of a Studio will depend primarily upon your efforts, capabilities and management skills as well as your efficient operation of the Studio. We make no claims or representations whatsoever regarding potential sales, profits or earnings achievable by you or your Studio.~~

D. We grant franchises to persons who meet our qualifications and are willing to undertake the investment and effort to own and operate Studios, and you have applied and been approved for a franchise to own and operate a Studio.

1. GRANT OF FRANCHISE.

A. Grant and Term of Franchise.

~~We hereby grant to you, and you accept from us, the right to use the Marks and Proprietary Assets to establish and operate 1 Fitness Together Studio at the Studio Location described in Section 2.2. You agree to use the Marks and Proprietary Assets, and conform to the System Standards, as they are periodically changed, improved and further developed by us and our affiliates, only in accordance with the terms, and subject to the conditions, of this Agreement. You do not have any right to sublicense or sub-franchise your Studio.~~

~~B.A. Corporation, Limited Liability Company, or Partnership~~

~~If you are at any time a corporation, limited liability company, or partnership (each, an “Entity”), you agree and represent that:~~

~~you will have the authority to execute, deliver, and~~Subject to this Agreement’s terms, we grant you a franchise to use the Franchise System and the Marks to operate a Studio (“your Studio”) at the specific address and location identified on Exhibit B (the “Premises”). If the Premises has not been determined as of the Effective Date, the Premises will be selected in accordance with Section 2.A., provided that the Premises is located within the geographical area set forth on Exhibit B.

The term of this Agreement begins on the Effective Date and expires ten (10) years from that date, unless sooner terminated as provided herein.

~~(a) — You agree at all times faithfully, honestly, and diligently to perform your obligations under this Agreement and all related agreements and will, throughout the term of this Agreement, remain validly existing and in good standing under the laws of the state of your formation;~~

~~you represent that the Statement of Ownership set forth as Exhibit 3 to this Agreement is true, complete, accurate, and to use your best efforts to promote your Studio. You may use the Premises only for your Studio. You agree not misleading, and any changes to the information reflected on Exhibit 3 require our prior written consent as described in Section 11; and to conduct the business of your Studio at any site other than the Premises.~~

~~each of your direct and indirect~~You agree and represent that you and such persons as we designate, which may include the spouses of your owners during the (if you are an Entity, as such term of this Agreement is defined below), will execute a guaranty agreement, in the form we prescribe undertaking to guaranty your performance and to set forth in Exhibit E (the “Guaranty”), under which such persons undertake personally to be bound, jointly and severally,

by all provisions of this Agreement and any ancillary agreements between you and us. ~~Our current form of guaranty is attached as Exhibit 4. The spouse of each such owner will also be required to acknowledge and consent to the guaranty.~~

## ~~2. TERRITORY; LOCATION; PROTECTED AREA~~

~~2.1. Territory. The territory identified in Exhibit 1 of this Agreement (the “Corporation, Limited Liability Company, or Partnership).~~

If you are a corporation, limited liability company, or general or limited partnership (collectively, an “Entity”), you agree and represent that:

- a) you are validly existing and in good standing under the laws of the state in which you were formed, and have the authority to execute, deliver, and perform your obligations under this Agreement and all related agreements;
- b) your organizational documents state that this Agreement restricts the issuance and transfer of any of your ownership interests, and all certificates and other documents representing your ownership interests will bear a legend referring to this Agreement’s restrictions;
- c) **Exhibit A** to this Agreement completely and accurately describes all of your owners and their interests in you as of the Effective Date. Subject to our rights and your obligations under Section 12, you and your owners agree to sign and deliver to us a revised **Exhibit A** to reflect any changes in your ownership information;
- d) the owner listed on **Exhibit A** who is a natural person with at least a twenty-five percent (25%) ownership interest and voting power in you, with the authority to take legally binding actions on your behalf, and who we approve, will act as your “**Operating Partner**”. Except as otherwise set forth in Section 12.F., in the event that your Operating Partner ceases to own at least a twenty-five percent (25%) ownership interest and voting interest in you, your Operating Partner resigns or otherwise indicates to us or to you that he or she wishes to cease acting as Operating Partner, or we disapprove of your Operating Partner at any time, you must designate a new Operating Partner we approve within thirty (30) days of the change in ownership or disapproval and deliver to us a revised **Exhibit A** to accurately identify the Operating Partner for our review and approval;
- e) you agree that the Operating Partner is authorized to deal with us on your behalf for all matters whatsoever that may arise with respect to this Agreement. Any decision made by the Operating Partner will be final and binding on you, and we will be entitled to rely solely on the decision of the Operating Partner without discussing the matter with any other party. We will not be held liable for any actions based on any decision or actions of the Operating Partner; and

- f) your Studio will be the only business that such entity operates, unless we approve you to acquire and operate additional Studios pursuant to additional franchise agreements between us and you.

C. Your Protected Area.

Except as provided in this Agreement, and subject to your compliance with this Agreement, neither we nor any affiliate of ours shall establish or authorize any person or entity to establish a Studio using the Marks and the Franchise System within the geographic area assigned to you in Exhibit B upon the determination of your Studio's Premises (the "Protected Area") during the term of this Agreement. The license granted to you under this Agreement is personal in nature, may not be used at any location other than your Studio, does not include the right to sell products or services identified by the Marks at any location other than at your Studio, and does not include the right to sell products or services identified by the Marks through any other channels of distribution, including the Internet (or any other existing or future form of electronic commerce). You will not have the right to subfranchise or sublicense any of your rights under this Agreement.

D. Territorial Rights We Reserve.

You acknowledge and agree that the franchise granted under this Agreement is non-exclusive. Other than your Protected Area, you have no territorial protection and we (and our affiliates) retain all rights with respect to the placement of Studios and other businesses using the Marks, the sale of similar or dissimilar products and services, and any other activities, without compensation to you. These rights include:

- a) the right to establish and operate, and allow others to establish and operate, other Studios and other businesses using the Marks or the Franchise System, at any location outside the Protected Area, and on any terms and conditions we approve;
- b) the right to establish and operate, and allow others to establish and operate, additional concepts or businesses providing products or services similar to those provided at Studios anywhere in the world, including within your Protected Area, under any trade names, trademarks, service marks and commercial symbols other than the Marks;
- c) the right to establish, and allow others to establish, other distribution channels (including, the internet or retail stores) wherever located or operating, including within your Protected Area, regardless of the nature or location of the clients, and regardless of the trade names, trademarks, service marks or commercial symbols used by such business, which may include the Marks and/or any other trade names, trademarks, service marks or commercial symbols that are the same as or different from Studios, and which may sell products and/or services that are identical or similar to, and/or competitive with, those that Studios customarily sell under any terms and conditions we approve;

- d) offer and sell (and grant others to offer and sell) goods and services to clients located anywhere, including in your Protected Area;
- e) the right to establish and operate, and allow others to establish and operate, other Studios and other businesses using the Marks or the Franchise System, at Captive Market Locations. “Captive Market Locations” are airports or other transportation terminals, sports facilities, parks and recreation areas, medical campuses, college and university campuses, corporate campuses, a department within an existing retail store, hotels, or other similar types of locations that have a restricted trade area located within the geographic boundaries of the Protected Area.
- f) the right to acquire, to merge, or be acquired by (whether through acquisition of assets, ownership interests or otherwise, regardless of the form of transaction) a business providing products and services similar to those provided at Studios, even if such business operates, franchises and/or licenses Competitive Businesses (as defined in Section 7.A.); and
- g) engage in all other activities not expressly prohibited by this Agreement.

## 2. DEVELOPMENT AND OPENING OF THE STUDIO

### A. Site Selection.

The territory identified in Exhibit B of this Agreement (the “Search Territory”) is the area in which you will focus your efforts to find an acceptable location for your Studio. -We are identifying the Search Territory for the sole purpose of facilitating the orderly development of the market, and not for purposes of granting you any exclusivity or protection within the Search Territory. You acknowledge and agree that the Search Territory description set forth on Exhibit 1 B is subject to change upon mutual written agreement by you and us. -Any change in the Territory shall be made in the form of an amendment to this Agreement, which must be signed by you and us prior to you beginning the site selection process within the amended Territory.

### ~~C.A. Site Selection.~~

~~Unless we otherwise agree in writing, you will operate your Studio from a specific site or location within the Territory which we have approved (the “Studio Location”). You acknowledge and agree that our approval of the site for your Studio does not constitute a guarantee, recommendation, or endorsement of the Studio Location and that the success of your Studio depends upon your abilities as an independent businessperson. Our approval simply means that the Studio Location meets our current location criteria, which means it meets our requirements with respect to demographics, neighborhood characteristics, size, appearance, convenience, proximity to other businesses, and other characteristics we deem appropriate. During the term of this Agreement, you shall use the Studio Location exclusively to operate a Studio.~~

~~We, or at our option, a third party we designate, may provide real estate services to assist you in obtaining a site for your Studio. However, it is your sole responsibility to locate a suitable site for your Studio. Upon executing this Agreement, you must begin searching for a site for your Studio,~~

~~making diligent efforts to work with us (or a third party we may designate) to review site information, view locations and review letters of intent, so that you can locate a site and sign a lease in a timely manner. Although there is no deadline by which you are required to select a site, you must open your Studio by the commencement of operations deadline set forth in Section 7.3(b).~~

~~2.2. — **Protected Area.** During the term of this Agreement, if you are not in default under this Agreement, we and our affiliates will not establish or operate, or sell to or grant a license for any other person to establish or operate another Fitness Together Studio within a one-mile radius of your Studio Location (the “**Protected Area**”). This Agreement does not provide you with any options, rights of first refusal, or similar rights, to acquire additional Studios.~~

We must approve the Premises. If the location for the Premises is not specified on Exhibit B as of the Effective Date, then you will submit to us a complete report for a site you propose for your Studio, which must be located within the Search Territory. Unless you have our prior written approval to search for a proposed site outside of your Search Territory, all site reports that you submit to us must be for a site within your Search Territory. Your report must contain the documents and information we require, including a description of the proposed site, and a letter of intent or other evidence confirming your favorable prospects for obtaining the proposed site. We may also require that you hire a commercial real estate broker that we designate, which may be one of our affiliates, to assist you with the site-selection process.

We have the right to accept or not accept all proposed sites, including sites selected using the services of any of our designees. We will use reasonable efforts to accept or not accept the proposed site within thirty (30) days after receiving your report. After we approve a site, and after you secure the site, we will insert the address on the cover page of this Agreement and into Exhibit B and it will be the Premises.

You acknowledge and agree that your acceptance of a site is based on your own independent investigation of the site’s suitability for your Studio. Neither the information we give you regarding a site for the Premises (including any recommendations) nor the assistance we or our representatives provide you in selecting the site, constitutes a representation or warranty of any kind, express or implied, of the site’s suitability for your Studio or any other purpose. Our recommendations and assistance indicate only that we believe that the site and location meet our then-acceptable criteria.

## **B. Lease of Site.**

You must obtain our written approval of your Studio’s proposed site before signing any lease, sublease, or other document for the Premises (the “**Lease**”). We also must approve the terms of the Lease before you sign it. The Lease must contain certain provisions we require, including a collateral assignment of the lease, pursuant to the form of lease rider attached as Exhibit F (“**Lease Rider**”). It is your sole responsibility to obtain a fully executed Lease Rider in connection with executing your Lease. Our approval of your Lease is subject to our receipt of the Lease Rider in the form attached as Exhibit F, without modification or negotiation, executed by you and the landlord. If you or the landlord request that we consider any modifications to the Lease Rider, and we elect to do so, we may also require you to reimburse us all expenses that we incur (including

attorneys' fees) in connection with such review. We may also reject any request for modifications to the Lease Rider for any reason.

Our approval of the Lease does not constitute a guarantee or warranty, express or implied, of the success or profitability of your Studio operated at the Premises. Our approval and assistance indicate only that we believe that the Lease's terms meet our then-acceptable criteria. You must obtain our written approval of your Studio's proposed site for the Premises and sign the Lease within one hundred eighty (180) days of the Effective Date. You must deliver to us a signed copy of the Lease within ten (10) days after its execution.

#### D.C. Relocation of Your Studio.

~~–You must obtain our prior written approval in order to~~ You may not relocate your Studio, ~~which approval will not be unreasonably withheld.~~ to a location other than the Premises without our prior written approval. Our decision on whether to approve or deny a relocation request will be based on our then-current standards for approving relocations requests, which may include a variety of factors including, ~~but not limited to,~~ the viability of the ~~Studio Location~~ proposed location and the availability of alternative locations. ~~–We will endeavor to provide a written response to any relocation request within thirty (30) days of receiving your written request. –If approved, we allow you must pay all costs of relocating to relocate your Studio and sign a, the relocation addendum which will include our form of general release, be subject to the site selection and lease provisions set forth above and which will include a non-disparagement clause. –If you cease operating occur at your Studio for more than 30 days before relocation, we may require you to terminate this Agreement and sign our then current franchise agreement for the new location; however, you will not be required to pay a new Initial Franchise Fees~~ sole expense.

### ~~3. TERM; RENEWAL~~

~~3.1. Initial Term. The initial term~~ Development and Construction of this ~~Your Studio.~~

You are responsible for developing the Premises. If you need to secure financing to complete your development obligations, you agree to do so independently and at your own expense.

No later than ten (10) days after the date that you sign an approved Lease for the Premises, you must pay to us a non-refundable site survey fee equal to \$2,500, in the form of a lump sum payment by ACH (the “Site Survey Fee”). You acknowledge and agree that any site surveys and preliminary floor plans generated by us or our approved architects and/or contractors in connection with the Site Survey Fee is not intended to imply or guarantee the success or profitability of your Studio.

We will give you (or if we have designated an approved supplier to develop design specifications for your Studio, we will give that approved supplier) mandatory and suggested specifications for the Premises, including requirements for dimensions, design, image, interior layout, decor, fixtures, equipment, signs, furnishings, and color scheme. You agree to develop,

construct, and decorate the Premises at your own expense according to plans and specifications approved by us and in accordance with the requirements of the Lease and applicable law.

We reserve the right to require you to use one of our approved architects and/or contractors. You must hire a service provider that we designate to assist you with the construction-management process. If we approve an exception to the requirement that you use our designated service provider for construction-management services, you must pay us a construction management fee of \$5,000. You must send us your development and construction plans and specifications for review for compliance with our design requirements and obtain our approval before you begin construction. You must send us any revisions of plans or specifications before such revisions are implemented.

If you wish to refurbish or remodel the Premises during the term of the Agreement ~~is for a period of 10 years,~~ you must obtain our approval for your proposed plans and specifications.

It is your responsibility to ensure all required construction plans and specifications comply with the Americans with Disabilities Act (“ADA”) and all other applicable ordinances, building codes, permit requirements, and Lease requirements and restrictions, and that the Premises complies with such laws and regulations.

#### E. Operating Assets.

Before you open your Studio, you agree to obtain and install the fixtures, furniture, equipment, components of the Computer System (as defined in Section 2.F.), and signs that we approve for Studios as meeting our specifications and standards for quality, design, appearance, function, and performance (collectively, “**Operating Assets**”). You agree to purchase or lease the brands, types, and models of Operating Assets that we designate or approve. You agree to purchase or lease the Operating Assets only from suppliers we designate or approve (which may include or be limited to us and/or our affiliates).

#### F. Computer System.

You agree to obtain and use the computer hardware, sales and scheduling software, point-of-sale system, other operating software, applications, platforms and existing or future technology components we specify from time to time (the “**Computer System**”). We may replace or modify all or components of the Computer System from time to time and you agree to implement our replacements or modifications after you receive notice from us at your expense. We might periodically require you to purchase, lease, and/or license new or modified components of the Computer System and to obtain service and support for the Computer System.

You must obtain and install the Computer System, and ensure that the Computer System is functioning properly, before your Studio opens.

You must pay for any proprietary software, applications or other technology that we, our affiliates or third-party designees license to you and for other maintenance and support services that we, our affiliates or third-party designees provide during this Agreement’s term. We or our affiliates may condition your license or use of any proprietary software, applications or other technology that we or our affiliates designate, develop or maintain, on your signing a license

agreement or similar document that we or our affiliates approve to regulate your use of, and our and your respective rights and responsibilities with respect to, such software, applications or other technology.

The Computer System must give us and our affiliates access to all information generated by the Computer System, including pricing and client information for your Studio. At our request, you agree to sign a release with any vendor of your Computer System providing us with unlimited access to your data.

You are solely responsible for acquiring, operating, maintaining and upgrading: (1) the Computer System; (2) the connectivity of your Computer System (including the point-of-sale system); and (3) third-party interfaces between the Computer System and our and any third party's computer system. You are solely responsible for any and all consequences if the Computer System is not properly operated, maintained, and upgraded. You also are solely responsible for protecting yourself from disruptions, Internet access failures, Internet content failures, and attacks by hackers and other unauthorized intruders and you waive any and all claims you may have against us as the direct or indirect result of such disruptions, failures or attacks.

#### G. Telephone Numbers and Social Media Accounts.

You agree that each telephone or facsimile number, directory listing, social media presence and any other type of contact information used by or that identifies or is associated with your Studio (any "Contact Identifiers") will be used solely to identify your Studio in accordance with this Agreement. You are required to execute the form of Assignment of Contact Identifiers and Online Presences attached as Exhibit H to grant us with full power and control over the Contact Identifiers and Online Presences upon termination or expiration of this Agreement.

#### H. Studio Opening.

You may not open your Studio until you have received our written approval and the following has occurred:

- a) we notify you in writing that your Studio meets our standards and specifications (although our acceptance is not a representation or warranty, express or implied, that your Studio complies with applicable laws, ordinances, rules, regulations, or other requirements);
- b) You (or your Operating Partner) and any manager or assistant manager we require, satisfactorily complete the Training Program (defined in Section 4.A.);
- c) you pay the Initial Franchise Fee and all other amounts then due to us;
- d) you give us certificates for all required insurance policies (as described in Section 8.J.);
- e) you obtain all required supplies and opening inventory for your Studio;

- f) you obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services;
- g) you hire a minimum of two (2) personal fitness trainers, subject in all instances to the licensure and background check requirements set forth in Section 8.I., in anticipation of your Studio's opening;
- h) you submit a completed trade area survey and a proposed advertising and marketing plan for approval (as described in Section 9.B.); and
- i) you meet all regulatory requirements, including all state and local professional regulations.

Subject to your compliance with these conditions, you agree that you must open your Studio for full use by clients by the first anniversary of the Effective Date, unless sooner terminated pursuant to the terms of this Agreement. The date that your Studio first opens for business for full use by clients shall be referred to herein as the "Opening Date." Starting on the Opening Date, you must operate your Studio continuously for the remainder of the term of this Agreement during the minimum business hours we require.

3.2. — ~~Renewal. At the end of the initial term you may, at your option, renew this Agreement for one, additional successive 10-year term (a "Renewal Term"), provided that:~~

- ~~(a) — you provide us written notice of your election to renew at least 180 days (but not more than 1 year) prior to the end of the term of this Agreement;~~

3. at the time you provide the written notice of renewal, you are not in default or under notice of default of any provisions of this Agreement or of any other agreement between us, including any other FEES.

A. Initial Franchise Fee.

- ~~(b) — You agree to pay us a nonrecurring initial franchise agreement, master franchise agreement and/or area director agreement, and you have been in substantial compliance with the terms and conditions of all such agreements (including this Agreement) during the term of this Agreement;~~

- ~~(c) — all monetary obligations you owe us (under this Agreement or any other agreements between us, including any other franchise agreement, master franchise agreement and/or area director agreement) have been satisfied and paid when due throughout the term of this Agreement;~~

- ~~(d) — you sign and agree to be bound by our then-current form of franchise agreement, which may contain terms and conditions materially different from those set forth in~~

this Agreement, including terms changing the Protected Area, the Royalty (defined in Section 4.2) and other fee amounts; provided you will not be required to pay a new Initial Franchise Fee (although you will have to pay us the renewal fee set forth below);

- (e) ~~you, your owners, and any guarantors under this Agreement, sign a general release in a form satisfactory to us, which will include a non-disparagement clause, releasing any and all claims against us, our affiliates, and our and their respective shareholders, members, owners, principals officers, directors, employees, representatives, agents, successors and assigns, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims under this Agreement and the business relationship between us;~~
- (f) ~~you (or, if you are an Entity, one of your owners) and, if not the same person as you (or the designated owner), your manager (or the individual having responsibility for the day to day operations of your Studio) must attend and satisfactorily complete such refresher training as we may require, at such time and place prior to expiration of the term of this Agreement as we may designate;~~
- (g) ~~you pay us a renewal fee equal to \$10,000; and~~
- (h) ~~if we deem it necessary, you must upgrade, remodel and refurbish, at your sole expense, the inside and outside of your Studio to conform to our then current standards. The upgrade may include, but is not limited to, new signs and equipment. All such upgrades, remodels and refurbishments must be performed in accordance with our System Standards and other standards and specifications we may designate.~~

If: (1) you fail to provide us with the notice fee in the amount of \$39,900, unless otherwise specified in subsection 3.2(a) above by the deadline required thereunder; (2) such notice states that you elect not to renew this Agreement; or (3) if you are not entitled to the grant of a Renewal Term because you have failed to satisfy each of the conditions set forth above, then you must: (i) immediately cease selling Gift Cards (as defined in Section 8.6) that expire after this Agreement expires and (ii) at least 30 days prior to the scheduled expiration of this Agreement, cease selling Memberships (as defined in Section 7.5).

## ~~4. FEES; PAYMENTS~~

4.1. ~~Initial Franchise Fee. You must pay to us, in the form of a lump sum payment, by wire transfer, the amount of \$39,900 as a non-refundable initial franchise fee (the “Exhibit B (the “Initial Franchise Fee”)-”) when you sign this Agreement. The Initial Franchise Fee must be paid at the time you sign this Agreement. The Initial Franchise Fee is as a lump sum by wire transfer and is fully earned by us when paid by you upon execution of this Agreement and is ~~not non-refundable under any circumstances.~~~~

E.B. Royalty— Fee.

~~On the fifth (5th) day of the first full calendar month after opening your Studio and on the 5th day of each month after that date during the term of this Agreement, you must pay to us a continuing royalty of 6% of your gross receipts (as defined below) You agree to pay us a monthly royalty fee (the “Royalty”.) equal to six percent (6%) of your Studio’s Gross Receipts during the preceding month. We reserve the right, but not the obligation upon notice to you, to collect the Royalty on a weekly, rather than monthly, basis upon notification to you.~~

~~If we are unable to obtain your gross receipts directly from our approved computer system used by you to record receipts, we may debit your account for an estimated . The Royalty equal to 110% of the average of your previous 3 months of gross receipts for your Studio (“Estimated Royalty”). If the Estimated Royalty we debit from your account is less than the amount you actually owe us (once we have determined your Studio’s true and correct gross receipts), we will debit your account for the balance on the day we specify. If the Estimated Royalty we debit from your account is greater than the amount you actually owe us, we will credit the excess against the amounts we otherwise would debit from your account during the following period.~~

~~Despite any designation you make, we may apply any of your payments to any of your past be due indebtedness to us.~~

~~4.2. Electronic Funds Transfer. You authorize us and our affiliates, as set forth in Exhibit 2 of this Agreement, to automatically withdraw funds from your bank account (sometimes referred to as ACH or auto-debit) to pay the Royalty based on your gross receipts from the previous month, as reported by you or obtained by us from our approved computer system used by you to record receipts, and to pay any other amounts you owe us or our affiliates under this Agreement or otherwise (the “ACH Authorization”). The ACH Authorization shall remain in full force and effect during the term of this Agreement. You must comply with our and our affiliates’ procedures and instructions in connection with the auto-debit process, and sign any document or take any action that may be required to effect this authorization. on the dates we determine from time to time. If the date on which a ~~You agree to ensure that funds are available in your designated account to cover our withdrawals.~~ Some banks charge fees for ACH transactions and, to the extent your bank charges ACH fees, you agree to pay those fees. In the event any Royalty payment is not paid on a timely basis, we will also have the right to ACH from your bank account such late fees, default fees or other fees that may would otherwise be assessed in connection with your non-timely due is not a business day, then payment, or such other fees or payments as we may periodically designate.~~

~~All amounts due under this Agreement or otherwise shall be payable by ACH; however, we reserve the right to require payment by means other than ACH (e.g., by check or credit card) whenever we deem appropriate, and you must comply with our payment instructions. If you fail to comply with our payment instructions, we reserve the right to exclude you from participating in~~

certain programs. Your failure to comply with our payment instructions will also be considered a default under this Agreement due on the next business day.

4.3. ~~Definition~~ For purposes of Gross Receipts, this Agreement, “Gross receipts Receipts” include: ~~(a) all of your revenue and receipts, including those taken by cash, credit card, debit card, check, trade, barter or exchange, electronic funds transfer, or any ACH, trade, barter or exchange. Gross Receipts also include: (a) any other means of credit which are revenue~~ derived from the operations of your Studio, including, ~~but not limited to, the sale of Memberships (as defined in Section 7.5), fitness services, Gift Cards (as defined in Section 8.6) which are not sold under any of our national Gift Card programs, L.), merchandise, or any products, or any other products or services which that~~ are sold by you, whether sold at ~~your Studio location~~ the Premises or from an off-site ~~location, excluding~~ Premises location; ~~(b) all revenue from the sale or redemption of Gift Cards (as defined in Section 8.N.), in accordance with our then-current System Standards; and (c) the gross amount of any business interruption or similar insurance payments. Gross Receipts exclude: (i) sales, use or privilege taxes paid to the appropriate taxing authority; and (ii) refunds that are made to clients; and (b) the gross redemption amount of Gift Cards which are sold under any of our national Gift Card programs. In addition, should your business be interrupted for any reason and you are receiving business interruption insurance payments, the gross amount of these payments will be considered to be gross receipts and will be subject to the Royalty provided to clients; and (iii) tips received from clients for payment to your employees.~~

4.4. ~~Product And Supply Orders.~~ You are required to purchase certain equipment, products, materials and/or services from our Approved Suppliers (defined below), which could be us or one of our affiliates, at the prices listed in the Operations Manual, on our website, or in such other place as we may designate.

4.5. ~~Default Fee.~~ If you are in default of this Agreement and we send you a default notice, you must pay us a fee of \$250.

Set Up Fees; You shall not charge clients any additional fees or service charges not authorized by us, including convenience fees, gift card conversion fees, credit card fees, service fees, or other surcharges.

#### F.C. Technology Fee; & Set-Up Fees.

~~You must use computer hardware and software we designate in the operation of your Studio. Prior to opening your Studio, you will be required to pay us a set up fee of \$499 payable by ACH for the set up of certain required software. You must also pay us a monthly technology fee, which is currently \$405, payable by ACH on the first day of each calendar month, beginning 2 months prior to your Studio opening. We may periodically change the amounts of the set up fees and monthly technology fee, and/or the hardware and software requirements, and we may require you to purchase new or additional hardware and software. You may be required to execute a software license or other agreement in connection with your use of the required computer software. Other than providing the hardware and software specifications and Approved Suppliers from which you can purchase the required computer hardware and software, we are not obligated to provide you~~

~~with any assistance in obtaining the required computer hardware and software or any support in connection with your use of the required hardware and software.~~

~~Dishonored Checks/Insufficient Funds – We require you to pay a fee to us, or a service provider we designate (which may be one of our affiliates), for technology-related services, including website or email hosting, help desk support, software or website development, enterprise solutions and other services associated with your Computer System and/or any Franchise System Website (as defined in Section 9.F.) (a “**Technology Fee**”). The Technology Fee is currently \$330 per month, payable by ACH (as defined in Section 3.G.) on the first day of each calendar month, beginning two (2) months prior to your Studio’s opening. We may modify the amount of your Technology Fee periodically. You must pay the Technology Fee at the times, and in the manner, designated by the provider of such services. We may require you to enter into a written agreement with the provider of any technology services, with terms and conditions we approve. If we travel to your Studio to provide any technological support and/or installation services, you must also reimburse us for the costs we incur for such site visit, including travel, food and lodging. Prior to opening your Studio, you will be required to pay us a software set-up fee of \$499, which shall be payable by ACH.~~

~~**G.D.**~~ Interest on Late Payments.

~~–If you write us a check that is returned, cancelled or dishonored, or if we ACH your bank account and your account has insufficient funds or is inaccessible, you must pay us an insufficient funds fee of \$150. In addition, all~~All amounts that you owe us for any reason will bear interest accruing as of their original due date at one-and-one-half percent (1.5%) per month or the highest commercial contract interest rate the law allows, whichever is less. We may debit your bank account automatically for ~~service~~transaction charges and interest. You acknowledge that this Section ~~4.83.D~~ is not our agreement to accept any payments after they are due or our commitment to extend credit to you or otherwise finance the operation of your Studio.

~~4.6. Changes to Fees and Requirements. We may revise our System Standards and Operations Manual to implement new or different operating requirements and fees; provided, however, no such revision will increase your Royalty, contributions to the Marketing Fund, or Local Marketing Spend Requirement to an amount greater than the amount as provided herein. You agree to comply with any new or changed requirements and fees.~~

~~4.7. Set Offs. You have no right to set off any amounts you owe us against amounts we owe you, and you hereby expressly waive any such right. You agree you will not withhold payment of any fee or other amount you owe us (whether under this Agreement or any other agreements between us, including any other franchise agreement, master franchise agreement and/or area director agreement) because of alleged nonperformance of our obligations under this Agreement or otherwise. Absent a court order to the contrary, if you withhold any amounts owed to us and we pursue collection of such amounts, you must pay all of our reasonable costs, including court costs, attorneys’ fees, the value of our employees’ time, witness fees and travel expenses in connection with our collection efforts.~~

~~4.8. Marketing Fees. You agree to pay the Grand Opening Spend Fee (as defined in Section 8.2), make contributions to the Marketing Fund (as defined in Section 8.3(a)), and pay us~~

the Local Advertising Fee (as defined in Section 8.5), each in the amounts specified in such sections.

## ~~5. OUR RELATIONSHIP; OUR OBLIGATIONS TO YOU~~

~~5.1. Our Relationship with You. We and you agree that each of us is an independent businessperson, our only relationship is by virtue of this Agreement, and no fiduciary relationship is created under this Agreement. No agency, employment or partnership is created or implied by the terms of this Agreement. In all public records, in your relationship with other persons, and in any disclosure document, prospectus or similar document, you must indicate clearly that you independently own your Studio and that the operations of your Studio are separate and distinct from the operations of our business. In addition, you shall prominently display in your Studio notice that the business is operated by you as a franchisee and not as an agent of ours. You shall place such notice of independent ownership on all forms, business cards, stationery, advertising, signs, and other materials.~~

~~We and you may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in the name or on behalf of the other or represent that our respective relationship is other than franchisor and franchise owner. We will have no right or duty to direct your employees in the course of their employment for you. You are solely responsible for the terms and conditions of employment of your employees. We will not be obligated for any damages to any person or property directly or indirectly arising out of your Studio's operation or the business you conduct under this Agreement.~~

~~We will have no liability for any sales, use, service, occupation, excise, gross revenue, income, property, or other taxes, whether levied upon you or your Studio, due to the business you conduct (except for our income taxes). You are responsible for paying these taxes and must reimburse us for any taxes that we must pay to any state taxing authority on account of either your operation or payments that you make to us.~~

~~5.2. Training. We or our designee will provide initial training ("**Initial Training**") to you (or your owners) and your managers who have responsibility for the day-to-day operations of your Studio. You acknowledge that Initial Training is intended solely to assist you in establishing and operating the Studio in accordance with the System Standards and is not intended to be general training for your employees, which is your sole responsibility in accordance with Section 7.1. You (or, if you are an Entity, one of your owners) and, if not the same person as you (or the designated owner), your manager (or the individual having responsibility for the day-to-day operations of your Studio) must complete Initial Training to our satisfaction before your Studio opens, but not later than four (4) weeks before the scheduled opening. If, after your Studio has commenced operation, your manager (or employee having responsibility for the day-to-day operations of your Studio) is terminated, resigns, or is otherwise no longer employed at your Studio, you must appoint a replacement manager (or employee having responsibility for the day-to-day operations of your Studio) and he or she must also attend and complete the Initial Training to our satisfaction within 90 days following such termination, resignation, or other departure. We have the discretion to determine whether or not any individual has successfully completed Initial Training.~~

~~You must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training.~~

~~We or our designee will provide, at no additional cost to you, 1 to 5 days of on-site assistance and support in connection with the opening and initial operations of your Studio. We have discretion to determine the individuals who will provide this on-site support. If, upon the arrival of the support team at your Studio, we determine in our discretion that you are not ready to open your Studio, or if we determine in our discretion that you require or would benefit from additional on-site opening support, you will be responsible for the reasonable travel and living expenses incurred by our support team in providing the postponed or additional assistance.~~

~~5.3. Additional Training and Conferences. You are required to pay all travel, accommodations, meals and other expenses, for each individual you may designate for any refresher training we make (or that we authorize a third party to make) available to our franchisees or for any optional training programs we may conduct from time to time. You must attend any annual conferences or seminars that we may require at a location we designate. You agree to pay all costs to attend.~~

~~5.4. Supplies and Source of Supplies. We may designate specific products that you must purchase, and require that you purchase products and services from suppliers and vendors we approve. We will provide you with the System Standards in the Operations Manual we make available to you. We can modify, amend and change our System Standards, Operations Manual, and other standards and specifications at any time and you agree to abide by any such modified, amended or changed provisions.~~

~~To the extent we have approved certain manufacturers, vendors, distributors, suppliers and producers, which may be us or our affiliates (collectively, “**Approved Suppliers**”), you are required to purchase from the Approved Suppliers. We reserve the right to require you to participate in certain mandatory service programs. You must purchase all goods and services required for the operation of your Studio from the Approved Suppliers (which may be 1 supplier for any given product or service) under terms, in the manner, and from the source designated by us or any of our affiliates. If you wish to purchase any product or service from a supplier that is not an Approved Supplier, you must first submit to us a written request to do so. We do not charge you a fee for evaluating the supplies or supplier you request. We will typically provide a response to the written request within 30 days from our receipt of the request. We may require that samples of the product produced by the proposed alternative supplier be delivered to us for review and testing. We may withhold approval of a supplier for any reason. We will not approve a new supplier or continue to approve any supplier unless the supplier has agreed that we have a right to inspect the supplier’s premises and products. If any inspection discloses a supplier’s failure to maintain our specified criteria for products or services, we may revoke our approval in writing. We do not make available to our franchisees our criteria for approving suppliers. If an exclusive supplier already has been designated for the equipment, products, services, supplies, or materials proposed to be offered by a new vendor, your request for a new vendor likely will be rejected without further review or investigation. Unless we have designated you or your owners as an Approved Supplier of a particular product or service, during the term of this Agreement, you and your owners will not sell or attempt to sell, directly or indirectly, any products or services to other franchisees of the Franchise System. **ALTHOUGH SUPPLIES OR SUPPLIERS MAY BE APPROVED BY US, WE AND OUR AFFILIATES MAKE NO WARRANTY AND**~~

~~EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO INVENTORY, PRODUCTS, FIXTURES, FURNITURE, EQUIPMENT (INCLUDING WITHOUT LIMITATION ANY REQUIRED COMPUTER SYSTEMS), SIGNS, STATIONERY, SUPPLIES OR OTHER APPROVED ITEMS.~~

~~5.5. Studio Design. We, or at our option, our Approved Supplier will provide you with a list of recommended and required specifications and guidelines for the design and layout of a typical Studio. You must comply with all such specifications and guidelines unless we approve otherwise in writing.~~

~~5.6. On going Support and Assistance. We or our designee will provide the following operational support to you as we deem appropriate:~~

- ~~(a) opening support and ongoing operational support of your Studio by telephone, in person, or otherwise;~~
- ~~(b) recommendations for advertising and promotional materials;~~
- ~~(c) merchandising, marketing and other data and advice as may periodically be developed by us;~~
- ~~(d) advice, consultation and assistance regarding the operations of your Studio based primarily on our inspections of your Studio and reports you are required to provide to us. This assistance may be provided by telephone or in person or by newsletters, bulletins, or otherwise as we deem necessary or appropriate from time to time; and~~
- ~~(e) such other resources and assistance as we may develop and provide in the future.~~

~~5.7. Our Reservation of Rights.~~

- ~~(a) Right to Modify the Franchise System. Whenever this Agreement provides that we have a certain right, that right is absolute and the parties intend that our exercise of that right will not be subject to any limitation or review. We have the right to operate, administer, develop, and change the Franchise System in any manner that is not specifically precluded by the provisions of this Agreement.~~
- ~~(b) Adaptations and Variances. Because uniformity under varying conditions may not be possible or practical, we specifically reserve the right to vary standards for any Studio. If we vary standards for any Studio, we have no obligation to vary standards for your Studio.~~
- ~~(c) Right to License to Others. We may use and license others to use the Marks, Proprietary Assets and the Franchise System for the operation of Studios anywhere outside of your Protected Area. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall restrict our rights, or grant any rights to you, with respect to the pursuit of any business concept other than the Franchise System concept.~~

- ~~(d) Right to Develop and Franchise Other Systems. Unless specifically stated in this Agreement, we retain the right to develop, use and franchise the rights to any systems, businesses, trade names, trademarks, service marks, trade symbols, emblems, signs, slogans, insignia, or copyrights not designated by us as part of the Franchise System, the Proprietary Assets, or Marks, at any location, including within the Protected Area, on such terms and conditions as we may deem advisable, and without granting you any rights therein.~~
- ~~(e) Right to Sell Products and Services. We may sell any products or services, including those similar to the products and services offered by Studios, anywhere, using the Marks or not, through various channels of distribution (including internet, wholesale, mail order and retail). Franchisees may use various channels of distribution, such as direct mail, email and internet (but only through Studio websites maintained through us) to market their Studios, provided that we have approved any marketing materials. Franchisees must not market their Studios or the services provided by the Studios by making unsolicited advertising or marketing phone calls or by sending or transmitting unsolicited advertising or marketing faxes, text messages, emails, or other digital communications.~~
- ~~(f) Right to Offer Franchises in Captive Venues. We may establish and operate Studios, and grant rights to other persons to establish and operate Studios, in any closed market or other facility serving a captive market, within or outside the Protected Area, including any department stores, shopping malls, airports, train stations and other modes of mass transportation, public facilities, college and school campuses, hotels, resorts, condominium and cooperative facilities, office buildings, convention centers, government facilities, and any other public attraction or venue or mass gathering events or locations.~~
- ~~(g) Right to Transfer, Assign, Purchase or Be Purchased. You acknowledge and agree that we have the right to transfer or assign all or any part of our right and interest in and to, and our obligations under, this Agreement to any person or legal entity without your approval. We also have the right to purchase or be purchased by, or merge or combine with, any Competitive Business (as defined in Section 12.1) or any other competing or other business, even if such business has locations within the Protected Area.~~
- ~~(h) Right to Delegate Obligations. You acknowledge and agree that we have the right to delegate to third party designees the performance of all or any portion of our obligations under this Agreement.~~
- ~~(i) Notice of Potential Profit. We or our affiliates may derive revenues or profits, or obtain other consideration, from your dealings with our Approved Suppliers or other suppliers. You acknowledge and agree that we have the right to receive payments, discounts, promotional allowances, and other payments from any supplier based on your purchases and the purchases of our other franchisees. Additionally, we have the right, and you acknowledge and agree that we are~~

~~entitled, to derive revenues, profits and other consideration from your purchases from us or our affiliates.~~

## ~~6. USE OF THE MARKS~~

- ~~6.1. Ownership; Goodwill. You acknowledge that we and our affiliates have the sole right to license and control your use of the Marks and that the Marks shall remain under our and our affiliates' sole and exclusive ownership and control. You acknowledge that you do not acquire any right, title, or interest in the Marks except for the right to use the Marks in the operation of your Studio under this Agreement. You will display the Marks prominently at your Studio and on forms, advertising, marketing and other materials in the manner we prescribe. Any unauthorized use of the Marks by you shall constitute a breach of this Agreement and an infringement of our rights in and to the Marks. You acknowledge and agree that your use of the Marks and any resulting goodwill is for our exclusive benefit.~~
- ~~6.2. Limitation on Use. You shall not use any Mark as part of any Entity name or with any prefix, suffix, or other modifying words, terms, designs, or symbols, nor may you use any Mark in connection with unauthorized services or products or in any other manner not expressly authorized by us in writing. You agree that no service or trade mark other than the Marks shall be used in the marketing, promotion, or operation of your Studio. You shall not use any Mark as part of any website, domain name, email address, social media account, username, other online presence or presence on any electronic medium of any kind except in accordance with our guidelines set forth in the Operations Manual or otherwise in writing from time to time.~~

### ~~H.A. Discontinuance of Use of Marks.~~

~~If it becomes advisable at any time for us or you to modify or discontinue the use of any Mark, or to use an additional Mark, you must comply with our directions to do so within a reasonable time after we provide notice to you. We need not reimburse you for any lost revenue or the costs you incur to comply with such direction, including the costs to change your Studio's signs, replace proprietary supplies or promote the modified or newly required Marks.~~

### ~~I.A. Notification of Infringements and Claims.~~

~~You must notify us immediately of any possible infringement of any Mark or use of a trademark confusingly similar to the Marks that comes to your attention. You must also notify us of any challenge to your use of the Marks. You may not communicate information about an infringement or challenge with any person other than us, our affiliates, our counsel, or your counsel. ~~You may not settle any claim without our written consent.~~ We may take any action we deem appropriate (including no action) and exclusively control any litigation or United States Patent and Trademark Office or other administrative proceeding arising out of any infringement, challenge or claim related to the Marks. We will indemnify you against any losses or damages incurred by you as a result of any successful claim of trademark infringement brought by a third party that is related solely to your authorized use of the Marks in accordance with the terms of this Agreement. We will not pay any of your attorneys' fees if you hire your own attorney. You must cooperate with us in any litigation. You must execute any and all instruments and documents, render such~~

assistance, and perform such acts as may be necessary or advisable to protect and maintain our interests in the Marks.

## ~~7. OPERATION OF YOUR FRANCHISE; YOUR OBLIGATIONS~~

~~7.1. Employees, Agents and Independent Contractors. You acknowledge and agree that you are solely responsible for all decisions relating to employees, agents, and independent contractors you may hire to assist in the operation of your Studio. You agree that any employee, agent or independent contractor you hire or retain shall be your employee, agent or independent contractor, and not our employee, agent or independent contractor. Notwithstanding the foregoing, any fitness instructors and Studio employees that you hire must be employees, and not independent contractors. We will not own any of the information regarding your employees that is entered into the software programs you are required to use in the operation of your Studio. You also agree that you are exclusively responsible for the terms and conditions of employment of your employees, including, without limitation, recruiting, hiring, firing, training, compensation, work hours and schedules, work assignments, safety and security, discipline, and supervision. You agree to manage the employment functions of your Studio in compliance with federal, state, and local employment laws.~~

You further agree that any employee, agent or independent contractor you hire shall be required to execute a confidentiality and non-solicitation agreement, substantially in the form set forth as Exhibit 5 to this Agreement (“**Form of Confidentiality Agreement**”) or as we otherwise provide to you. You acknowledge and agree that the Form of Confidentiality Agreement is a form of agreement only, and that it may or may not be enforceable in a particular jurisdiction. You agree that you are solely responsible for obtaining your own professional advice with respect to the adequacy of the terms and provisions of any confidentiality, non-solicitation, and/or non-competition agreement you require your employees, agents and independent contractors to sign.

~~7.2. Lease Approval. We must approve any lease for your Studio premises and any sublease, amendment to, renewal, or assignment of the lease prior to you signing such lease, sublease, lease amendment, renewal, or assignment. You acknowledge and agree that any review and approval of any Studio premises or lease is for our sole benefit and the benefit of the Franchise System, and are not intended to imply or guarantee the success or profitability of any Studio Location. You acknowledge that you have been advised to obtain the advice of your own professional advisors before signing a lease. You and your legal and other advisors are solely responsible for negotiating the terms of the lease for your Studio’s premises. However, your lease must include the terms of our lease rider attached hereto as Exhibit 6, unless otherwise approved by us in writing. If you are acquiring an existing Studio and assuming a lease that does not contain the terms of our lease rider, you and the landlord must execute the lease rider in the form attached hereto as Exhibit 6, unless otherwise approved by us in writing. You (and not any of your affiliates or owners) must be the tenant on the lease for the Studio’s premises. You agree to provide us a copy of the fully executed lease for your Studio and any amendments or renewals of your lease upon signing and at any time upon our request.~~

~~7.3. Opening Your Studio.~~

- (a) ~~Build Out.~~ You are required to use one of our Approved Suppliers for construction services, which include all design, architecture and construction services related to the build-out of your Studio. If you wish to use a supplier that is not our Approved Supplier, you must comply with the evaluation process and pay the evaluation fee set forth in Section 5.4. If we approve an exception to the requirement that you use one of our Approved Suppliers of construction services, you are required to pay us a construction management fee of \$5,000. After obtaining possession of the Studio Location, you must promptly complete the following:
1. ~~prepare (or cause to be prepared) and submit to us for our approval, a site survey and any proposed modifications to our conceptual designs and specifications (not including construction) including, but not limited to, modifications to our required dimensions, exterior and interior design, materials, layout, equipment, fixtures, furniture, and signs and décor; provided, however, that modifications are permitted only if required to comply with applicable ordinances, building codes and permit requirements and are subject to our prior written approval;~~
  2. ~~obtain all permits and licenses for the lawful construction and operation of the Studio, together with all certifications from government authorities having jurisdiction over the Studio Location that all requirements for construction and operations have been met, including, but not limited to, zoning, access, sign, health, fire, and safety requirements, building and other required construction permits, licenses to do business, fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearances;~~
  3. ~~obtain all customary contractors' sworn statements and partial and final lien waivers for construction, remodeling, decorating and installation services;~~
  4. ~~purchase or lease equipment, furniture, fixtures and signs as provided under this Agreement or in the Operations Manual;~~
  5. ~~complete the construction and build out of the Studio premises, including installing equipment, fixtures, furniture and signs, and decorating your Studio, in full and strict compliance with the plans and specifications we have approved, and in accordance with all applicable ordinances, building codes and permit requirements; and~~
  6. ~~otherwise complete all other aspects of developing your Studio as we may reasonably require in order to be able to commence operation of your Studio on or before the Projected Opening Date (defined below).~~
- (b) ~~Commencement of Operations.~~ You must have your Studio open and operating within 1 year from the Effective Date (the "**Projected Opening Date**"), unless otherwise specifically approved by us in writing.

~~You may not open your Studio for business until (a) we notify you that you have properly equipped your Studio, (b) you and your employees and other personnel have successfully completed the applicable training to our satisfaction, (c) you have paid all amounts due to us and our Approved Suppliers and other vendors, (d) you have obtained all required licenses and permits to operate your Studio, (e) you have obtained our required minimum insurance coverage for your Studio and have provided us with a certificate of insurance and evidence that you have paid your insurance premium, and (f) if you are an individual, you transfer the ownership of your Studio under this Agreement to an Entity in accordance with the transfer provisions set forth in Section 11 of this Agreement. Once you have opened your Studio for business, you must operate your Studio continuously for the remainder of the initial term of this Agreement.~~

~~7.4. — Insurance. — Before your Studio opens, you must purchase insurance coverage from our Approved Supplier; provided, however, you may obtain owned auto insurance from any reputable insurer and worker's compensation from either your payroll provider or any reputable insurer. For purposes of this paragraph, a "reputable insurer" means an insurer with a minimum rating of A by A.M. Best. You must maintain the insurance throughout the duration of the term of this Agreement. Each insurance policy for your Studio must designate as additional insured parties, us and, if requested by us, any of our affiliates or area directors or other parties we may periodically designate. In addition, each insurance policy must provide that all additional insured parties will receive at least 30 days' prior written notice of termination, material amendment or cancellation.~~

~~Prior to opening your Studio, and then a minimum of annually or upon our request, you must provide to us a certificate of insurance (including those of each of your employees if required) reflecting the following minimum coverage limits: (a) general liability limits not less than \$1,000,000 per occurrence (\$2,000,000 in the aggregate); (b) professional liability coverage due to errors or omissions in the performance of services at your Studio with limits not less than \$1,000,000 per occurrence (\$2,000,000 in the aggregate); (c) hired and non-owned auto liability limits not less than \$1,000,000 per occurrence; (d) owned auto combined single liability limits not less than \$100,000; (e) sexual abuse and molestation limits not less than \$100,000 per occurrence (\$300,000 in the aggregate); (f) cyber liability limits not less than \$1,000,000 in the aggregate; (g) employment practices liability limits not less than \$100,000 in the aggregate; (h) property insurance limits in amounts that adequately protect your business personal property, fixtures, improvements and business interruption and extra expense exposures; and (i) worker's compensation insurance (in compliance with state and local laws). **Other than employment practices coverage, the policies must be occurrence policies, and not claims-made policies.**~~

E. ~~We reserve the right to change or modify (including increasing) the required minimum coverage limits. You acknowledge and agree that the minimum coverage limits we specify are for our benefit and are not intended to be relied upon by you as a recommendation as to the types of coverage or coverage limits that are or might be appropriate for your Studio. Additional insurance coverage or increased coverage limits might be appropriate based upon, for example, the location of your Studio. You agree to seek the advice~~

~~of your insurance advisor regarding the appropriate types of coverage and coverage limits you may need to sufficiently protect your Studio. We are not responsible if you sustain losses that exceed your insurance coverage under any circumstances. No insurance coverage that you or any other party maintains will be deemed a substitute for your indemnification obligations~~  
Default Fee

If you are in default of this Agreement and we send you a default notice, you must pay us a fee of \$250 in consideration for our administrative expenses.

#### F. Application of Payments.

Despite any designation you make, we may apply any of your payments to us or our affiliates to any of your past due indebtedness to us or our affiliates. We may set off any amounts you or your owners owe us or our affiliates against any amounts we or our affiliates owe you or your owners. You may not withhold payment of any amounts you owe us due to our alleged nonperformance of any of our obligations under this Agreement.

#### G. Method of Payment.

You must make all payments due under this Agreement in the manner we designate from time to time and you agree to comply with all of our payment instructions. You hereby authorize us and/or any third party we designate to debit your business checking account automatically (sometimes referred to as “ACH” or “auto-debit”) for any or all amounts due under this Agreement (the “Automatic Bank Draft Authorization”). You agree to execute and deliver to us any document(s) we require to evidence the Automatic Bank Draft Authorization. Our current form of Automatic Bank Draft Authorization is attached hereto as **Exhibit G**. The Automatic Bank Draft Authorization will remain in full force and effect during the term of this Agreement. We or our designee will debit the business account you designate in the Automatic Bank Draft Authorization for amounts you owe us on their due dates (or the subsequent business day if the due date is a national holiday or a weekend day). You must have one sole designated business account for your Studio for all payments received from clients and for all payments to be made to us. You agree to ensure that funds are available in your designated account to cover our withdrawals. ~~to us or our affiliates under Section 9 or otherwise.~~

~~If you do not comply with these insurance provisions, you will be in material breach of this Agreement. In addition to all other available remedies, we may demand that you cease operating the Studio for any period during which you do not have insurance coverage.~~

#### ~~7.5. Operation of Your Studio.~~

~~Your Responsibilities. You are solely responsible for the successful operation of your Studio and for the performance of all of your obligations arising from the operation of your Studio, including, without limitation, the payment (when due) of all applicable taxes and the procurement and maintenance of all required or applicable business licenses and~~

~~permits, including any changes to such licenses and permits. You shall at all times during the term of this Agreement own and control the Studio.~~

~~System Standards. You must operate your Studio in accordance with our System Standards, as described in the Operations Manual. You acknowledge receipt of a copy of the Operations Manual, which we are loaning to you. We have the right to revise the System Standards and the contents of the Operations Manual to meet changing conditions. The System Standards~~ You shall pay us a fee of \$150 each time we attempt to debit your business account and your account is inaccessible or we receive a notice of insufficient funds or you write us a check that is returned, cancelled, or dishonored. You must sign and deliver to us a revised **Exhibit G** to reflect any changes in your business checking account information at least three (3) business days prior to the next scheduled ACH due to us.

We may receive information regarding your Gross Receipts through our access to the Computer System or we may require you to submit monthly (or more frequent) Gross Receipts reports in the format we require. If we ever stop having access to information from your Computer System, and you fail to report your Studio's Gross Receipts when due, then for each payment due under this Agreement that is calculated based on Gross Receipts, we may debit your business account one hundred ten percent (110%) of the average of the last three (3) applicable payments that we debited. If the amounts that we debit from your business account are less than the amounts you actually owe us (once we have determined your Studio's true and correct Gross Receipts), we will debit your business account for the balance on any day we specify. If the amounts that we debit from your business account are greater than the amounts you actually owe us, we will credit the excess against the amounts we otherwise would debit from your business account on the next payment due date.

#### 4. TRAINING AND ASSISTANCE.

##### A. Initial and Ongoing Training.

Before the Opening Date, we will provide initial training on the operations of a Studio to you (or your Operating Partner) and Designated Manager (as defined in Section 8.H.) (the "Training Program"), at no cost to you, if all such persons attend the Training Program at the same time. If we provide any portion of the Training Program more than one time, we may charge you our then-current training fee for any training that we have previously provided to at least one trainee associated with you. We may also elect not to provide any portion of the Training Program more than once. You may invite additional employees to attend the Training Program if space allows, though we reserve the right to charge you our then-current training fee for each additional individual. We reserve the right to require any additional managers and/or assistant managers of your Studio to attend the Training Program. We reserve the right to limit the number of additional attendees for the Training Program. You may also request that we provide any portion of the Training Program on-site at your Studio, and we will determine whether to provide such portion of the Training Program on-site. If we provide any portion of the Training Program on-site at your Studio, we reserve the right to charge our then-current training fee.

We will provide the Training Program at the times and locations we determine. We reserve the right to vary the Training Program based on the experience and skill level of the individual(s)

attending. You (or your Operating Partner) and your Designated Manager (if applicable) must satisfactorily complete the Training Program no later than four (4) weeks before the Opening Date.

If you (or your Operating Partner) or your Designated Manager (if applicable), or any manager and/or assistant manager required by us, fail to satisfactorily complete the Training Program then we reserve the right to require such individual to attend additional training and you may be required to pay us our then-current training fee for such additional training. Additional training will be provided at a time and location of our choice. If you (or your Operating Partner), or any manager and/or assistant manager required by us (including any applicable Designated Manager), are unable to satisfactorily complete the additional required training, we reserve the right to terminate this Agreement.

You are responsible for providing a training program concerning the operation of your Studio in accordance with our System Standards for all your employees other than the attendees of the Training Program. All employees must pass the program, to your satisfaction, prior to providing services at your Studio. We reserve the right to approve the length and content of all training programs you provide to your employees and to require specific mandatory training programs (as further set forth in this Section 4.A.) for certain job positions to ensure compliance with our System Standards.

If you appoint a new Operating Partner or Designated Manager, he or she may be required to attend the then-current Training Program within ninety (90) days of the appointment date and you may be required to pay us our then-current training fee, unless we determine that you are sufficiently trained to provide a comparable substitute training program to such new Operating Partner or Designated Manager. If we permit you to train any Operating Partner or Designated Manager yourself, you must provide such training according to our then-current standards and specifications, and we must determine that such Operating Partner or Designated Manager has been adequately trained prior to providing any services at your Studio. If we determine that any Operating Partner or Designated Manager that you trained is not sufficiently trained to provide services at your Studio, we may require such person attend our Training Program and you may be required to pay us our then-current training program fee. If we determine that you are (or your Operating Partner is) sufficiently trained to provide a comparable substitute training program to any Designated Manager, we may elect not to make the Training Program available to such person until the next time our Training Program would otherwise be offered.

We may require you (or your Operating Partner), and/or certain other managers and employees of your Studio (including any applicable Designated Manager) to attend or otherwise complete various training courses (including electronic training courses), trade shows, ongoing education or certification programs, and/or webinars at the times and locations designated by us, including courses and programs provided by third parties we designate.

Besides attending these training courses, programs and events, you (or your Operating Partner) and any applicable Designated Manager are required to attend any scheduled annual meeting of franchise owners. You will be required to pay our then-current registration fee. If you do not attend, we will charge you the default fee (as set forth in Section 3.E.) for failing to attend. We may additionally require you (or your Operating Partner) to attend regional meetings for

franchise owners. These annual and regional meetings will be held when we determine at locations we designate.

After the Opening Date, based on the factors we determine, we may offer you (or your Operating Partner) and any applicable Designated Manager the opportunity to attend an advanced manager training program. If we offer such training and you elect to attend such training, you may be required to pay us our then-current training fee.

Either before or after the Opening Date, based on the factors we determine, we may offer you (or your Operating Partner) and any applicable Designated Manager the opportunity to attend non-mandatory training at a franchisee-owned Studio that we have certified as an “Approved Mentorship Studio.” Alternatively, a franchisee from an Approved Mentorship Studio may visit your Studio. If we offer such training involving an Approved Mentorship Studio and you elect to participate in such training, you may be required to pay us our then-current fee.

You agree to pay all travel and living expenses (including, wages, transportation, food, lodging, and workers’ compensation insurance) that you (or your Operating Partner) or any employee or manager (including any applicable Designated Manager) incurs during any and all meetings and/or training courses and programs, including those incurred in attending training at an Approved Mentorship Studio. You are also responsible for the travel and living expenses and out-of-pocket costs we incur in sending our trainer(s) to your Studio to conduct training, including food, lodging and transportation, including those of any franchisee that may visit your Studio from an Approved Mentorship Studio.

**B. Opening Assistance.**

We will send a training team we determine (which may be comprised of only one (1) person) for up to five (5) days (which may not be consecutive) to your Studio to assist you with final suggestions on your Studio and provide on-site advice, guidance, and initial operations support.

**C. General Guidance.**

We may advise you from time to time regarding your Studio’s operation based on your reports or our inspections. We may guide you with respect to: (1) standards, specifications, and operating procedures and methods that Studios use, including, facility appearance, client-service procedures, and quality control; (2) equipment and facility maintenance; (3) inventory management and working with suppliers; (4) advertising, marketing and branding strategies; and (5) administrative, accounting, reporting and record retention. Such guidance will be furnished in the form of our Operations Manual (as defined in Section 4.D.). We may also provide guidance via telephonic conversations and/or consultation at our offices. If you request, and we agree to provide, additional or special guidance, assistance, or training, we may charge you our then-applicable fee, including our personnel’s per diem charges and travel and living expenses. We reserve the right to periodically visit the Premises and evaluate your Studio.

#### D. Operations Manual.

We will make one (1) copy of our manual for the operation of Studios available to you during the term of this Agreement, which may include one or more separate manuals, as well as information available on an internet site, other electronic media, bulletins and/or other written materials (collectively, the “Operations Manual”). The Operations Manual contains the mandatory specifications, standards, operating procedures, and rules that we periodically prescribe for operating a Studio (“System Standards”), other specifications, standards and procedures that we suggest, and information on your other obligations under this Agreement. Any mandatory specifications, standards, operating procedures, and rules exist to protect our interests in the Franchise System and the Marks and to create a uniform customer experience, and not for the purpose of establishing any control or duty to take control over those matters that are reserved to you. You acknowledge and agree that you will comply with the System Standards as they may be periodically changed or modified by us. Our periodic modification of the System Standards, which may accommodate regional or local variations, may obligate you to invest additional capital in your Studio and incur higher operating costs. We may modify the Operations Manual at any time.

Operations Manual Requirements. You must at all times If there is a dispute over its contents, our master copy of the Operations Manual shall control. You agree that the Operations Manual’s contents are confidential and that you will not disclose the Operations Manual to any person other than any employee of yours who needs to know its contents. You may not at any time copy, duplicate, record, or otherwise reproduce any part of the Operations Manual.

(a) You agree to keep your copy of the Operations Manual current and up-to-date. In the event of any dispute as to the contents of the Operations Manual, the master copies maintained by us at our principal place of business shall be controlling.

You must treat the Operations Manual and the information it contains as confidential, and must use all reasonable efforts to maintain the information as secret and confidential. You must not copy, duplicate, record or otherwise reproduce the Operations Manual, in whole or in part, or otherwise make it or any part of it available to any unauthorized person. The Operations Manual will remain our sole property and must be kept in a secure place on the location at your Studio premises.

. At our option, we may post some or all or portions of the Operations Manual on a restricted website, intranet or extranet to which our franchisees you will have access. If we do so, you agree to monitor and access the website, intranet or extranet for any updates to the Operations Manual. Any password or other digital identification necessary to access the Operations Manual will be deemed to be our proprietary information, subject to the confidentiality provisions of this Agreement.

(b) Products and Services. You acknowledge and agree that you are authorized to offer only those services and products we designate from time to time in the Operations Manual or otherwise. There are no limitations on our right to designate additional authorized services and products that you must offer. You cannot offer any other types of services or products, or operate or engage in any other type of business or

profession, from or through the Studio, unless you first receive our written consent. You shall not charge clients any additional fees or service charges not authorized by us including but not limited to convenience fees, gift card conversion fees, credit card fees, service fees, or other surcharges.

~~Unless prohibited by applicable law, we may periodically set a maximum or minimum price that you may charge for products and services offered by your Studio. If we impose a maximum price for any product or service, you may not charge more for the product or service than the maximum price we impose. If we impose a minimum price for any product or service, you may not charge less for such product or service than the minimum price we impose. For any product or service for which we do not impose a maximum or minimum price, we may require you to comply with an advertising policy adopted by us which will prohibit you from advertising any price for a product or service that is different than our suggested retail price. Although you must comply with any advertising policy we adopt, you will not be prohibited from selling any product or service at a price above or below the suggested retail price unless we impose a maximum price or minimum price for such product or service.~~

~~(e) — Studio Management. During the term of this Agreement, except as we otherwise approve in writing, one of your owners or your manager, must devote full time and best efforts to the management and operation of your Studio. Your Studio must, at all times, be under the direct on-site supervision of an individual who has satisfactorily completed Initial Training. We impose no limitations on, or requirements with respect to, who you may hire, except that you must comply with all applicable laws, and must not harm the goodwill associated with the Marks, the Proprietary Assets and the Franchise System. Your manager will be required to attend and complete Initial Training to our satisfaction and will be required to enter into a confidentiality and non-solicitation agreement. You must perform background checks for all employees you hire and update the background checks as specified in the Operations Manual. These requirements may affect who you may hire.~~

~~(d) — Computer Hardware and Software. The minimum computer hardware requirements are specified in the Operations Manual. You may use any brand of computer hardware meeting our specifications and may acquire your computer hardware from any source. You must keep your computer in good working order and obtain and install the upgrades necessary to efficiently operate your Studio. You are responsible for consequences arising from improper use and/or poor upkeep and maintenance of your computer.~~

~~You must use the software programs designated and described in the Operations Manual or otherwise designated by us which include the Studio management and client satisfaction software and customer relationship management software.~~

~~You must implement all administrative, physical and technical safeguards necessary to protect any information that can be used to identify an individual, including names, addresses, telephone numbers, e-mail addresses, employee identification numbers, signatures, [Any](#)~~

~~passwords, financial information, credit card information, biometric or health data, government-issued identification numbers and credit report information (“Personal Information”) in accordance with applicable law and industry best practices (which includes complying with then-current Payment Card Industry Data Security Standards currently found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org), or any similar or subsequent standard, for the protection of cardholder data throughout the term of this Agreement). It is entirely your responsibility (even if we provide you any assistance or guidance in that regard) to confirm that the safeguards you use to protect Personal Information comply with all applicable laws and industry best practices related to the collection, or other digital identifications necessary to access, use, storage, disposal and disclosure of Personal Information. If you become aware of a suspected or actual breach of security or unauthorized access involving Personal Information, you will notify us immediately and specify the extent to which Personal Information was compromised or disclosed. We expressly disclaim any ownership interest in any credit card information or cardholder data that is included within Personal Information.~~ the Operations Manual on a website or extranet will be deemed to be part of Confidential Information (as defined in Section 6 below).

## 5. MARKS.

### A. Ownership and Goodwill of Marks.

Your right to use the Marks is derived only from this Agreement and is limited to the operation of your Studio according to this Agreement and all System Standards we prescribe during the term of this Agreement. Your unauthorized use of the Marks is a breach of this Agreement and infringes our rights in the Marks. Your unauthorized use of the Marks will cause us irreparable harm for which there is no adequate remedy at law and will entitle us to injunctive relief. You acknowledge and agree that your use of the Marks and any goodwill established by that use are exclusively for our benefit and this Agreement does not confer any goodwill or other interests in the Marks to you (other than the right to operate your Studio under this Agreement). All provisions of this Agreement relating to the Marks apply to any additional proprietary trade and service marks we authorize you to use. You may not at any time during or after this Agreement’s term contest or assist any other person in contesting the validity, ownership, distinctiveness, or enforceability of the Marks.

### B. Limitations on Your Use of Marks.

You agree to use the Marks as your Studio’s sole identification, except that you agree to identify yourself as its independent owner and operator in the manner we prescribe. You may not use any Mark (1) as part of any corporate or legal business name, (2) with any prefix, suffix, or other modifying words, terms, designs, or symbols (other than logos we have licensed to you), (3) in selling any unauthorized services or products, (4) as part of any website, domain name, email address, social media account, other online presence or presence on any electronic medium of any kind (“Online Presence”), except in accordance with our guidelines set forth in the Operations Manual or otherwise in writing from time to time; (5) in advertising the transfer, sale, or other disposition of your Studio or an ownership interest in you without our prior consent, or (6) in any other manner that we have not expressly authorized in writing. You agree to display the Marks prominently as we prescribe at your Studio and on forms, advertising, supplies, and other materials

we designate. You agree to give the notices of trade and service mark registrations that we specify and to obtain any fictitious or assumed name registrations required under applicable law.

### C. Notification of Infringements and Claims.

You agree to notify us immediately of any apparent infringement or challenge to your use of any Mark, or of any person's claim of any rights in any Mark, and not to communicate with any person other than us, our attorneys, and your attorneys, regarding any possible infringement, challenge, or claim. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding, or other administrative proceeding arising from any infringement, challenge, or claim or otherwise concerning any Mark. You agree to sign any documents and take any other reasonable action that, in the opinion of our attorneys, are necessary or advisable to protect and maintain our interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain our interests in the Marks. We will reimburse you for your reasonable costs of taking any action that we have asked you to take.

### D. Discontinuance of Use of Marks.

~~You acknowledge and agree that we, our affiliates, and third parties we designate (including area directors and Approved Suppliers) may have independent, unlimited access to all information generated by your computer system. At our request, you agree to sign a release with any vendor of your computer system providing us with unlimited access to your data.~~

- ~~(e) — Computer Hardware and Software Updates. You must upgrade any hardware component or software program at any time to be compatible with the software package we require.~~
- ~~(f) — Accounting Software; Financial Reports. You must use the accounting software described in the Operations Manual or otherwise designated by us and maintain full, complete, and accurate books, records, and accounts. By the 25<sup>th</sup> day of each calendar month, you must provide to us, in the form we prescribe, a profit and loss statement and a balance sheet for the preceding month. Within 90 days of the end of your fiscal year, you must submit to us a profit and loss statement for that fiscal year and a balance sheet as of the last day of the fiscal year prepared on an accrual basis, including all adjustments necessary for a fair presentation of your financial results. You must also maintain a report of all promotional expenditures relating to the Local Marketing Spend Requirement, which we may review at our request. All such financial statements and report shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be accurate and complete in all material respects.~~
- ~~(g) — Additional Financial Information; Our Right to Audit. In addition to the financial statements and reports described above, we shall have the right to periodically request additional financial information about your Studio and to inspect and audit your books and records. You must permit us or our representatives or designees to~~

~~enter your Studio during normal business hours to inspect and examine your operations, facilities, books and records, and you must cooperate with such inspections by rendering assistance as we or they may reasonably request. We and our affiliates may collect the Studio's books, records and other financial information for review in any form or manner we reasonably determine including, without limitation, requiring you to send documents to our offices. If an inspection or audit of your books and records reveals a deficiency in amounts owed to us, then those amounts shall become immediately due and payable to us, with interest at the rate of 18%, calculated on a per annum basis, from the date the amount was due until paid. If an inspection or audit discloses an understatement of 2% or more, then you will also reimburse us for any costs and expenses, including accountants' and attorneys' fees, in connection with the inspection or audit. You must retain your books and records for 3 years following the fiscal year to which they relate.~~

- ~~(h) Financing and Title to Assets. You agree that you will directly obtain all financing required for the development and operation of the Studio and that no third party will obtain financing on your behalf. You further agree that you will directly own all of the assets necessary for the operation of the Studio.~~
- ~~(i) Security Interest. As security for the performance of your obligations under this Agreement, including payments owed to us or our affiliates, you shall grant us a security interest in all of the furniture, fixtures, equipment, signage, and realty (including your interests under all real property and personal property leases) of the Studio, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof (including cash derived from the operation of the Studio), wherever located, used in connection with the Studio. You agree to execute such other documents as we may reasonably request in order to further document, perfect and record our security interest. If you default in any of your obligations under this Agreement, we may exercise all rights of a secured creditor granted to us by law, in addition to our other rights under this Agreement and at law. This Agreement shall be deemed to be a Security Agreement and Financing Statement and may be filed for record as such in the records of any county and/or state that we deem appropriate to protect our interests. If a third party lender requests that we subordinate our security interest in the assets of your Studio as a condition to issuing a loan to you, we will agree to do so in accordance with our then current form of subordination agreement.~~
- ~~(j) Other Products and Services. You may not install or maintain on your Studio premises any newspaper racks, video games, jukeboxes, gaming machines, gum machines, games, rides, vending machines or other similar items without our prior written approval.~~
- ~~(k) Inspections. We shall have the right to interview your clients, customers, employees, and contractors and inspect your Studio, and to examine and copy your books, records, and documents, including, without limitation, inventory, products, equipment, materials, and supplies, to ensure compliance with our designated standards and specifications. We have the right to conduct inspections with or~~

~~without prior notice to you. If we provide you prior notice, you or one of your owners are required to be present at the Studio during the inspection.~~

- ~~(f) **Membership Sales.** You will offer and sell rights of access to your Studio, referred to as a “**Membership**” or “**Memberships**.” All Memberships must be evidenced by a written agreement (a “**Membership Agreement**”) and may not be for a term that extends beyond the expiration of this Agreement. When selling Memberships, you will use the form of Membership Agreement that we will provide to you, and you will not make any modifications in the forms without our prior written consent. Notwithstanding the foregoing, you acknowledge that you are responsible for ensuring that the Membership Agreements comply with all applicable laws and you may modify the Membership Agreements to the extent necessary to comply with such applicable laws, provided that you provide us with immediate written notice of all such modifications. You acknowledge and agree that, subject to the preceding sentence, any Membership Agreement that has been modified without our consent shall be void. We may modify the types and terms of Memberships to be offered, terminate your right to offer certain types of Memberships, and/or approve or require other types of Memberships for sale.~~

~~You will only offer for sale the Memberships in strict compliance with System Standards and our standards, policies and procedures. If we authorize you to sell Memberships, you will nevertheless be responsible for determining that you may do so under all laws and regulations applicable to your Studio and you agree that you will fully comply with all such laws and regulations. We may suspend, revoke or terminate your right to offer Memberships at any time.~~

~~You agree to comply with the System Standards we establish from time to time regarding Memberships. These System Standards may regulate, among others, the following topics: (1) the types and terms of Memberships you may offer; (2) the form(s) of Membership Agreement; (3) the terms and conditions upon which a client may transfer his Membership from your Studio to another Studio and vice versa; (4) admission of clients of your Studio to other Studios; (5) procedures to follow when clients transfer to or from your Studio; (6) use and acceptance of coupons, passes, and certificates; (7) group accounts and group Memberships (and discounts applicable thereto); and (8) payment terms for Memberships.~~

~~You agree, upon notice from us, to accept any Memberships we assign to you, and, if we so require, to honor those Memberships on the terms and conditions of the existing Membership Agreement, and to accept as remuneration only such payments as accrue pursuant to the applicable Membership Agreement from the time of assignment.~~

~~You agree that we own all Client Information (defined in Section 12.4), that it comprises part of the Confidential Information which you are licensed to use under this Agreement, and that we may use Client Information in our and their business activities and may disclose Client Information (such as the number of clients), but during the term of this Agreement we will not publicly disclose any Client~~

~~Information unless we make such public disclosure without disclosing your identity or your Studio's Client Information on an individual (i.e., unconsolidated) basis. We may contact any client(s) of any Studio at any time for any purpose. Upon expiration or termination of this Agreement, we reserve the right to make any and all disclosures that we deem necessary or appropriate.~~

~~We reserve the right to establish a reciprocity program between your Studio and other Studios. You must comply with all standards and requirements of any reciprocity program as we may implement and periodically modify.~~

~~Audio and Visual Entertainment. You acknowledge and agree that the provision of audio and visual entertainment to clients of your Studio is or may become an integral part of the Franchise System. Accordingly, you agree to play only the types of music and display only the types of visual entertainment, at the decibel levels and using such equipment and in the manners that we may periodically prescribe or approve. You must acquire or install any audio or visual equipment that we designate or require for use by your Studio and subscribe to music and video services as we may periodically specify to enable you to broadcast videos, music, and other content as specified by us from time to time. ~~We may prohibit you from displaying, exhibiting, broadcasting or providing any media we choose, regardless of content, including prohibiting use of political, religious, or social content in such media.~~~~

~~7.6. Your Other Obligations. To further protect the Marks, the Proprietary Assets and the Franchise System, and their associated goodwill, you must:~~

- ~~(a) — attend and satisfactorily complete Initial Training and make certain that any other employee or individual having day-to-day supervisory responsibility for Studio operations attends and satisfactorily completes the Initial Training;~~
- ~~(b) — train your employees and other individuals working in your Studio so that they meet the qualifications established by us from time to time;~~
- ~~(c) — ensure that all of your fitness trainers have adequate insurance, including professional liability insurance or the equivalent;~~
- ~~(d) — feature and use the Marks and Proprietary Assets solely in the manner prescribed by us;~~
- ~~(e) — observe such reasonable requirements with respect to the Marks, fictitious name registrations, and copyright notices as we may direct from time to time;~~
- ~~(f) — not offer, sell or promote, in connection with the Marks or any same or similar mark, any type of physical fitness and nutrition services or other services or products other than those authorized by us under this Agreement;~~
- ~~(g) — sell or offer for sale at the Studio only services and products that we require or recommend and meet our current System Standards established in our Operations Manual;~~

- ~~(h) — use advertising, promotional and other materials displaying only the Marks and other names, marks, insignia and symbols we recommend or require for the Franchise System;~~
- ~~(i) — equip and stock your Studio with the equipment, furniture and fixtures, inventory, products and supplies required and approved by us so that at all times your Studio can operate at maximum capacity;~~
- ~~(j) — comply with all laws, ordinances and regulations applicable to the operation of your Studio and the offering of physical fitness and nutrition services;~~
- ~~(k) — adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct in all dealings with clients, suppliers, us and the public;~~
- ~~(l) — provide all authorized services only at your Studio Location unless otherwise approved by us in writing;~~
- ~~(m) — notify us in writing within 5 calendar days of the commencement of any action, lawsuit, complaint or proceeding, or of the issuance of any writ, injunction, award or decree of any court, agency, governmental agency, or instrumentality that may adversely affect your financial condition or your ability to meet your obligations under this Agreement or operate your Studio and, upon request, furnish us with copies of all documents related to any such action, award or decree;~~
- ~~(n) — pay on a timely basis all fees and costs incurred in the operation of your Studio, whether owing to us or to third parties to avoid irreparable harm to our reputation and credit and the reputation and credit of the Franchise System and other Studios;~~
- ~~(o) — submit to us, at the time we specify and on a form approved by us, such other reports we may prescribe from time to time in the Operations Manual or otherwise;~~
- ~~(p) — take all reasonable steps necessary to protect us, the Franchise System, the Marks and the Proprietary Assets against any misappropriation and/or similar actions taken by any third party that may damage us, the Marks, the Proprietary Assets or the Franchise System, and immediately notify us of such misappropriation or similar action;~~
- ~~(q) — devote such time to the operation of your Studio as is necessary to effectively and efficiently operate the Studio;~~
- ~~(r) — comply with all requirements in this Agreement and in the Operations Manual, as the same may be modified from time to time;~~
- ~~(s) — accept the transfer of any client of another Studio, as more fully described in Section 7.5(m);~~

- ~~(t) — at all times use the Studio Location solely to operate your Studio on the days and during the hours as we periodically specify, and refrain from using or permitting the use of the Studio Location for any other purpose or activity;~~
- ~~(u) — maintain and improve the condition and appearance of your Studio consistent with our System Standards and other Franchise System requirements as may be necessary to effectively operate your Studio;~~
- ~~(v) — without our prior written approval, make any material alterations to the Studio Location or make material replacements of, or alterations to, the Studio's equipment, fixtures or signs;~~
- ~~(w) — record all sales and related activities on a computer that is fully compatible with any program or system we require and ensure that we or our designee have full and direct access to all of your Studio's data and related information, whether in person, by Internet access, or otherwise;~~
- ~~(x) — display at all times our standard quality control and franchise opportunity signs in a highly visible area of your Studio; and~~
- ~~(y) — institute a data privacy and security policy for Personal Information in conformity with the requirements of Section 7.5(e).~~

## ~~8. — ADVERTISING~~

~~8.1. — Limitations. You agree to actively promote your Studio, to abide by all of our marketing and advertising requirements and to comply with the following provisions:~~

~~(a) — You may advertise your Studio and solicit clients from any area, even if the clients live or work in a territory or protected area other than the Protected Area, so long as you provide services only at the Studio location we have approved. You are not required to compensate any individual or entity in connection with this advertising and solicitation. We and our other franchisees reserve the same right to solicit, accept and provide physical and nutrition services to clients who live or work within the Protected Area, without compensating you.~~

~~(b) — All advertising and promotional materials, signs, and other items we designate for use in your Studio must bear the Marks in the form, color, location and manner we specify, and you must obtain all such materials from Approved Suppliers. Your advertising and promotional materials (including for your website) must meet our standards and specifications as described in the Operations Manual or as otherwise communicated to you by us. You may prepare and use your own advertising and promotional materials only with our prior written approval. Prior to using advertising and promotional materials you prepare (including signs, containers, boxes, specialty and novelty items, equipment and apparel), you must submit to us a copy of the materials, along with a description of how you intend to use the materials (including in newspapers, on television, radio or the internet, in a direct mail campaign, or in any other media sources). We have the right to approve, disapprove, or place conditions upon the advertising and promotional materials, such as limiting or modifying text, artwork or the manner in which you intend to disseminate the materials. We will approve or disapprove your advertising and promotional materials in writing~~

within 30 days after we receive your request for approval. If we do not respond within such 30 day period, the advertising material will be deemed disapproved.

~~(c) — You must pay us or a party we designate a fee to establish and maintain a website for your Studio (the “Studio Website”). This fee is currently included in the technology fee specified in Section 4.7 of this Agreement, but we reserve the right to charge you additional fees for the Studio Website. If you own more than 1 Studio, you must maintain a separate website for each of your Studios. You must use our Approved Suppliers to set up, design and host your website. We retain the right to require you to cease maintaining the Studio Website and participate, at your cost, in a website that we, at our option, maintain for all Studios in the future. A “website” is any interactive electronic document, mobile media, social media tool or page or other Internet presence, contained in or utilizing a network of computers linked by communication software, including the Internet, Worldwide Web and any successor technology, including texting, social media promotions, posting or sites such as Facebook, Twitter, and Instagram, and including any other electronic, mobile or digital device, method or system enabling the transmission of information. Your use of the Studio Website, including any pictures or other media you may post on the Studio Website, must be in strict compliance with all applicable laws, including but not limited to laws governing copyright.~~

~~(d) — You may utilize any social media website or any other Internet community that we approve (the “Approved Sites”) pursuant to our then current social media policy, which we may modify from time to time. You must follow our guidelines when posting messages relating to your Studio on the Approved Sites. We reserve the right to require our approval of any message you compose for an Approved Site or to revoke our approval to use any Approved Site at any time. Your use of Approved Sites, including any pictures or other media you may post on Approved Sites, must be in strict compliance with all applicable laws, including but not limited to laws governing copyright.~~

~~(e) — You must use our Approved Supplier to conduct digital marketing services we designate, which may include, but is not limited to, data analytics, content marketing, digital media planning and buying, and search engine optimization.~~

~~8.2. — Grand Opening Spend Fee. No later than 10 days after the date that you sign an approved lease for your Studio premises, you must pay to us, in the form of a lump sum payment, by ACH, the amount of \$15,000 as a non-refundable grand opening spend fee (the “Grand Opening Spend Fee”); provided, however, if you purchase an existing Studio, the Grand Opening Spend Fee will be due no later than 10 days after the date you take possession of the Studio. The Grand Opening Spend Fee is in addition to your Local Marketing Spend Requirement described below. We will use the Grand Opening Spend Fee to advertise, market, and promote your Studio in accordance with a marketing plan that we determine in our sole discretion. You acknowledge and agree that our collection of the Grand Opening Spend Fee and management of the associated marketing does not constitute a guarantee as to the success of your Studio, and that we make no claims or representations whatsoever regarding potential sales, profits or earnings achievable by you or your Studio.~~

~~We reserve the right to require you to spend the Grand Opening Spend Fee directly (rather than pay us the Grand Opening Spend Fee), and if we so request, you will advertise, market, and promote your Studio in accordance with an advertising and marketing plan we approve before the opening of your Studio. We will have the right to obtain from you information with respect to the results achieved from meeting your Grand Opening Spend Fee requirement and implementing your approved advertising and marketing plan.~~

### ~~8.3. Marketing Fund.~~

- ~~(a) We have established a national advertising and marketing fund (the “**Marketing Fund**”) for the advertising, marketing, and public relations programs and materials we deem appropriate that will be used nationally, regionally, or locally, and you agree to contribute to the Marketing Fund an amount equal to the greater of 2% of your gross receipts or \$500 per month; *provided, however*, you will not be required to contribute more than \$1,000 per month to the Marketing Fund. Your contribution to the Marketing Fund shall be payable at the same time as the payment of the Royalty, based on gross receipts for the immediately preceding reporting period. We have the right to collect for deposit into the Marketing Fund any advertising, marketing, or similar allowances paid to us by suppliers to the Franchise System who instruct us to use the allowances for advertising or marketing purposes. We may incorporate the Marketing Fund or operate it through a separate entity as we deem appropriate. We have no fiduciary obligations to you in connection with our administration of the Marketing Fund. We do not use any of the funds contributed to the Marketing Fund principally to solicit new franchise sales. If we or our affiliates own any Studios, those Studios make contributions to the Marketing Fund on the same basis as you and our other franchisees.~~
- ~~(b) We designate all programs to be financed by the Marketing Fund and have sole control over the creative concepts, materials, and endorsements prepared and used and their geographic, market, and media placement and allocation. The Marketing Fund may pay for: (i) preparing and producing video, audio, and written materials (including marketing and promotional materials and local store marketing advertisements we prepare) and electronic media; (ii) administering regional and multi-regional marketing and advertising programs, including purchasing space in print publications, direct mail, radio and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance; (iii) supporting public relations, market research, and other advertising, promotion, and marketing activities; (iv) developing and maintaining website(s) for the Franchise System; (v) administering online advertising and marketing campaigns (including search engine, social media, email, and display ad campaigns); and (vi) developing and maintaining application software designed to run on computers and similar devices, including tablets, smartphones and other mobile devices, as well as any evolutions or “next generations” of any such devices. The Marketing Fund will advertise in printed materials, on radio or television for local, regional or national circulation, and via digital media. We and/or our regional or national advertising agency will produce all advertising and marketing. We determine the use of the funds contributed to the Marketing Fund, including~~

~~allocating a portion of any Marketing Fund contributions to any regional advertising programs we may establish in the future. We are not required to spend any particular amount on marketing, advertising or promotion in the area in which your Studio will be located. In addition, we are not be required to ensure that Marketing Fund expenditures for or affecting any geographic area be proportionate or equivalent to Marketing Fund contributions by Studios operating in that area, or that any Studio benefits from the development or placement of advertising and marketing materials directly or in proportion to its Marketing Fund contributions. We intend for the Marketing Fund to promote the applicable Marks, patronage of Fitness Together<sup>®</sup> Studios, and the Fitness Together<sup>®</sup> brand generally. We may use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. We also may forgive, waive, settle, and compromise all claims by or against the Marketing Fund. Except as specifically provided in this Agreement, we assume no other direct or indirect liability or obligation to you for collecting amounts due, or maintaining, directing, or administering the Marketing Fund. We have no fiduciary obligation to you in connection with our administration of the Marketing Fund.~~

~~(c) We account for the Marketing Fund separately from our other funds and do not use the Marketing Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Marketing Fund and its programs, including conducting market research, preparing advertising, promotion, and marketing materials, and collecting and accounting for Marketing Fund contributions. The Marketing Fund is not our asset and we do not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing Fund or for any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. If we terminate the Marketing Fund, we will spend all unspent amounts on marketing activities specified by this Section 8.3.~~

~~(d) We prepare annual unaudited financial statements for the Marketing Fund that are available to you upon written request 120 days after the end of the Marketing Fund's fiscal year. We are not required to audit the Marketing Fund but may do so at our discretion.~~

~~8.4. Marketing Cooperatives. We may designate a geographic area in which 3 or more Studios are located as an area in which to establish a marketing cooperative ("Marketing Cooperative"). The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative's members are responsible for its administration and determination of contribution levels. All Marketing Cooperatives will be governed by written documentation generated and designated by us. Such~~

~~documentation is available for Marketing Cooperative member review. All material decisions of the Marketing Cooperative, including contribution levels, will require the affirmative vote of at least 51% of all Studios operating within the Marketing Cooperative's area (including those that we and our affiliates operate, if any), with each Studio receiving 1 vote. The Marketing Cooperative will be responsible for collecting Marketing Cooperative fees directly. We may form, modify, change, dissolve, or merge Marketing Cooperatives. We will not use funds contributed to a Marketing Cooperative to solicit new franchise sales.~~

#### ~~8.5. Local Marketing Spend Requirement.~~

- ~~(a) — You must pay us a fee of \$800 per month (“Local Advertising Fee”). In addition, you must spend a minimum of 2% of the gross receipts of your Studio toward approved advertising, marketing and promotional programs for your Studio within an area reasonably surrounding your Studio (“Local Spend Amount”). We will refer to the Local Advertising Fee and your Local Spend Amount together as the “Local Marketing Spend Requirement.” Your Local Marketing Spend Requirement excludes any contributions you make to the Marketing Fund, but any contributions you make to a Marketing Cooperative will count toward your Local Spend Amount. Your required Marketing Cooperative contributions could, by themselves, exceed the Local Spend Amount. We currently collect the Local Advertising Fee on the 15th day of each month for the preceding month. We may change the day of the month on which we collect the Local Advertising Fee. We or our affiliates may be an Approved Supplier of local advertising, marketing and promotional programs for your Studio.~~
- ~~(b) — At least 90 days before you open your Studio (or if you are purchasing an existing Studio, at least 30 days before taking possession of the Studio), you must submit to us a completed trade area survey and submit to us for approval an advertising and marketing plan describing your pre-opening advertising plan and your plan for the first 3 months after the opening or purchase. You will not be permitted to open and/or operate your Studio until we receive the completed trade area survey and approve this advertising and marketing plan. Subsequent to such period, and during the term of this Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Local Marketing Spend Requirement.~~

#### ~~J.A. Gift Cards and Loyalty Programs.~~

~~—You must participate in all gift card, loyalty card, promotional card, award card, or other similar prepaid card, code or other device (collectively, “Gift Cards”) programs and loyalty programs periodically established or approved of by us for Studios. You acknowledge and agree that we may charge you a fee in connection with your participation in these programs, which may include, without limitation, the cost of any third-party vendor commissions or fees incurred by us in connection with the programs. You are required to purchase Gift Cards from our Approved~~

~~Supplier and may use and honor Gift Cards only in the manner we designate and require. Participation in loyalty programs may require you to honor redemption policies that we implement from time to time, which may require you to provide services or products without charge or to reimburse other Studios for services and products provided by them.~~

## ~~9. INDEMNIFICATION~~

~~You agree to indemnify, defend and hold harmless us and our affiliates, and our and their respective shareholders, members, managers, owners, principals, directors, officers, employees, agents, representatives, successors and assigns (the “Indemnified Parties”) from and against, and agree to reimburse them for, all claims, obligations and damages described in this Section 9, any and all of your third party payment or other obligations, and any and all claims and liabilities directly or indirectly arising out of the operation of your Studio or your use of the Proprietary Assets in any manner, including, without limitation, those alleged to be or found to have been caused by the Indemnified Party’s gross negligence or willful misconduct, unless (and then only to the extent that) the claims and liabilities are determined to be caused solely by the Indemnified Party’s gross negligence or willful misconduct in a final, un-appealable ruling issued by a court or arbitrator with competent jurisdiction. For purposes of this indemnification, “claims” means and includes all obligations, actual and consequential damages, and costs reasonably incurred in the defense of any claims against the Indemnified Parties including, without limitation, reasonable accountants’, attorneys’ and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. Each Indemnified Party shall have the right to defend any such claim against it at your expense and agree to settlements or take any other remedial, corrective, or other actions. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.~~

## ~~10. DEFAULT; TERMINATION~~

~~10.1. Immediate Termination by Us. We have the right, at our option, to terminate this Agreement and all rights granted to you, without affording you any opportunity to cure any default (subject to any state laws to the contrary, in which case state law will prevail), effective upon delivery to you of a termination notice, upon the occurrence of any of the following events:~~

- ~~(a) Unauthorized Disclosure. If you or any person under your control intentionally or negligently discloses to any unauthorized person, or copies or reproduces, the contents or any part of the Operations Manual or any other Proprietary Assets, trade secrets or confidential information of ours or our affiliates;~~
- ~~(b) Fraud. If you commit fraud in connection with the purchase or operation of the Studio or otherwise engage in conduct that, in our sole judgment, impairs or may impair the goodwill associated with the Marks or otherwise subjects the Marks or the Franchise System to ridicule, scandal, reproach, scorn or indignity;~~
- ~~(c) Abandonment. If you cease to operate your Studio or you otherwise abandon your Studio for a period of 2 consecutive days, or you indicate an intent to permanently discontinue operation of the Studio, unless and only to the extent full operation of~~

~~your Studio is suspended or terminated due to the exercise of the power of eminent domain or fire, tornado, hurricane, flood, earthquake, or similar natural disaster which is not within your control (and not related to the availability of funds to you);~~

- ~~(d) Bankruptcy. If you, or any person controlling, controlled by or under common control with you (“**your affiliates**”), becomes insolvent or are adjudicated bankrupt; or if you or any of your affiliates file or has filed against you or any of your affiliates, a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States; or if a permanent or temporary receiver is appointed for you or any of your affiliates; or if you or any of your affiliates requests the appointment of a receiver or makes a general assignment for the benefit of creditors;~~
- ~~(e) Judgment. If a final judgment against you or any of your affiliates in the amount of \$5,000 or more remains unsatisfied of record for 30 days or longer; or if the bank accounts, property or receivables of you or any of your affiliates are attached and such attachment is not dismissed within 30 days; or if execution is levied against your or any of your affiliates’ business or property; or if suit is instituted to foreclose any lien or mortgage against your Studio, the premises thereof or equipment thereon, and not dismissed within 30 days;~~
- ~~(f) Criminal Conviction. If you or any of your Bound Parties (as defined in Section 12.1) is convicted of, or pleads no contest or guilty to, a felony, a crime involving moral turpitude, or any crime or offense that, in our sole judgment, is reasonably likely to harm or unfavorably affect the Marks, the Proprietary Assets or the Franchise System or their associated goodwill and reputation;~~
- ~~(g) Unethical Conduct. If you or any of your Bound Parties (as defined in Section 12.1) engage in any unethical conduct which, in our sole judgment, is reasonably likely to harm or unfavorably affect the Marks, the Proprietary Assets or the Franchise System or their associated goodwill and reputation;~~
- ~~(h) Failure to Pay. If you (or any other Entity in which you or one of your owners with at least a 25% ownership interest in you, is an owner) fails to pay any amounts due us or our affiliates within 10 days after delivery of notice that such fees or amounts are overdue;~~
- ~~(i) Underreporting. If you intentionally underreport your Studio’s gross receipts by any amount or negligently underreport your Studio’s gross receipts by 5% or more during any reporting period;~~
- ~~(j) Training. If you or any of your owners is discovered to be cheating at Initial Training or fails to complete Initial Training to our satisfaction~~
- ~~(k) Commencement of Operations. If you fail to open your Studio by the Projected Opening Date;~~

- ~~(l) Misuse of Marks. If you or any of your affiliates misuse the Marks or Proprietary Assets, fail to follow our directions and guidelines concerning use of the Marks or Proprietary Assets, or use any marks in connection with your Studio not authorized by us and fail to correct the misuse or failure within 10 days after delivery of notice from us;~~
  - ~~(m) Repeated Non-Compliance. If you receive 3 notices of default from us within a 1-year period, regardless of whether you cured the defaults;~~
  - ~~(n) Unauthorized Transfer. If you sell, transfer or otherwise assign this Agreement, the Studio, or any interest in this Agreement or the Studio, or sell, transfer or otherwise assign a substantial portion of the Studio, in each case, without complying with the provisions of this Agreement applicable to transfers;~~
  - ~~(o) Loss of Possession. If you lose the right to occupy the Studio premises;~~
  - ~~(p) Termination of Other Agreement. If we or any of our affiliates issues a notice of termination with respect to any other franchise agreement, master franchise agreement or area director agreement between us and any of our affiliates and you (or other Entity in which you, or one of your owners with at least a 25% ownership interest in you, is an owner) governing the operation of another Studio, or master franchise or area director business;~~
  - ~~(q) Loan Default. If you commit a default under any loan from, or lease with, us, our affiliates or a third party and fail to cure the default within the time specified by us or by any third party;~~
  - ~~(r) Health/Safety. If you create, or allow to exist, any condition in or at the Studio, on or about the Studio premises, or otherwise in connection with your obligations under this Agreement, that we reasonably believe presents health or safety concerns for the Studio's clients or employees; or~~
  - ~~(s) Background Checks. You fail to perform background checks for all employees you hire and update the background checks pursuant to Section 7.5(d) and as specified in the Operations Manual.~~
- ~~10.2. Termination by Us – 30 Days' Notice. If you breach any other provision of this Agreement, we will have the right to terminate this Agreement 30 days after we deliver to you prior written notice of any such breach (subject to any state laws to the contrary, in which case state law will prevail), including, without limitation, if you fail to comply with the provisions of the Operations Manual and fail to cure the default during the 30 day period. In that event, this Agreement will terminate without further notice to you, effective upon expiration of the 30-day period.~~
- ~~10.3. Default Fee. In addition to our other rights and remedies, we have the right to charge you a \$250 default fee per breach by you of any term or condition of this Agreement including, without limitation, failure to pay (or to have adequate amounts available for ACH from~~

~~your bank account) amounts owed to us or our affiliates or failure to timely provide required reports. We may change or eliminate this fee.~~

~~10.4. Your Obligations Upon Termination. Upon the expiration or termination of this Agreement for any reason, you must:~~

- ~~(a) — pay all Royalty and other amounts then owed to us or our affiliates pursuant to this Agreement or any other agreement between us, including any other franchise agreement, or any master franchise agreement or area director agreement, or otherwise;~~
- ~~(b) — cease identifying yourself as a franchisee of the Franchise System, cease using any of the Marks and Proprietary Assets or any confusingly similar names, marks, systems, insignia, symbols or other procedures or methods, cease using or operating (or take any action that may be required to disable) the Studio Website and any other websites, including social media websites, related to your Studio, and cease doing anything that would indicate any relationship between you and us;~~
- ~~(c) — return to us the Operations Manual and all other manuals, plans, specifications, designs, records, data samples, models, programs, materials, handbooks, drawings and other materials provided to you by us;~~
- ~~(d) — notify the telephone company, all telephone company directory publishers and all domain name providers of the termination or expiration of your right to use any telephone number, any regular, classified, or other telephone directory listings, and any domain names associated with any Mark (including any telephone number listing or domain name used in connection with your Studio) and authorize their transfer to us or our designee. You acknowledge that, as between you and us, we have the sole right to, and interest in, all telephone and facsimile machine numbers, directory listings and domain names associated with any Mark (including those related to your Studio). Should you fail to make such notifications, you authorize us, and hereby appoint us and any of our officers as your attorney in fact, to direct the telephone company, all telephone directory publishers and all domain name providers to transfer to us or our designee any telephone and facsimile machine numbers, directory listings and domain names relating to the Studio, and the telephone company, all telephone directory publishers and all domain name providers may accept such direction or this Agreement as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer; and~~
- ~~(e) — abide by all restrictive covenants set forth in Section 12 of this Agreement.~~

~~10.5. Client Obligations Upon Termination. In addition to the obligations set forth in Section 10.4, upon the expiration or termination of this Agreement for any reason, you must notify the clients of your Studio that you are no longer our franchisee and that your Studio will cease to operate under the Marks and the Franchise System. You acknowledge that, as between you and us, we have the sole right to, and interest in, the Client Information (as defined in Section 12.4). Accordingly, upon expiration or termination of this Agreement~~

~~for any reason, we or our designee may, but are not obligated to, contact clients of your Studio and offer such clients continued rights to use 1 or more Fitness Together Studios on such terms and conditions we deem appropriate, which in no event will include assumption of any then-existing liability arising out of or relating to any Membership Agreement or act or failure to act by you or arising from the operation of your Studio. If, upon expiration or termination of this Agreement, clients of your Studio are legally entitled to full or partial refund of any monies paid to you, you will refund such monies promptly and in full and will cooperate with us to preserve client goodwill with such clients.~~

~~10.6. Our Options in the Event of Your Default. If you are in default of this Agreement and have not cured the default within the applicable cure period:~~

~~(a) — we have the right (but not the obligation) to enter your Studio to make modifications necessary to protect the Proprietary Assets, to remove your equipment and signage, to cure any default under this Agreement or under the lease for the Studio Location, and assume all of your rights under the lease (including making lease payments), including the right to assign or sub-lease; and~~

~~(b) — we have the right (but not the obligation) to enter the Studio and assume the Studio's management (or to appoint a third party to assume its management) for any time period we deem appropriate. If we (or a third party) assume the Studio's management, you must pay us or the third party we designate (in addition to the Royalty and any additional amounts you owe us or our affiliates) our then-current monthly management fee (currently \$7,500). If we (or a third party) assume the Studio's management, you acknowledge that we (or the third party) will have a duty to use only reasonable efforts and will not be liable to you or your owners for any debts, losses, or obligations the Studio incurs, or to any of your creditors for any supplies or services the Studio purchases, while we (or the third party) manage it. The exercise of our rights under this Section 10.6 shall not affect our right to terminate this Agreement.~~

~~10.7. Liquidated Damages. If this Agreement is terminated because of your default or if you terminate this Agreement without cause before its expiration, you and we agree that it would be difficult if not impossible to determine the amount of damages that we would suffer due to the loss or interruption of the revenue stream we otherwise would have derived from your continued payment of Royalties and Marketing Fund contributions, less any cost savings, through the remainder of the term of this Agreement (the "**Damages**"). You and we agree that a reasonable estimate of the Damages is, and you agree to pay us as compensation for the Damages, an amount equal to the then net present value of the Royalties and Marketing Fund contributions that would have become due following termination of this Agreement for the period beginning on the date of termination and ending twenty-four (24) months from the termination date, unless the scheduled expiration of the term of this Agreement expires earlier, in which case the period for calculating the Damages will end on the date of the scheduled expiration (the "**Measurement Period**"). For this purpose, Damages shall be calculated by multiplying (1) the number of calendar~~

~~months in the Measurement Period by (2) the aggregate of the Royalties and Marketing Fund contribution percentages by (3) the average monthly gross receipts of the Studio during the twelve (12) full calendar months immediately preceding the termination date; however, if as of the termination date, the Studio has not been operating for at least twelve (12) months, Royalties and Marketing Fund contributions will be calculated based on the average monthly gross receipts of all Studios during our last fiscal year. You and we agree that the calculation described in this Section is a calculation only of the Damages and that nothing herein shall preclude or limit us from proving and recovering any other damages caused by your breach of this Agreement.~~

~~10.8. Our Post Term Purchase Option. Upon the termination or expiration of this Agreement, we will have the option, exercisable by giving written notice to you within sixty (60) days from the date of such termination or expiration, as applicable, to acquire any or all the assets of your Studio from you (subject to any rights of approval retained by the owner of the leasehold), including the Studio premises if you own the Studio premises, as follows:~~

~~(a) — We will have the unrestricted right to assign this option and we or our assignee will be entitled to all customary warranties and representations in connection with the asset purchase, including representations and warranties as to ownership and condition of and title to assets; liens and encumbrances on assets; validity of contracts and agreements; and liabilities affecting the assets, contingent or otherwise; and a general release.~~

~~(b) — If we elect to obtain the premises of your Studio, you agree to assign your leasehold interest to us at no cost to us other than our assumption of the obligation to make post-assignment rental payments to the landlord under the lease; or if you own the Studio premises, to lease the Studio premises to us at a reasonable commercial rent and upon terms comparable to rental terms for similar leased property in the marketplace where your Studio is located.~~

~~(c) — The purchase price for the assets will be their fair market value, provided that no value will be attributed to the rights granted by this Agreement, any goodwill attributable to our Marks, brand image, and other intellectual property, or any participation in the Franchise System. For any tangible assets, fair market value shall be determined in a manner consistent with reasonable depreciation and shall consider the age and condition of the improvements, equipment, fixtures, furnishings, decor, and signs of your Studio. Fair market value will be determined by you and us, provided, that if we and you cannot agree on fair market value, it will be determined by one (1) independent accredited appraiser who will conduct an appraisal and, in doing so, be bound by the criteria described in this Agreement. If we and you cannot agree on an independent appraiser, you will select one appraiser, we will select one appraiser, and these two appraisers will appoint the appraiser to determine the fair market value. You and we agree to select an appraiser within fifteen (15) days, and, if necessary, the two appraisers selected by you and us are obligated to appoint the actual appraiser within fifteen (15) days after the last of the two is selected. ~~You and we will share equally the appraisers'~~~~

~~fees and expenses. The appraiser must complete its appraisal within thirty (30) days after its appointment.~~

- ~~(d) We may exclude from the assets we elect to purchase cash or its equivalent and any leasehold improvements, equipment, fixtures, furnishings, signs, materials and supplies that are not necessary or appropriate (in function or quality) to your Studio's operation or that we have not approved as meeting the System Standards for Studios, and the purchase price will reflect such exclusions.~~
- ~~(e) The purchase price will be paid at the closing of the purchase, which will take place not later than ninety (90) days after the determination of the purchase price. We will have the right to set off against the purchase price, and thereby reduce the purchase price by, any and all amounts you or your owners owe to us. At the closing, you agree to deliver instruments transferring to us: (i) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances, with all sales and other transfer taxes paid by you; (ii) all licenses and permits of your Studio which may be assigned or transferred; and (iii) a leasehold interest in (or unencumbered title to) the Studio premises and improvements. If you cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, the closing of the sale will be accomplished through an escrow. As a condition of our purchase of your Studio, you and your owners further agree to execute general releases, in form satisfactory to us, of any and all claims against us and our subsidiaries, shareholders, officers, directors, employees, agents, successors and assigns.~~

## ~~11. TRANSFER~~

~~11.1. Transfers. You acknowledge and agree that we are entering into this Agreement in reliance upon, and in consideration of, your business skills, financial capacity and other required qualifications. Accordingly, the rights and duties created under this Agreement are personal to you. Your interest in this Agreement, any of your rights under this Agreement, your Studio and any interest therein, and ownership interest in you may not be assigned, transferred, shared or divided, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner (collectively, a "transfer"), without our prior written consent. Any actual or intended assignment, transfer or sale made in violation of the terms of this Section 11 shall be null and void and shall constitute a material breach of this Agreement, constituting good cause for termination of this Agreement. You agree that, other than a transfer pursuant to Section 11.2, there may be no transfers before you have commenced operations of the Studio in compliance with Section 7.3(b). We will not unreasonably withhold our consent to a transfer, provided all of the following conditions are met before or concurrently with the effective date of the transfer:~~

- ~~(a) the proposed transferee provides information to us sufficient for us to assess the transferee's business experience, aptitude, and financial qualification, and we approve the proposed transferee as a franchisee;~~

- ~~(b) — neither the transferee nor its owners or affiliates have an ownership interest in, or perform services in any capacity for a Competitive Business (defined in Section 12.1)~~
- ~~(c) — you, your owners, and any other guarantors under this Agreement, execute a form consent to transfer, which will include a general release and a non-disparagement clause, in a form satisfactory to us (“Consent to Transfer”), releasing us and our affiliates, and our and their respective officers, directors, members, shareholders, employees and agents, in their corporate and individual capacities, from any and all claims, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;~~
- ~~(d) — you and your owners and guarantors abide by all post-termination covenants, including the covenant not to compete set forth in Section 12.2;~~
- ~~(e) — all obligations created by this Agreement, all ancillary documents and any other franchise agreements, master franchise agreements, area director agreements or other agreements between us have been discharged or otherwise assumed by the transferee;~~
- ~~(f) — all amounts due and owing pursuant to this Agreement or otherwise (including under another franchise agreement, master franchise agreement or area director agreement with us) by you (or any other Entity in which you, or one of your owners, is an owner) to us, our affiliates, or third parties whose debts or obligations we have guaranteed on your behalf, if any, are paid in full; and~~
- ~~(g) — you are not in default under this Agreement or under any other franchise agreement, master franchise agreement, area director agreement or other agreements between us.~~

~~Notwithstanding the foregoing, if the proposed transfer is of this Agreement and the Studio or the day-to-day operational responsibilities for the Studio, or a controlling interest in you (25% or more), or is one of a series of transfers (regardless of the time period over which these transfers take place) that, in the aggregate, transfer this Agreement and the Studio or a controlling interest in you (25% or more), all of the following conditions must be met before or concurrently with the effective date of the transfer:~~

- ~~(h) — each of the conditions set forth in Section 11.1(a) through (g) above is satisfied;~~
- ~~(i) — the proposed transferee agrees to operate the Studio as a Fitness Together Studio and signs the then-current form of franchise agreement, the provisions of which may be materially different than the provisions contained in this Agreement;~~
- ~~(j) — the proposed transferee (and any other persons required by us under the then-current form of franchise agreement) must satisfactorily complete Initial Training prior to taking possession;~~

- ~~(k) — the proposed transferee agrees to renovate, refurbish, remodel or replace, at its own cost, the real and personal property and equipment used in operating the Studio within the timeframe specified by us in order to comply with our then current image and System Standards;~~
- ~~(l) — your landlord permits you to transfer or sublease the Studio lease to the transferee and any new lease, sublease, or lease assignment transferring or subleasing the Studio lease to transferee has been approved by us as set forth in Section 7.2;~~
- ~~(m) — you or the transferee pay us a fee in the amount equal to 50% of the then current initial franchise fee (“**Transfer Fee**”). The Transfer Fee must be paid to us in a lump sum by wire transfer concurrently with signing a Consent to Transfer;~~
- ~~(n) — if the transferee was identified, or referred to you, by a third party broker, you shall have paid any and all of such third party broker’s fees;~~
- ~~(o) — neither the transferee nor its owners may, without our prior written consent, take possession of the Studio until the transfer process has been completed; and~~
- ~~(p) — you pay us a deposit of \$3,500 (“**Fee Deposit**”). The Fee Deposit must be paid to us by wire transfer concurrently with the signing of the Consent to Transfer. We will refund the Fee Deposit to you, less any amounts which may be due under this Agreement, within thirty (30) days following the effective date of the transfer or the date on which you and the transferee have complied with all terms set forth in the Consent to Transfer, whichever is later.~~

~~You acknowledge that the proposed transferee will be evaluated by us based on the same criteria as those currently being used to assess new franchisees and that the proposed transferee will be provided with the disclosures required by law. We may review all information regarding the Studio and your franchise business that you give the transferee, and we may give the transferee copies of any reports or information that you have given us or that we have made regarding the Studio.~~

- ~~11.2. Transfer to an Entity Owned by You. Notwithstanding the foregoing, you may, for convenience of ownership or to comply with the provisions of Section 7.3(b), and without the payment of the Transfer Fee, transfer the ownership of your Studio under this Agreement to an Entity wholly owned by you. Before such transfer, you must furnish to us a copy of the organizational documents of the Entity, execute a guaranty of the obligations under this Agreement (substantially in the form set forth as Exhibit 4), and cause all necessary parties to execute any other transfer documents we deem reasonably necessary. As a condition to such transfer, you must sign our then current general release, which will include a non-disparagement clause.~~
- ~~11.3. Death, Disability or Permanent Incapacity. Upon your death, disability or permanent incapacity, we shall not unreasonably withhold our consent to the transfer of your interest in this Agreement to a spouse, heirs or relatives, by blood or marriage, whether such transfer is made by will or by operation of law, provided that the conditions of Section 11.1~~

~~and the requirements of this Agreement have been met, and further provided that the transfer does not result in a change of control of you to any party other than such spouse, heir or relative. In such event, no Transfer Fee shall be required. If your heirs do not obtain our consent as prescribed herein, your personal representative shall have 180 days to dispose of your interest hereunder, which disposition shall be subject to all of the terms and conditions for transfers under this Agreement.~~

~~11.4. Your Agreement to Transfer Restrictions. Any transfer permitted by this Section 11 shall not be effective until all requirements in this Agreement concerning transfer have been met and we have approved the transfer in writing. You agree that the restrictions on transfer imposed in this Agreement are reasonable and necessary to protect the Marks, the Proprietary Assets, your Studio and the Franchise System, as well as our reputation and image, and are for the protection of us, you, and our other franchisees.~~

~~K.A. Our Right of First Refusal.~~

~~If you (or any of your owners) at any time determine to sell or transfer for consideration a controlling interest in this Agreement (25% or more), the assets of your Studio, or a controlling interest in you (except to or among your current owners, which is not subject to this Section), in a transaction that otherwise would be allowed under Section 11.1 above, you (or your owners) agree to obtain from a responsible and fully disclosed buyer, and send us, a true and complete copy of a bona fide, executed written offer (which may include a letter of intent) relating exclusively to an interest in you or in this Agreement and your Studio. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price, and must be contingent upon our waiver of our right of first refusal as described in this Section 11.5. We may require you (or your owners) to send us copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction.~~

~~Upon our receipt of the offer and other documents, we will have 30 days in which to exercise our right of first refusal on the same terms and conditions set forth within the offer. During such period, we may also notify you that we have acted to withhold approval of the proposed transfer and will provide you with the specific reasons for such action.~~

~~11.5. Transfer if Franchisee Is an Entity. If you are an Entity, the terms of this Section 11 shall be deemed to also apply to any sale, resale, pledge, assignment, transfer or encumbrance of the voting stock of, or other ownership interest in you.~~

~~11.6. Controlling Interest. A person will be deemed to have a controlling interest in you if that person has the right to vote 25% or more of the voting securities or other forms of ownership interest of a corporation, partnership or other form of entity, or is entitled to receive 25% or more of the net profits of any such entity, or is otherwise able to direct or cause the direction of that entity's management or policies.~~

~~11.7. Our Transfer. This Agreement inures to the benefit of us and our successors and assigns, and we have the right to transfer or assign all or any part of our interest, rights, privileges, duties and obligations hereunder to any person or legal entity without your approval.~~

## ~~12. RESTRICTIVE COVENANTS~~

~~12.1. Non-Competition During Term. You agree that, other than the Studio, neither you nor any of your officers, directors, shareholders, members, partners or other owners, nor any spouse of yours or any of these individuals (collectively, “Bound Parties”), shall, during the term of this Agreement:~~

- ~~(a) have any direct or indirect interest as a disclosed or beneficial owner in a Competitive Business (as defined below), wherever located or operating~~
- ~~(b) perform services as a director, officer, manager, employee, consultant, lessor, representative, agent or otherwise for a Competitive Business, wherever located or operating;~~
- ~~(c) divert or attempt to divert any business or Memberships related to the Studio, our business, or any other franchisee’s Studio by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of ours, any of our affiliates, or another franchisee, to any Competitive Business;~~
- ~~(d) use any of the Proprietary Assets for any unauthorized purpose, use any confusingly similar method, format, procedure, technique, slogan, insignia, term, designation, design, diagram, promotional material or course material, or cause or permit any facility or program to look like, copy or imitate any facility or program operated or licensed by us without our prior written consent; or~~
- ~~(e) directly or indirectly assist an immediate family member of any of the Bound Parties in engaging in any of the activities listed in subsections (a)–(d) above.~~

~~The term “Competitive Business” for purposes of this Agreement, means any business operating or granting franchises or licenses to others to operate one on one or personal small group physical fitness studios or any other physical fitness or nutrition service business, or any business offering or selling products or educational materials, or conducting workshops for, services that are the same as, similar to, or competitive with the Franchise System or other Studios (other than a franchise operated under a franchise agreement with us or our affiliate).~~

~~Post Termination We may at any time require you to modify or discontinue using any Mark and/or use one or more additional or substitute Marks. You agree to replace the Marks at your Studio with the modified, additional or substitute Marks we specify and comply with all other directions we give regarding the Marks at your Studio within a reasonable time after receiving notice from us. We are not required to reimburse you for any costs or expenses associated with making such changes, for any loss of revenue due to any modified or discontinued Mark, or for your expenses of promoting a modified or substitute Mark. Our rights in this Section 5.D. apply to any and all of the Marks (and any portion of any Mark) that we authorize you to use in this Agreement. You acknowledge both our right to take this action and your obligation to comply with our directions.~~

E. Indemnification for Use of Marks.

We agree to reimburse you for all damages and expenses that you incur in responding to any trademark infringement proceeding disputing your authorized use of any Mark under this Agreement if you have timely notified us of the proceeding and complied with our directions in responding to it and have used the Marks in accordance with the terms of this Agreement. We will not pay any of your attorneys' fee if you hire your own attorney. At our option, we may defend and control the defense of any proceeding arising from your use of any Mark under this Agreement.

6. CONFIDENTIAL INFORMATION.

~~I.A. A. Covenant Not to Compete~~

~~For a period of 2 years after the expiration or termination of this Agreement (regardless of the cause of termination) or the sale or transfer of your Studio, or such other date as you and all other Bound Parties begin to comply with this Section 12.2, whichever is later, neither you nor any other Bound Party shall have any direct or indirect interest as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, lessor, representative, agent, or in any other capacity in any Competitive Business located or operating within a 3-mile radius of your Studio (including at the former Studio Location) or within a 3-mile radius of any other Studio existing on the later of the effective date of termination or expiration of this Agreement or the date on which you and all other Bound Parties begin to comply with this Section 12.2.~~

~~12.2. Permitted Interests. Nothing in this Section 12 shall prohibit you or any other Bound Party from owning shares of a class of securities listed on a stock exchange or traded on the over-the-counter market representing 5% or less of the aggregate number of shares of that class of securities issued and outstanding.~~

Confidential Information:

We possess (and will continue to develop and acquire) certain proprietary confidential information consisting, some of (i) the Marks, (ii) the Proprietary Assets, (iii) our which constitutes trade secrets under applicable law (the "Confidential Information"), relating to developing and operating Studios, including:

- a) training and operations materials, including the Operations Manual;
- b) the System Standards, (iv) and other methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating Studios;
- c) market research, promotional, marketing and advertising strategies and programs for Studios;
- d) strategic plans, including expansion strategies and targeted demographics;
- e) knowledge of, specifications for and suppliers of, and methods of ordering, Operating Assets and other products and supplies;

- f) any computer software or similar technology which is proprietary to us or the Franchise System, including digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology;
- g) knowledge of the operating results and financial performance of Studios (other than your Studio);
- h) information generated by, or used or developed in, your Studio's operation, including information relating to clients such as client names, addresses, telephone numbers, ~~e-mail~~email addresses, buying habits, preferences, demographic information, and ~~similar~~related information, and any other information contained from time to time in the Computer System ("Client Information"), and (v) other methods, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques and knowledge of and experience in the operation and franchising of Studios (the "Confidential Information"). We shall disclose the-"); and
- i) any other information designated as confidential or proprietary by us.

All Confidential Information ~~to~~ will be owned by us. You acknowledge and agree that you in Initial Training, in the Operations Manual, and in guidance and materials furnished to you during the term of this Agreement. You have~~will~~ not ~~acquired~~acquire any interest in the Confidential Information, other than the right to utilize it in the territory and Protected Area in the execution of your duties hereunder during the term of this Agreement, and you acknowledge that use it as we specify in operating your Studio during this Agreement's term, and that Confidential Information is proprietary, includes our trade secrets, and is disclosed to you only on the condition that you agree, and you in fact do agree, that you and your owners:

(a) will not use Confidential Information in any other business or capacity and the use or duplication of ~~the~~any Confidential Information in any other business ~~venture~~or capacity would constitute an unfair method of competition. You acknowledge and agree that the Marks and Proprietary Assets have valuable goodwill attached to them, that their protection and maintenance are essential to us and our affiliates, and that any unauthorized use or disclosure;

will keep each item deemed to be part of the Marks, the Proprietary Assets or other Confidential Information will result in irreparable harm to us and our affiliates. You also acknowledge and agree that the Confidential Information is proprietary, includes trade secrets of ours, and is disclosed to you solely on the condition that you agree, and all of the other Bound Parties hereby agree that you:

(a)(b) will not use the Confidential Information in any other business or capacity absolutely confidential, both during this Agreement's term and then thereafter;

~~(b)(c)~~ will ~~maintain the absolute confidentiality~~ not make unauthorized copies of ~~the~~ any Confidential Information during and after the term of this Agreement ~~disclosed via electronic medium or in written or other tangible form~~;

~~(a)~~ ~~will not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and~~

~~(e)(d)~~ will adopt and implement ~~all~~ reasonable procedures ~~prescribed periodically by us~~ to prevent unauthorized use or disclosure of Confidential Information, including by restricting its disclosure and/or by requiring persons who have access to the Confidential Information, including requiring that every employee, agent or independent contractor you hire or engage to assist you in the operation of your Studio ~~execute a confidentiality and non-solicitation agreement. (See Section 7.1)~~ agreements in the form attached as Exhibit D; and

~~(e)~~ You agree ~~will not sell, trade or otherwise profit in any way from the Confidential Information, except using methods approved by us.~~

Confidential Information does not include information, knowledge, or know-how, which (i) before we provided it to you, lawfully came to your attention, (ii) before we disclosed it to you, had already lawfully become known to you through publication or communication by others (without violating an obligation to us or our affiliates), or (iii) after we disclosed it to you, lawfully becomes known through publication or communication by others (without violating an obligation to us or our affiliates). However, if we include any matter in Confidential Information, anyone who claims that we shall have the perpetual right to use and authorize other franchisees to use, and you shall fully and promptly disclose to us, all it is not Confidential Information must prove that one of the exclusions provided in this paragraph is fulfilled.

All ideas, concepts, methods, and techniques relating to the development and operation of the Franchise System howsoever conceived or developed by you or your employees during the term of this Agreement. You acknowledge that any ideas, concepts, methods, and techniques, or materials concerning any relating to a Studio, whether or not protectable intellectual property and whether or not created by or for you or your owners or employees, must be promptly disclosed to us and will be deemed to be our and our affiliates' our sole and exclusive property, part of the Franchise System, and works "made-for-hire" for us and our affiliates. With respect to. To the extent that any such item, you assign ownership of that item, or will cause your owners or employees to does not qualify as a "work made-for-hire" for us, you hereby assign ownership of that item, and all related rights to that item, to us and our affiliates and you must sign agree to take whatever action (including signing assignment or other documents) we or our affiliates request to reflect evidence our ownership of, or to help us and our affiliates obtain intellectual property rights in; the item. If you are an individual, you

## B. Trade Secrets

You understand and agree that your spouse shall be bound, and if you are an Entity, you will come into possession of certain of our trade secrets concerning the manner in which Studios conduct business including: methods of doing business or business processes; strategic

business plans; customer lists and information; marketing and promotional campaigns; and any other materials clearly marked or labeled as trade secrets. You agree that ~~any~~ the forgoing information, which may or may not be considered "trade secrets" under prevailing judicial interpretations or statutes, is private, valuable, and constitutes trade secrets belonging to us. You agree that you derive independent economic value from the foregoing information not being generally known to, and not being readily ascertainable through proper means by another person. You agree to take reasonable measures, as we may describe further in the Operations Manual, to keep such information secret. Upon termination of this Agreement, you must not use, sell, teach, train, or disseminate in any manner to any other person, firm, corporation, or association any trade secret pertaining to our business and/or the manner in which it is conducted.

## 7. EXCLUSIVE RELATIONSHIP DURING TERM.

### A. Covenants Against Competition.

You acknowledge that we have granted you a franchise in consideration of and reliance on your agreement to deal exclusively with us. You therefore agree that, during this Agreement's term, neither you, any of your owners, nor any of your or your owners' immediate family members will:

- a) have any direct or indirect controlling or non-controlling ownership interest as an owner (whether of record, beneficially, or otherwise) in a Competitive Business (as defined below), wherever located or operating (except that equity ownership of less than five percent (5%) of a Competitive Business whose stock or other forms of ownership interest are publicly traded on a recognized United States stock exchange will not be deemed to violate this subparagraph);
- b) act as a director, officer, manager, employee, consultant, lessor, representative, or agent for a Competitive Business, wherever located or operating;
- c) divert or attempt to divert any actual or potential business or client of your Studio to a Competitive Business; or
- d) engage in any other activity which might injure the goodwill of the Marks and Franchise System.

You agree to obtain similar covenants from your personnel as we specify, including officers, directors, ~~partners, shareholders~~ managers and other employees attending our Training Program or having access to Confidential Information. We have the right to regulate the form of agreement that you use and to be a third-party beneficiary of that agreement with independent enforcement rights.

The term "Competitive Business" means any business (excluding any Studios operated under a franchise agreement with us or our affiliate) operating, or granting, franchises or licenses to others to operate any business that: (i) offers one-on-one or personal small group personal fitness training in physical fitness studios or any other physical fitness or nutrition service business; and ~~members~~ -/or (ii) offers or sells products or educational materials, or conducts workshops, that are

~~the same as or similar to products, educational materials, and their respective spouses shall be bound by this Section 12.4. Without limiting the generality of the foregoing, you acknowledge and agree that, in accordance with this provision, we have the perpetual right to use and authorize other franchisees to use any materials (including but not limited to photos or videos that you or your employees create), without the requirement that we pay any fee or royalty, which you or your owners may post to any Approved Sitesworkshops, offered by us or other Studios.~~

~~All Client Information will be owned by us. You agree to (1) use Client Information only for the promotion of your Studio during the term hereof and (2) refrain from selling Client Information to third parties. You will institute a data privacy and security policy for Client Information in conformity with the requirements of Section 7.5(e).~~

#### B. Non-Interference.

You further agree that, during the term of this Agreement, neither you, any of your owners, nor any of your or your owners' immediate family members will solicit, interfere, or attempt to interfere with our or our affiliates' relationships with any clients, vendors, or consultants.

#### M.C. Non-Disparagement.

-You agree not to (and to use your best efforts to cause your current and former shareholders, members, officers, directors, principals, agents, partners, employees, representatives, attorneys, spouses, ~~Affiliates~~affiliates, successors and assigns not to) (i) disparage or otherwise speak or write negatively, directly or indirectly, of us, our affiliates, any of our or our affiliates' directors, officers, employees, representatives or affiliates, the "Fitness Together" brand, the Franchise System, any Studio, any business using the Marks, or (ii) take any other action which would, directly or indirectly, subject the "Fitness Together" brand to ridicule, scandal, reproach, scorn, or indignity, or which would negatively impact the goodwill of us or the "Fitness Together" brand.

~~12.3.—Consideration for Covenants; Severability.~~

### 8. SYSTEM STANDARDS.

#### A. Compliance with System Standards.

You acknowledge and agree that operating and maintaining your Studio according to our System Standards is essential to preserve the goodwill of the Marks and all Studios. Therefore, you agree, at all times, to operate and maintain your Studio according to all of our System Standards, as we periodically modify and supplement them, even if you believe that a System Standard is not in the Franchise System's or your best interests. Although we retain the right to establish and periodically modify System Standards, you (or your Operating Partner) are solely responsible for the management and operation of your Studio and for implementing and maintaining System Standards at your Studio.

As examples, and without limitation, System Standards may regulate any one or more of the following, in addition to the ~~license of the Marks granted to you~~ items described in Sections 8.B. through 8.N. below:

- a) amounts and types of equipment and inventory you must purchase and/or maintain;
- b) sales, marketing, advertising, and promotional campaigns, including prize contests, special offers and other national, regional or location marketing programs, and materials and media used in these programs;
- c) if we require you to offer any off-site services, the methods you use to operate, offer and sell such services;
- d) use and display of the Marks at your Studios and on uniforms, labels, forms, paper, products, and other supplies;
- e) issuing and honoring gift cards, gift certificates and similar items, and participating in loyalty card programs;
- f) pre-opening and ongoing staffing levels for your Studio; and employee credentials and qualifications, training, dress, and appearance (although you have sole responsibility and authority concerning employee selection and promotion, hours worked, rates of pay and other benefits, work assigned, and working conditions);
- g) days and hours of operation;
- h) client-service standards and policies, and participation in quality-assurance and client-satisfaction programs;
- i) product and service development programs, including participation in market research and testing;
- j) participation in, and dues assessed for, advisory councils;
- k) accepting cash, credit and debit cards, other payment systems, and check-verification services (and any evolutions or “next generations” of any of the foregoing payment methods);
- l) bookkeeping, accounting, data processing, and recordkeeping systems and forms; formats, content, and frequency of reports to us of sales, revenue, financial performance, and condition; and
- m) any other aspects of operating and maintaining your Studio that we determine to be useful to preserve or enhance the efficient operation, image, or goodwill of the Marks and Studios.

**B. Variation and Modification of System Standards.**

You acknowledge that complete and detailed uniformity might not be possible or practical under varying conditions, and that we specifically reserve the right to vary System Standards for

any franchise owner as we determine. We may choose not to authorize similar variations or accommodations to you or other franchise owners. We may also permit variations in the System Standards between Studios owned by us (or our affiliates) and Studios owned by franchisees.

We will periodically modify System Standards. These modifications may obligate you to invest additional capital in your Studio and/or incur higher operating costs. You agree to implement any changes in System Standards within the time period we request, whether they involve refurbishing or remodeling your Studio, buying new Operating Assets, adding new products and services, adding personnel or otherwise modifying the nature of your operations, as if they were part of this Agreement as of the Effective Date. We may require you to conduct mystery-shopper, client-survey, or other market-research testing, and quality-assurance inspections at your Studio at your expense.

#### C. Condition and Appearance of Your Studio.

During the term of this Agreement, you must regularly clean, repaint, and repair the interior and exterior of the Premises, repair or replace damaged, worn-out, or obsolete Operating Assets, and otherwise maintain the condition of your Studio, the Premises, and the Operating Assets to meet the highest standards of professionalism, cleanliness, sanitation, efficiency, courteous service, and pleasant ambiance.

You will place or display at the Premises (interior and exterior) only those signs, emblems, designs, artwork, lettering, logos, and display and advertising materials that we from time to time approve.

#### D. Approved Products and Services.

You agree that: (1) you will offer for sale or sell at your Studio only the products and services that we specify from time to time; (2) you will offer for sale or sell at your Studio approved products and services only in the manner and at the locations we have prescribed and will not sell any products or services wholesale or through alternative channels of distribution (including, the internet or retail stores); (3) you will not offer for sale or sell at your Studio, the Premises or any other location any products or services we have not approved (including any off-site services we have not authorized); (4) you will discontinue selling and offering for sale at your Studio any products or services that we at any time decide to disapprove; (5) you will purchase and use only the brands, types, or models of products, materials, supplies and services (including the Operating Assets and the Computer System) that we designate for operating your Studio; and (6) your Studio will provide services and sell products only on the days and during the hours approved by us.

If we at any time (including after our initial approval) determine that you fail to meet our System Standards for providing any products or services that we require, we may permanently or temporarily terminate your right to offer such products or services; provided that nothing contained herein shall be deemed a waiver of our right to terminate pursuant to Section 14.

E. Approved Distributors and Suppliers.

We may designate, approve or develop standards and specifications for manufacturers, distributors and suppliers of products and services to your Studio, which may be us or our affiliates (collectively, “suppliers”). You must purchase the products and services we periodically designate only from the suppliers we prescribe and only on the terms and according to the specifications we approve. We may designate a single supplier for any product, service (including digital marketing services), Operating Asset, or other material, or approve a supplier only for certain products.

You acknowledge and agree that we and/or our affiliates may derive revenue based on your purchases (including from charging you for products and services we or our affiliates provide to you and from promotional allowances, rebates, volume discounts and other payments, services or consideration we receive from suppliers that we designate or approve for some or all of our franchise owners). We and/or any of our affiliates may use such revenue or profit without restriction.

Unless we designate certain items or services used in the development or operation of your Studio that you may purchase from a supplier of your choosing, you must purchase those items or services only from suppliers that are then approved by us. If you would like us to consider approving a supplier that is not then approved, you must submit your request in writing before purchasing any items or services from that supplier. We will not be obligated to respond to your request, and we may require that you pay us a fee to compensate us for the time and resources we spend in evaluating the proposed supplier. Approval of a supplier may be conditioned on any factors we determine, including requirements relating to product quality, prices, consistency, reliability, financial capability, labor relations, and standards of service. We may, with or without cause, revoke our approval of any supplier at any time.

F. Compliance with Laws and Good Business Practices.

You must secure and maintain all required licenses, permits and certificates relating to your Studio and must, at all times, operate your Studio in full compliance with all applicable laws, ordinances, and regulations. You agree to comply and assist us in our compliance efforts with any and all laws and regulations, including those relating to truth-in-lending, fitness businesses, safety and sanitation, truth-in-advertising, occupational hazards, health and anti-discrimination laws (including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, if applicable to your Studio), and anti-terrorist activities (including the U.S. Patriot Act, Executive Order 13224, and related U.S. Treasury and/or other regulations). In connection with such compliance efforts, you agree not to enter into any prohibited transactions and to properly perform any currency reporting and other activities relating to your Studio as may be required by us or by law. You confirm that you and your owners are not listed in the Annex to Executive Order 13224 and agree not to hire any person so listed or have any dealing with a person so listed (the Annex is currently available at <http://www.treasury.gov>). You are solely responsible for ascertaining what actions must be taken by you to comply with all such laws, orders and/or regulations, and specifically acknowledge and agree that your indemnification responsibilities (as provided in Section 16.D.) apply to your obligations under this Section 8.F.

You and your employees must adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct in all dealings with clients, suppliers, us and the public. You agree to refrain from any business or advertising practice which may injure our business and the goodwill associated with the Marks and other Studios. Except as otherwise set forth in the Operations Manual, you must notify us in writing within five (5) days of the threat of or commencement of any action, suit or proceeding, and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect your operation or financial condition or that of your Studio and of any notice of violation of any law, ordinance, or regulation relating to your Studio.

#### G. Information Security.

You must implement all administrative, physical and technical safeguards required under applicable law or that we require to protect any information that can be used to identify an individual, including names, addresses, telephone numbers, e-mail addresses, employee identification numbers, signatures, passwords, financial information, credit card information, biometric or health data, government-issued identification numbers and credit report information (“Personal Information”), which includes complying with then-current Payment Card Industry Data Security Standards currently found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org), or any similar or subsequent standard, for the protection of cardholder data throughout the term of this Agreement. By way of example and not limitation, you shall institute a data privacy and security policy at your Studio to safeguard the Personal Information. No assistance, guidance, standards or requirements that we provide you constitute a representation or warranty of any kind, express or implied, that your Studio or business is compliant with federal, state, or local privacy and data laws, codes, or regulations, or acceptable industry standards. It is your responsibility to confirm that the safeguards you use to protect Personal Information comply with all laws and industry best practices related to the collection, access use, storage, disposal and disclosure of Personal Information.

If you become aware of a suspected or actual breach of security or unauthorized access involving Personal Information, you will notify us immediately and specify the extent to which Personal Information was compromised or disclosed. We reserve the right to conduct a data security and privacy audit of your Studio and your Computer System at any time, from time to time, to ensure that you are complying with our requirements for handling Personal Information. You shall pay the cost of such audit. You agree to cooperate with us fully during this audit. If we exercise any of these rights, we will not interfere unreasonably with your Studio’s operation.

#### H. Management of Your Studio.

Subject to the terms and conditions of this Agreement, you are solely responsible for the management, direction and control of your Studio. However, you (or your Operating Partner) may elect not to supervise your Studio on a full-time basis, provided that you appoint a manager who has completed our then-current Training Program to work full-time at your Studio (your “Designated Manager”). Your Designated Manager must supervise the management and day-to-day operations of your Studio and continuously exert his or her best efforts to promote and enhance your Studio and the goodwill associated with the Marks. You must identify your Designated Manager on **Exhibit A**. If you elect not to appoint a Designated Manager, your Designated Manager’s employment at your Studio is terminated, or we disapprove your Designated Manager

at any time, you (or your Operating Partner) must immediately assume the full-time responsibilities of supervising the management and day-to-day operations of your Studio and continuously exert your best efforts to promote and enhance your Studio and the goodwill associated with the Marks pursuant to the terms of this Agreement. You must notify us of any changes to your Designated Manager's employment as set forth in the Operations Manual.

I. Employees, Agents, and Independent Contractors.

You acknowledge and agree that you are solely responsible for all decisions relating to employees, agents, and independent contractors that you may hire to assist in the operation of your Studio. You agree that any employee, agent or independent contractor that you hire will be your employee, agent or independent contractor, and not our employee, agent or independent contractor. You also agree that you are exclusively responsible for the terms and conditions of employment of your employees, including recruiting, hiring, firing, training, compensation, work hours and schedules, work assignments, safety and security, discipline, and supervision. You agree to manage the employment functions of your Studio in compliance with federal, state, and local employment laws. ~~-, you have been-~~ Any best practices or sample resources we provide related to the foregoing employment matters are optional and for recommendation purposes only.

You must perform background checks (meeting the standards we set forth in the Operations Manual) for all employees you hire and update such background checks as specified in the Operations Manual. These requirements may affect who you may hire.

You must ensure that all your personal fitness trainers are properly licensed (if required in your jurisdiction) and have adequate insurance, including professional liability insurance or its equivalent.

We reserve the right to require that any employee, agent or independent contractor that you hire execute a confidentiality and non-solicitation agreement to protect the Confidential Information. We reserve the right to regulate the form of confidentiality and non-solicitation agreement that you use (including by requiring you to use the agreement attached as **Exhibit D**) and to be a third-party beneficiary of those agreements with independent enforcement rights. You acknowledge that any form of confidentiality and non-solicitation agreement that we require you to use, provide to you, or regulate the terms of (including the agreement attached as **Exhibit D**) may or may not be enforceable in a particular jurisdiction. You agree that you are solely responsible for obtaining your own professional advice with respect to the adequacy of the terms and provisions of any confidentiality and non-solicitation agreement that your employees, agents and independent contractors sign.

J. Insurance.

During the term of this Agreement you must maintain in force at your sole expense general liability, professional liability, sexual abuse and molestation, cyber-liability, motor vehicle liability, property, worker's compensation, employment practices liability, and other types of insurance we require. We reserve the right to require that you obtain all or a portion of your insurance policies from a designated vendor and on the terms and according to the specifications we approve. The liability insurance must cover claims for bodily and personal injury, death, and

property damage caused by or occurring in connection with your Studio’s operation or activities of your personnel in the course of their employment (within and outside your Studio and the Premises). All policies must contain the minimum coverage we prescribe from time to time and must have deductibles not to exceed the amounts we specify. We may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverages (including reasonable excess liability insurance) at any time. These insurance policies must be purchased from licensed insurers having a rating of “A/VIII” or higher by the then-current edition of Best Insurance Reports published by A.M. Best Company (or other similar publication or criteria we designate).

Other than employment practices coverage, the policies must be occurrence policies, and not claims-made policies. Each insurance policy for liability coverage must name us and any affiliates we designate as additional named insureds, using a form of endorsement that we have approved, and provide for thirty (30) days’ prior written notice to us of a policy’s material modification, cancellation or expiration. Each insurance policy must contain a waiver of all subrogation rights against us, our affiliates and their successors and assigns. You must routinely furnish us copies of your Certificates of Insurance, insurance policy endorsements or other evidence of your maintaining this insurance coverage and paying premiums.

Our requirements for minimum insurance coverage are not representations or warranties of any kind that such coverage is sufficient for your Studio’s operations. Such requirements represent only the minimum coverage that we deem acceptable to protect our interests. It is your sole responsibility to obtain insurance coverage for your Studio that you deem appropriate, based on your own independent investigation. We are not responsible if you sustain losses that exceed your insurance coverage under any circumstances. No insurance coverage that you or any other party maintains will be deemed a substitute for your indemnification obligations under Section 16.D. or otherwise.

#### K. Pricing.

Subject to applicable law, we may periodically set a maximum or minimum price that you may charge for products and services offered by your Studio. If we impose a maximum price for any product or service, you may not charge more for the product or service than the maximum price we impose. If we impose a minimum price for any product or service, you may not charge less for such product or service than the minimum price we impose. You must comply with any advertising policy we adopt which will prohibit you from advertising any price for a product or service that is different than our suggested retail price. Although you must comply with any advertising policy we adopt, you will not be prohibited from selling any product or service at a price above or below the suggested retail price unless we impose a maximum price or minimum price for such product or service.

#### L. Membership Sales.

You must offer and sell rights of access to your Studio, referred to as a “**Membership**” or “**Memberships.**” All Memberships must be evidenced by a written agreement (a “**Membership Agreement**”) and may not be for a term that extends beyond the expiration of this Agreement. When selling Memberships, you will use the form of Membership Agreement that we will provide

to you, and you will not make any modifications in the forms without our prior written consent. Notwithstanding the foregoing, you acknowledge that you are responsible for ensuring that the Membership Agreements comply with all applicable laws and you may modify the Membership Agreements to the extent necessary to comply with such applicable laws, provided that you provide us with immediate written notice of all such modifications. We may modify the types and terms of Memberships to be offered, terminate your right to offer certain types of Memberships, and/or approve or require other types of Memberships for sale at any time.

You will only offer for sale the Memberships in strict compliance with our System Standards. These System Standards may regulate, among others, the following topics: (1) the types and terms of Memberships you may offer; (2) the form(s) of Membership Agreement; (3) the terms and conditions upon which a client may transfer their Membership from your Studio to another Studio and vice versa; (4) admission of clients of your Studio to other Studios; (5) procedures to follow when clients transfer to or from your Studio; (6) use and acceptance of coupons, passes, and certificates; (7) group accounts and group Memberships (and discounts applicable thereto); and (8) payment terms for Memberships.

You agree, upon notice from us, to accept any Memberships we assign to you, honor those Memberships on the terms and conditions of the existing Membership Agreements, and to accept as remuneration only such payments as accrue pursuant to the applicable Membership Agreement from the time of assignment.

#### M. Audio Entertainment.

You must play the types of music we require. You must acquire or install any audio equipment that we designate or require for use by your Studio and subscribe to music services as we may periodically specify to enable you to broadcast music and other content as specified by us from time to time. We may prohibit you from displaying, exhibiting, broadcasting or providing any media we choose, regardless of content, including prohibiting use of political, religious, or social content in such media.

#### N. Gift Cards and Loyalty Programs.

You must participate in all gift card, gift certificate, loyalty card, promotional card, award card, or other similar prepaid card, code or other device (collectively, “Gift Cards”) programs and loyalty programs we periodically establish or approve for Studios. You acknowledge and agree that we may charge you a fee in connection with your participation in these programs, which may include the cost of any third-party vendor commissions or fees incurred by us in connection with the programs. You must purchase Gift Cards from our designated supplier and must use and honor Gift Cards only in the manner we designate and require. We may establish and periodically modify System Standards for calculating Gross Receipts for revenue associated with Gift Cards. Participation in loyalty programs may require you to honor redemption policies that we implement from time to time, which may require you to provide services or products without charge or to reimburse other Studios for services and products provided by them.

## 9. MARKETING.

### A. Grand Opening.

You must spend \$15,000 in advertising, marketing, and promoting your Studio in accordance with an advertising and marketing plan we approve before the opening of your Studio (the “Grand Opening Spend Requirement”) as follows: (1) you must spend \$10,000 beginning sixty (60) days prior to the opening of your Studio; and (2) you must spend \$5,000 within the first thirty (30) days after your Studio opens. Notwithstanding the foregoing, if you purchase an existing Studio, the Grand Opening Spend Requirement must be spent within six (6) months after the date you take possession of the Studio. The Grand Opening Spend Fee is in addition to your Local Marketing Spend Requirement described below. We will have the right to obtain from you information with respect to the results achieved from meeting your Grand Opening Spend Requirement and implementing your approved advertising and marketing plan. In addition, we have the right to review your books and records from time to time to determine your expenditures for the Grand Opening Spend Requirement.

### B. Local Marketing Spend Requirement.

- a) You must spend a minimum of two percent (2%) of the Gross Receipts of your Studio each year toward approved advertising, marketing and promotional programs for your Studio within an area reasonably surrounding your Studio (the “Local Marketing Spend Requirement”). Your Local Marketing Spend Requirement excludes any contributions you make to the Brand Marketing Fund, defined in 9.D. below, but any contributions you make to a Marketing Cooperative, defined in 9.E. below, will count toward your Local Marketing Spend Requirement. Your required Marketing Cooperative contributions could, by themselves, exceed the Local Marketing Spend Requirement.
- b) We or our affiliates may be a supplier of local advertising, marketing and promotional programs for your Studio.
- c) At least ninety (90) days before you open your Studio (or if you are purchasing an existing Studio, at least thirty (30) days before taking possession of the Studio), you must submit to us a completed trade area survey and submit to us for approval an advertising and marketing plan describing your pre-opening advertising plan and your plan for the first three (3) months after the opening or purchase. You will not be permitted to open and/or operate your Studio until we receive the completed trade area survey and approve this advertising and marketing plan. Subsequent to such period, and during the term of this Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Local Marketing Spend Requirement. In addition, we have the right to review your books and records from time to time to determine your expenditures for the Local Marketing Spend Requirement. In addition, we have the right to review your books and

records from time to time to determine your expenditures for the Local Marketing Spend Requirement.

C. Advertising by You.

You agree that your advertising, promotion, and marketing will be completely clear, factual, and not misleading and conform to the highest standards of ethical advertising, the System Standards, and any marketing and the advertising and marketing policies that we prescribe from time to time. At least fourteen (14) days before you intend to use them, you agree to send us samples of all advertising, promotional and marketing materials that we have not previously approved. If we do not approve of the materials within seven (7) days of our receipt of such materials, then they shall be deemed disapproved. You may not use any advertising, promotional, or marketing materials that we have not approved or have disapproved. You must participate in and market any promotion we require.

D. Brand Marketing Fund.

We have established an advertising and marketing fund (the “**Brand Marketing Fund**”) for the marketing, recruiting, advertising, and promotional programs and materials we deem appropriate that will be used nationally, regionally, or locally, and you agree to contribute to the Brand Marketing Fund an amount equal to the greater of two percent (2%) of the Gross Receipts of your Studio or \$500 per month; provided, however, you will not be required to contribute more than \$1,000 per month to the Brand Marketing Fund. Your contribution to the Brand Marketing Fund shall be payable at the same time as the payment of the Royalty, based on Gross Receipts for the immediately preceding reporting period. We have the right to collect for deposit into the Brand Marketing Fund any advertising, marketing, or similar allowances paid to us by suppliers to the Franchise System who instruct us to use the allowances for advertising or marketing purposes. We may incorporate the Brand Marketing Fund or operate it through a separate entity as we deem appropriate. We have no fiduciary obligations to you in connection with our administration of the Brand Marketing Fund. We do not use any of the funds contributed to the Brand Marketing Fund principally to solicit new franchise sales. If we or our affiliates own any Studios, those Studios make contributions to the Brand Marketing Fund on the same basis as you and our other franchisees.

We designate all programs to be financed by the Brand Marketing Fund and have sole control over the creative concepts, materials, and endorsements prepared and used and their geographic, market, and media placement and allocation. The Brand Marketing Fund may be used for any purpose to promote the Franchise System, the Marks, the patronage of Studios, and the Fitness Together brand generally as we determine, including paying for: (1) preparing and producing video, audio, and written materials (including marketing and promotional materials and local studio marketing advertisements we prepare) and electronic media; (2) administering national, regional, multi-regional, and local marketing, recruiting, advertising, and promotional programs, including purchasing space in print publications, direct mail, radio and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance; (3) supporting public relations, market research, and other marketing, recruiting, advertising, and promotional activities; (4) developing and maintaining website(s) for the Franchise System; (5) administering online marketing, recruiting, advertising, and promotional

campaigns (including search engine, social media, email, and display ad campaigns); and (6) developing and maintaining application software designed to run on computers and similar devices, including tablets, smartphones and other mobile devices, as well as any evolutions or “next generations” of any such devices. We determine the use of the funds contributed to the Brand Marketing Fund, including allocating a portion of any Brand Marketing Fund contributions to any national, regional, multi-regional, or local marketing, recruiting, advertising, and promotional programs we may establish in the future. We are not required to spend any particular amount on marketing, recruiting, advertising or promotion in the area in which your Studio will be located. In addition, we are not required to ensure that Brand Marketing Fund expenditures for or affecting any geographic area be proportionate or equivalent to Brand Marketing Fund contributions by Studios operating in that area, or that any Studio benefits from the development or placement of marketing, recruiting, advertising, or promotional materials directly or in proportion to its Brand Marketing Fund contributions. We also may forgive, waive, settle, and compromise all claims by or against the Brand Marketing Fund. Except as specifically provided in this Agreement, we assume no other direct or indirect liability or obligation to you for collecting amounts due, or maintaining, directing, or administering the Brand Marketing Fund.

We account for the Brand Marketing Fund separately from our other funds and do not use the Brand Marketing Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Brand Marketing Fund and its programs, including conducting market research, preparing marketing, recruiting, advertising, and promotional materials, and collecting and accounting for Brand Marketing Fund contributions. The Brand Marketing Fund may spend in any fiscal year more or less than the total Brand Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. If we terminate the Brand Marketing Fund, we will spend all unspent amounts on marketing activities specified by this Section 9.D.

We prepare annual unaudited statement of contributions and disbursements for the Brand Marketing Fund that are available to you upon written request one hundred and twenty (120) days after the end of the Brand Marketing Fund’s fiscal year for the previous fiscal year. We are not required to audit the Brand Marketing Fund.

#### E. Marketing Cooperative.

We may designate a geographic area in which three (3) or more Studios are located as an area in which to establish a marketing cooperative (“Marketing Cooperative”). The Marketing Cooperative’s members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We may collect Marketing Cooperative fees and transfer those fees to the Marketing Cooperative, or the Marketing Cooperative may collect the fees directly, as we determine. We may designate, approve or develop standards and specifications for Marketing Cooperative suppliers. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative’s members are responsible for its administration and determination of contribution levels. All Marketing Cooperatives will be governed by written documentation we designate or approve. Such documentation is available for Marketing Cooperative member review. We may form, modify,

change, dissolve, or merge Marketing Cooperatives. We will not use funds contributed to a Marketing Cooperative to solicit new franchise sales.

F. Franchise System Website.

We may establish, acquire, or host any website(s) for recruitment purposes or to advertise, market, and promote Studios, the products and services that they offer and sell, and/or a Studio franchise opportunity (a “Franchise System Website”). We may (but are not required to) provide you with a webpage on a Franchise System Website that references your Studio. If we provide you with a webpage on a Franchise System Website, you must: (1) provide us the information and materials we request to develop, update, and modify your webpage; (2) notify us whenever any information on your webpage is not accurate; and (3) if we give you the right to modify your webpage, notify us whenever you change the content of your webpage and obtain our approval. We will own all intellectual property and other rights in all Franchise System Websites, including your webpage and all information it contains (including the domain name, any associated email address, any website analytical data, and any personal or business data that visitors supply). If we provide you with a webpage on a Franchise System Website, we reserve the right to charge you a fee for such webpage as part of the Technology Fee. We periodically may update and modify any Franchise System Website (including your webpage).

Even if we provide you a webpage on a Franchise System Website, we will only maintain this webpage while you are in full compliance with this Agreement and all System Standards we implement (including those relating to Franchise System Websites). If you are in default of any obligation under this Agreement or our System Standards, then we may temporarily remove your webpage from any Franchise System Website (or all Franchise System Websites) until you fully cure the default. We will permanently remove your webpage from all Franchise System Websites upon this Agreement’s expiration or termination.

We reserve the right to require you to obtain from us and use an email address associated with our registered domain name. If we require you to obtain and use such an email address, you must do so according to our then-current terms and conditions, which may include additional monthly fees.

Except as provided above, or as approved by us in writing or in the Operations Manual, you may not develop, maintain or authorize any Online Presence that mentions your Studio, links to any Franchise System Website or displays any of the Marks, or engage in any promotional or similar activities, whether directly or indirectly, through any Online Presence. If we approve the use of any such Online Presence in the operation of your Studio, you will develop and maintain such Online Presence only in accordance with our guidelines, including our guidelines for posting any messages or commentary on other third-party websites. We will own the rights to each such Online Presence. At our request, you agree to grant us access to each such Online Presence, and to take whatever action (including signing assignment or other documents) we request to evidence our ownership of such Online Presence, or to help us obtain exclusive rights in such Online Presence.

## 10. RECORDS, REPORTS, AND FINANCIAL STATEMENTS.

You agree to establish and maintain at your own expense a bookkeeping, accounting, and recordkeeping system conforming to the requirements and formats we prescribe from time to time. You must use the Computer System to maintain certain sales data, Client Information, and other information. You agree that we will, at all times, have access to your Computer System and that we have the right to collect and retain from the Computer System any and all data concerning your Studio. We may require that you hire a service-provider that we designate as your provider of accounting, payroll and/or bookkeeping services. If we designate a service-provider for accounting, payroll and/or bookkeeping services, you agree to cooperate with such service-provider and provide such service-provider with all information you would appropriately provide us under this Section 10.

Each month, you agree to generate, in the manner and format that we may prescribe from time to time, an income statement (including a standard chart of the accounts designated by us) for your Studio covering the most recently completed month. On our request, you agree to send us such statements. You also agree to give us in the manner and format that we prescribe from time to time:

- a) on or before the Royalty payment, a report on your Studio's Gross Receipts during the preceding calendar month (or week if we elect to collect Royalties on a weekly basis);
- b) within twenty-five (25) days after the end of each calendar month, the operating statements, financial statements, statistical reports and other information we request regarding your Studio covering the preceding month;
- c) within the time limits specified in the Operations Manual, such other periodic operating statements, financial statements, statistical reports and other information we request regarding you and your Studio;
- d) by March 30 of each year, annual profit and loss and source and use of funds statements and a balance sheet for your Studio as of the end of the prior calendar year prepared on an accrual basis, including all adjustments necessary for a fair presentation of your financial results; and
- e) within ten (10) days after our request, exact copies of federal and state income tax returns, sales tax returns, and any other forms, records, books, and other information we may periodically require relating to you and your Studio.

One of your officers must certify and sign each report and financial statement in the manner we prescribe. We may disclose data derived from these reports, although we will not without your consent (unless required by law) disclose your identity in materials that we circulate publicly.

Subject to applicable law, you agree to preserve and maintain all records in a secure location at your Studio for at least three (3) years (including sales checks, purchase orders, invoices, payroll records, check stubs, sales tax records and returns, cash receipts journals, cash

disbursement journals, and general ledgers). We may require you to have audited financial statements prepared annually during the term of this Agreement.

## 11. INSPECTIONS AND AUDITS.

### A. Our Right to Inspect Your Studio.

To determine whether you and your Studio are complying with this Agreement and all System Standards, we and our designated agents or representatives may at all times and without prior notice to you, but in all cases subject to client privacy: (1) inspect your Studio; (2) photograph your Studio and observe and videotape your Studio's operation for consecutive or intermittent periods we deem necessary; (3) continuously or periodically monitor your Studio using electronic surveillance or other means; (4) remove samples of any products and supplies; (5) interview your Studio's personnel and clients; (6) inspect your Computer System, including hardware, software, security, configurations, connectivity, and data access; and (7) inspect and copy any books, records, and documents relating to your Studio's operation. We may designate certain books, records, and documents which must be available for on-site inspection. Additionally, we may contract with third parties to conduct mystery-shopper, client-survey, or other market-research testing, and quality-assurance inspections at your Studio. You agree to cooperate with us fully during these inspections and tests. If we exercise any of these rights, we will not interfere unreasonably with your Studio's operation.

### B. Our Right to Audit.

We may at any time during your business hours, and without prior notice to you, examine all of your and your Studio's business, bookkeeping, and accounting records, sales and income tax records and returns, and any other records necessary to complete an audit, and we may require that you send us copies of such records. You agree to cooperate fully with our representatives and independent accountants in any examination. If any examination discloses an understatement of your Studio's Gross Receipts, you agree to pay us the Royalty, Brand Marketing Fund contribution, and any other fees understated, plus interest on the understated amounts from the date originally due until the date of payment, within fifteen (15) days after receiving the examination report. Furthermore, if an examination is necessary due to your failure to furnish reports, supporting records, or other information as required, or to furnish these items on a timely basis, or if our examination reveals an understatement of Gross Receipts exceeding two percent (2%) of the amount that you actually reported to us for the period examined, you agree to reimburse us for the costs of the examination, including the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of our employees. These remedies are in addition to our other remedies and rights under this Agreement and applicable law.

## 12. TRANSFER.

### A. By Us.

We may change our ownership or form of organization and/or assign this Agreement and any other agreement to a third party without restriction. After our assignment of this Agreement to a third party who expressly assumes the obligations under this Agreement, we no longer will

have any obligations under this Agreement. This Agreement and any other agreement will inure to the benefit of any transferee or other legal successor to our interest in it.

## B. By You.

You acknowledge that the rights and duties this Agreement creates are personal to you and your owners and that we have granted you the franchise in reliance on our perception of your and your owners' individual or collective character, skill, aptitude, attitude, business ability, and financial capacity. Accordingly, without our prior written approval, you may not transfer any of the following, or attempt to transfer any of the following, including by listing any of the following for sale on any directory or listing: (i) this Agreement (or any interest in this Agreement); (ii) your Studio (or any right to receive all or a portion of your Studio's profits or losses or capital appreciation related to your Studio); (iii) substantially all of the assets of your Studio; or (iv) any direct or indirect ownership interest in you (regardless of its size) if you are an Entity. A transfer of your Studio's ownership, possession, or control, or substantially all of its assets, may be made only with a transfer of this Agreement. Any transfer without our approval is a breach of this Agreement and has no effect. In this Agreement, the term "transfer" includes a voluntary, involuntary, direct, or indirect assignment, sale, gift, or other disposition, including transfer by reason of merger, consolidation, issuance of additional securities, death, disability, divorce, insolvency, foreclosure, surrender or by operation of law.

Additionally, you may not pledge or encumber this Agreement, your Studio or an ownership interest in you or your owners (to someone other than us) as security for any loan or other financing, unless (1) we grant our prior written consent and (2) the lender agrees that its claims will be subordinate to all amounts you owe at any time to us or our affiliates.

If you intend to list your Studio for sale with any broker or agent, you shall do so only after obtaining our written approval of the broker or agent and of the listing agreement. You may not use or authorize the use of any Mark in advertising the transfer or other disposition of your Studio or of any ownership in you without our prior written consent. You shall not use or authorize the use of, and no third party shall on your behalf use, any written materials to advertise or promote the transfer of your Studio or of any ownership interest in you without our prior written approval of such materials.

## C. Conditions for Approval of Transfer.

You may not transfer this Agreement before your Studio has opened for business. Thereafter, subject to the other provisions of this Section 12, we will approve a transfer that meets all of the following conditions before or concurrently with the effective date of the transfer:

- a) you submit an application in writing requesting our consent and providing us all information or documents we request about the transferee and its owners to allow us to evaluate their ability to satisfy their respective obligations under our then-current form of franchise agreement and any documents ancillary thereto, and each such person must have completed and satisfied all of our application and certification requirements, including the criteria that neither the transferee nor its owners (if the transferee is an entity) or affiliates have an ownership

interest (direct or indirect) in or perform services for a Competitive Business. At the time you sign a conditional consent to transfer, you must pay us, by wire transfer, a deposit of \$3,500 (“Fee Deposit”). We will refund you the Fee Deposit, less any amounts which may be due under this Agreement, within thirty (30) days following the effective date of the transfer or the date on which you and the transferee have complied with all terms set forth in any applicable consent to transfer that we and you sign in connection with the transfer, whichever is later;

- b) you have provided us executed versions of any documents executed by you (or your owners) and the transferee (and its owners) to effect the transfer, and all other information we request about the proposed transfer, and such transfer meets all of our requirements, including criteria for terms and conditions, closing date, purchase price, amount of debt and payment terms;
- c) you (and your owners) and the transferee (and its owners) sign all of the documents we are then requiring in connection with a transfer, in a form satisfactory to us, including: (i) a general release of any and all claims against us and our affiliates and our and their owners, officers, directors, employees, and agents, (ii) a covenant that you and your transferring owners (and your and their immediate family members) will not, for two (2) years beginning on the transfer’s effective date, engage in any of the activities proscribed in Section 15.F. below, and (iii) covenants that you and your transferring owners satisfy all other post-termination obligations under this Agreement;
- d) you have paid all Royalties, Brand Marketing Fund contributions, and other amounts owed to us, our affiliates, and third-party vendors, and have submitted all required reports and statements;
- e) you and your owners have not violated any provision of this Agreement or any other agreement with us or our affiliates during both the sixty (60) day period before you requested our consent to the transfer and the period between your request and the effective date of the transfer;
- f) the transferee (or its operating partner) and any other manager and/or assistant manager we designate (including any applicable designated manager), satisfactorily complete our then-current Training Program;
- g) if the proposed transfer (including any assignment of the Lease or subleasing of the Premises) requires notice to or approval from your landlord, or any other action under the terms of the Lease, you have taken such appropriate action and delivered us evidence of the same;
- h) the transferee shall (if the transfer is of this Agreement), or you shall (if the transfer is of a controlling ownership interest in you or one of your owners), sign our then-current form of franchise agreement and related documents, any and all of the provisions of which may differ materially from any and all of

those contained in this Agreement, including the Royalty and the Brand Marketing Fund contribution; provided, however, that the term of the new franchise agreement signed will equal the remainder of the then-remaining term of this Agreement;

- i) you pay us a transfer fee equal to fifty percent (50%) of our then-current initial franchise fee for new franchises, unless the transfer is of a non-controlling ownership interest in you (if you are an entity), in which case you must only reimburse us for any direct costs we incur in connection with documenting and otherwise processing such transfer, including reasonable legal fees;
- j) we have determined that the purchase price and payment terms will not adversely affect the transferee's operation of your Studio;
- k) if you or your owners finance any part of the purchase price, you and/or your owners agree that all of the transferee's obligations under promissory notes, agreements, or security interests reserved in your Studio are subordinate to the transferee's obligation to pay Royalties, Brand Marketing Fund contributions, and other amounts due to us, our affiliates, and third-party vendors related to the operation of your Studio and otherwise to comply with this Agreement;
- l) you have corrected any existing deficiencies of your Studio of which we have notified you, and/or the transferee agrees to upgrade, remodel, and refurbish your Studio in accordance with our then-current requirements and specifications for Studios within the time period we specify following the effective date of the transfer (we will advise the transferee before the effective date of the transfer of the specific actions that it must take and the time period within which such actions must be taken); and
- m) you provide us the evidence we reasonably request to show that appropriate measures have been taken to effectuate the transfer as it relates to the operation of your Studio, including, by transferring all necessary and appropriate business licenses, insurance policies, and material agreements, or obtaining new business licenses, insurance policies and material agreements.

We may review all information regarding your Studio that you give the transferee, correct any information that we believe is inaccurate, and give the transferee copies of any reports that you have given us or we have made regarding your Studio.

Our consent to a transfer pursuant to this Section is not a representation of the fairness of the terms of any contract between you and the transferee, a guarantee of your Studio's or transferee's prospects of success, or a waiver of any claims we have against you (or your owners) or of our right to demand the transferee's full compliance with this Agreement.

D. Transfer to a Wholly Owned Entity.

Notwithstanding Section 12.C. above, if you are in full compliance with this Agreement, you may transfer this Agreement to an Entity in which you maintain management control, and of which you own and control one hundred percent (100%) of the equity and voting power of all issued and outstanding ownership interests; provided, that (1) that Entity will own all of your Studio's assets, and will conduct all of your Studio's business, (2) that Entity will conduct no business other than your Studio and, if applicable, other Studios, and (iii) you reimburse us for any direct costs we incur in connection with documenting and otherwise processing such transfer, including reasonable legal fees. The Entity must expressly assume all of your obligations under this Agreement. You agree to remain personally liable under this Agreement as if the transfer to the Entity did not occur and sign the form of consent to assignment and assignment satisfactory to us which may include a general release of any and all claims against us and our owners, officers, directors, employees and agents. You further agree to provide us with all organizational documents for the Entity that we require.

E. Our Right of First Refusal.

If you (or any of your owners) at any time decide to sell an interest in this Agreement, your Studio, substantially all the assets of your Studio, or an ownership interest in you or one of your owners (except to or among the current owners of such Entity), you (or your owners) agree to obtain a bona fide executed written offer, relating exclusively to the transfer of this Agreement, your Studio, substantially all the assets of your Studio, or the ownership interest in you or one of your owners (as applicable), from a responsible and fully disclosed buyer and send to us a true and complete copy of that written offer. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a dollar amount, and the proposed buyer must submit with its offer an earnest money deposit equal to five percent (5%) or more of the offering price.

We may also require you (or your owners) to send us copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction. We may elect to purchase the interest offered for the price and on the terms and conditions contained in the offer, provided that:

- a) we notify you or your selling owner(s) that we intend to purchase the interest or within thirty (30) days after we receive a copy of the offer and all other information we request;
- b) we may substitute cash for any form of payment proposed in the offer (such as ownership interests in a privately held entity);
- c) our credit will be deemed equal to the credit of any proposed buyer (meaning that, if the proposed consideration includes promissory notes, we or our designee may provide promissory notes with the same terms as those offered by the proposed buyer);

- d) we will have an additional thirty (30) days to prepare for closing after notifying you of our election to purchase; and
- e) we must receive, and you and your owners agree to make, all customary representations and warranties given by the seller of the assets of a business or the ownership interests in an Entity, as applicable, including representations and warranties regarding: (a) ownership and condition of and title to ownership interests and/or assets; (b) liens and encumbrances relating to ownership interests and/or assets; and (c) validity of contracts and the liabilities, contingent or otherwise, of the entity whose assets or ownership interests are being purchased.

We have the unrestricted right to assign this right of first refusal to a third party, who then will have the rights described in this Section 12.E.

If we do not exercise our right of first refusal, you or your owners may complete the sale to the proposed buyer on the original offer's terms, but only if we otherwise approve the transfer in accordance with Sections 12.B. and 12.C. above, and if you (and your owners) and the transferee comply with the conditions in Sections 12.B. and 12.C. above. Notwithstanding anything in this Section to the contrary, the right of first refusal process will not be triggered by a proposed transfer that would not be allowed under Sections 12.B. and 12.C. above.

If you do not complete the sale to the proposed buyer within sixty (60) days after we notify you that we do not intend to exercise our right of first refusal, or if there is a material change in the terms of the sale (which you agree to notify us of promptly), we or our designee will have an additional right of first refusal. We or our designee must exercise this additional right of first refusal during the thirty (30) day period following either the expiration of the sixty (60) day period or our receipt of notice of the material change(s) in the sale's terms, either on the terms originally offered or the modified terms, at our or our designee's option.

#### F. Your Death or Disability.

On the death or disability of you, your Operating Partner or any owner with a controlling ownership interest in you (a "Controlling Owner"), your or the Operating Partner's or such Controlling Owner's executor, administrator, conservator, guardian, or other personal representative must transfer your interest in this Agreement, or the Operating Partner's or Controlling Owner's ownership interest in you, to a third party (which may be your or the Operating Partner's or Controlling Owner's heirs, beneficiaries, or devisees). That transfer must be completed within a reasonable time, not to exceed nine (9) months from the date of death or disability, and is subject to all of the terms and conditions in this Section 12 (except that any transferee that is the spouse or immediate family member of you or your Operating Partner or such Controlling Owner, shall not have to pay the Fee Deposit described in Section 12.C.a or the transfer fee described in Section 12.C.i if the transfer meets all the other conditions in Section 12.C.; provided, that the transferee reimburse us for any direct costs we incur in connection with documenting and otherwise processing such transfer, including reasonable legal fees). A failure to transfer your interest in this Agreement or the Operating Partner's or such Controlling Owner's ownership interest in you within this time period is a breach of this Agreement.

The term “disability” means a mental or physical disability, impairment, or condition that is reasonably expected to prevent or actually does prevent you or the Operating Partner or such Controlling Owner from supervising the management and operation of your Studio. If your Studio is not being managed by an approved Designated Manager at the time of your or your Operating Partner’s death or disability, your or the Operating Partner’s executor, administrator, conservator, guardian, or other personal representative must within a reasonable time, not to exceed fifteen (15) days from the date of death or disability, appoint a Designated Manager in accordance with the terms and conditions of Section 8.H. A new Operating Partner acceptable to us also must be appointed for your Studio within sixty (60) days. If your Studio is not being managed properly at any time after your or the Operating Partner’s death or disability, in our sole judgment, we may, but need not, assume your Studio’s management (or appoint a third party to assume its management) in accordance with Section 14.C.

### 13. EXPIRATION OF THIS AGREEMENT.

#### A. Your Right to Acquire a Successor Franchise.

Upon expiration of this Agreement, you will have the option to acquire a successor franchise to operate your Studio for one (1) additional term of ten (10) years, if you meet the following conditions:

- a) you (and each of your owners) have substantially complied with this Agreement during its term;
- b) you (and each of your owners) are, both on the date you give us written notice of your election to acquire a successor franchise (as provided in Section 13.B. below) and on the date on which the term of the successor franchise would commence, in full compliance with this Agreement and all System Standards;
- c) you maintain possession of and agree to remodel and/or expand your Studio, add or replace improvements and Operating Assets, and otherwise modify your Studio as we require to comply with System Standards then-applicable for new Studios, or, at your option, you secure substitute premises that we approve and you develop those premises according to System Standards then-applicable for Studios;
- d) you sign the franchise agreement we then use to grant franchises for Studios (modified as necessary to reflect the fact that it is for a successor franchise), which may contain provisions that differ materially from those contained in this Agreement;
- e) you and your owners agree to sign, in a form satisfactory to us, guarantees and general releases of any and all claims against us and our shareholders, officers, directors, employees, agents, successors, and assigns; and
- f) you pay a successor franchise fee equal to \$10,000, in the form of a lump sum payment, by wire transfer.

If you (and your owners) fail to meet the conditions set forth in this Section, you acknowledge that we need not grant you a successor franchise, whether or not we had, or chose to exercise, the right to terminate this Agreement during its term under Section 14.B.

**B. Grant of a Successor Franchise.**

You agree to give us written notice (“Your Notice”) of your election to acquire a successor franchise no more than one (1) year and no less than one hundred eighty (180) days before this Agreement expires. We agree to give you written notice (“Our Notice”) of our decision to grant or not to grant you a successor franchise not more than six (6) months after we receive Your Notice. If applicable, Our Notice will describe the remodeling, maintenance, expansion, improvements, technology upgrades, trade dress updates, and/or modifications required to bring your Studio into compliance with then-applicable System Standards for new Studios and state the actions you must take to correct operating deficiencies and the time period in which you must correct these deficiencies.

If Our Notice states that you must remodel your Studio and/or must cure certain deficiencies of your Studio or its operation as a condition to our granting you a successor franchise, and you fail to complete the remodeling and/or to cure those deficiencies, we will give you written notice of our decision not to grant a successor franchise, not less than ninety (90) days before this Agreement expires; provided, that we need not give you ninety (90) days’ notice if we decide not to grant you a successor franchise due to your breach of this Agreement during the ninety (90) day period before it expires. We may extend this Agreement’s term for the time period necessary to give you either reasonable time to correct deficiencies or the ninety (90) days’ notice of our refusal to grant a successor franchise. If you fail to notify us of your election to acquire a successor franchise within the prescribed time period, we need not grant you a successor franchise.

**14. TERMINATION OF AGREEMENT.**

**A. Termination by You.**

You may terminate this Agreement if you are in full compliance with this Agreement and we materially fail to comply with this Agreement, and (1) we fail correct the failure within thirty (30) days after you deliver written notice of the material failure to us, or (2) if we cannot correct the failure within thirty (30) days, we fail to give you within thirty (30) days after your notice reasonable evidence of our effort to correct the failure within a reasonable time. Your termination under this Section will be effective thirty (30) days after you deliver to us the written notice of termination.

If you terminate this Agreement other than according to this Section 14.A., the termination will be deemed a termination without cause and a breach of this Agreement.

**B. Termination by Us.**

We may terminate this Agreement, effective on delivery of written notice of termination to you, if:

- a) you (or any of your owners) have made or make any material misrepresentation or omission in acquiring the franchise or operating your Studio;
- b) you do not obtain our approval of your Lease or deliver us a fully executed copy of the Lease and Lease Rider, in each case by the deadlines set forth in 2.B.;
- c) you do not comply with the conditions specified in Section 2.H., and open your Studio for full use by clients by the deadline specified in Section 2.H.;
- d) you (or your Operating Partner) and your Designated Manager (if applicable) do not satisfactorily complete the Training Program in accordance with Section 4.A.;
- e) without our prior consent, you abandon or fail to actively operate your Studio for more than two (2) consecutive days, or fourteen (14) days during any twelve-month period, or provide us or any other party notice (written or oral) that you intend to permanently close or otherwise abandon the operation of your Studio;
- f) you (or your owners) make or attempt to make any transfer in violation of Section 12;
- g) you (or any of your owners) are or have been convicted of, or pleaded guilty or no contest to, a felony, a crime involving moral turpitude, or any other crime or offense that, in our sole judgment, is reasonably likely to harm or unfavorably affect the Marks, the Franchise System, or their associated goodwill and reputation;
- h) you fail to maintain the insurance we require and do not correct the failure within ten (10) days after we deliver written notice of that failure to you;
- i) you (or any of your owners) engage in any dishonest or unethical conduct which, in our opinion, adversely affects your Studio's reputation or the goodwill associated with the Marks;
- j) you lose the right to occupy the Premises whether or not through any fault of yours;
- k) you (or any of your owners) knowingly or negligently make any unauthorized use or disclosure of any Confidential Information;
- l) you violate any health, safety, or sanitation law, ordinance, or regulation, or operate your Studio in an unsafe manner, and do not begin to cure the violation immediately, and correct the violation within seventy-two (72) hours after you receive notice from us or any other party, regardless of any longer period of time that any governmental authority or agency may have given you to cure such violation;

- m) you create or allow to exist any condition in connection with your operation of your Studio that we reasonably determine to present an immediate health or safety concerns for your Studio's clients or employees;
- n) you violate any other applicable law, regulation, ordinance or consent decree, or fail to maintain any bond, license or permit, and do not cure such violation or failure within ten (10) days after we or any applicable government agency deliver notice to you of that violation or failure;
- o) you fail to pay us (or our affiliates) any amounts due and do not correct the failure within ten (10) days after we deliver written notice of that failure to you;
- p) you fail to pay when due any federal or state income, service, sales, employment or other taxes due on your Studio's operation, unless you are in good faith contesting your liability for these taxes;
- q) you have insufficient funds in your designated account to cover your payments owed for Royalties, Brand Marketing Fund contributions and other amounts due on three (3) separate occasions within a twelve (12) month period;
- r) you intentionally underreport your Studio's Gross Receipts by any amount or negligently underreport your Studio's Gross Receipts by five percent (5%) or more during any reporting period;
- s) you (or any of your owners) (a) fail on three (3) or more separate occasions within any twelve (12) consecutive month period to comply with this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you; or (b) fail on two (2) or more separate occasions within any twelve (12) consecutive month period to comply with the same obligation under this Agreement, whether or not we notify you of the failures, and, if we do notify you of the failures, whether or not you correct the failures after our delivery of notice to you;
- t) you make an assignment for the benefit of creditors or admit in writing your insolvency or inability to pay your debts generally as they become due; you consent to the appointment of a receiver, trustee, or liquidator of all or the substantial part of your property; your Studio is attached, seized, subjected to a writ or distress warrant, or levied on, unless the attachment, seizure, writ, warrant, or levy is vacated within thirty (30) days; or any order appointing a receiver, trustee, or liquidator of you or your Studio is not vacated within thirty (30) days following the order's entry;
- u) your or any of your owners' assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or you or any of your owners otherwise violate any such law, ordinance, or regulation;

- v) you (or any of your owners) fail to comply with any other provision of this Agreement or any System Standard and do not correct the failure within thirty (30) days after we deliver written notice of the failure to you;
- w) there is a termination of any other franchise agreement, area development agreement, area director agreement, or master franchise agreement between you (or any of your owners) or your affiliates and us or any of our affiliates;
- x) you fail to perform background checks for all employees you hire and update the background checks pursuant to Section 8.I. and as specified in the Operations Manual;
- y) you fail to ensure that all your personal fitness trainers are properly licensed (if required in your jurisdiction) pursuant to Section 8.I. and as specified in the Operations Manual;
- z) you fail to report incidents at your Studio which could negatively impact the goodwill of the “Fitness Together” brand as specified in the Operations Manual;  
or
- aa) you fail to pay when due any third-party supplier, including landlords or lenders, and do not cure such failure within the applicable cure period.

C. Assumption of Management.

If: (1) you abandon or fail actively to operate your Studio; (2) you fail to comply with any provision of this Agreement or any System Standard and do not cure the failure within the time period we specify in our notice to you; or (3) this Agreement is terminated and we are deciding whether to exercise our option to purchase your Studio under Section 15.E.:

(a) we have the right (but not the obligation): (i) to enter the Premises to make any modifications we deem necessary to protect the Operating Assets; (ii) to remove any equipment, signage, or other materials featuring the Marks; (iii) to cure any defaults under the Lease; and (iv) to assume all of your rights under the Lease; and/or

(b) we have the right (but not the obligation) to enter the Premises and assume your Studio’s management for any period of time we deem appropriate.

We may assign our rights under this Section 14.C. to any person or entity without your consent.

All funds from your Studio’s operation while it is under our (or the third party’s) management will be kept in a separate account, and all expenses will be charged to this account. If we (or a third party) assume your Studio’s management, you agree to pay us (in addition to the Royalty, Brand Marketing Fund contributions, and other amounts due to us or our affiliates) our then-current monthly management fee (currently, \$7,500 per month), plus our (or the third party’s) direct out-of-pocket costs and expenses.

If we (or a third party) assume your Studio's management, you acknowledge that we (or the third party) will have a duty to use only reasonable efforts and will not be liable to you or your owners for any debts, losses, or obligations your Studio incurs, or to any of your creditors for any supplies, products, or other assets or services your Studio purchases, while we (or the third party) manage it.

Our decision to assume management of your Studio (or to appoint a third party to assume management of your Studio) will not affect our right to terminate this Agreement under Section 14.B.

## 15. RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION.

### A. Payment of Amounts Owed to Us.

You agree to pay us the Royalties, Brand Marketing Fund contributions, interest, and all other amounts owed to us (and our affiliates), which accrued prior to termination or expiration, within fifteen (15) days after this Agreement expires or is terminated, or on any later date that we determine, calculated as of the date of payment. You acknowledge that termination or expiration of this Agreement does not affect your liability for amounts you (or your owners or affiliates) owe any third-parties or creditors and we do not assume any such liabilities.

### B. Liquidated Damages.

If this Agreement is terminated because of your default or if you terminate this Agreement without cause before its expiration, you and we agree that it would be difficult if not impossible to determine the amount of damages that we would suffer due to the loss or interruption of the revenue stream we otherwise would have derived from your continued payment of Royalties, Brand Marketing Fund contributions, and Marketing Cooperative contributions, less any cost savings, through the remainder of the term of this Agreement (the "**Liquidated Damages**"). Liquidated Damages will be equal to the combined monthly average of Royalties, Brand Marketing Fund contributions, and any other fees under this Agreement (without regard to any fee waivers, or other reductions) payable during the thirty-six (36) months preceding the date of early termination, multiplied by the lesser of (i) thirty-six (36) or (ii) the number of full months remaining in the term. The present value of the total calculated at a discount rate of 8%, assuming payment at the end of each month, will be our Liquidated Damages. You and we agree that the calculation described in this Section 15.B. is a calculation only of the Liquidated Damages and that nothing herein shall preclude or limit us from proving and recovering any other damages caused by your breach of this Agreement.

### C. Marks.

Upon termination or expiration of this Agreement, you and your owners must immediately:

- a) close the Studio for business to clients and cease to directly or indirectly sell any products and services of any kind and in any manner from the Studio and/or using the Marks, unless we direct you otherwise in connection with our exercise of our option to purchase pursuant to Section 15.E.;

- b) cease to directly or indirectly use any Mark, any colorable imitation of a Mark, any other indicia of a Studio, or any trade name, trademark, service mark, or other commercial symbol that indicates or suggests a connection or association with us, in any manner or for any purpose;
- c) cease to directly or indirectly identify yourself or your business as a current or former Studio or as one of our current or former franchise owners (except in connection with other Studios you operate in compliance with the terms of a valid franchise agreement with us) and take the action required to cancel or assign all fictitious or assumed name or equivalent registrations relating to your use of any Mark;
- d) if we do not exercise our right to purchase your Studio, promptly and at your own expense, remove all materials bearing the Marks and remove from both the interior and exterior of the Premises all materials and components of our trade dress as we determine to be necessary to avoid any association between the Premises and our System or that would, in any way, indicate that the Premises are or were associated with our brand or System;
- e) cease using and, at our direction, either disable or instruct the registrar of any Contact Identifiers or Online Presence to transfer exclusive control and access of such Contact Identifiers and Online Presence to us or our designee in accordance with our instructions; and
- f) comply with all other System Standards we establish from time to time (and all applicable laws) in connection with the closure and de-identification of the Studio.

If you fail to take any of the actions (or refrain from taking any of the actions) described above, we may take whatever action and sign whatever documents we deem appropriate on your behalf to cure the deficiencies, including, without liability to you or third parties for trespass or any other claim, to enter the Premises and remove any signs or other materials containing any Marks from your Studio. You must reimburse us for all costs and expenses we incur in correcting any such deficiencies.

#### D. Confidential and Personal Information.

You agree that when this Agreement expires or is terminated you will immediately cease using any of our Confidential Information in any business or otherwise and return to us all copies of the Operations Manual and any other Confidential Information that we have loaned you. You also agree to comply with all of our directions for returning or disposing of Personal Information, in any form, in your possession or the possession of any of your employees. We may require you to certify in writing that you have returned or securely disposed of all Personal Information.

E. Our Right to Purchase Your Studio.

We have the option to purchase your Studio and the Premises (if you or one of your affiliates owns the Premises) upon the occurrence of a Termination Event (as defined below). We may exercise this option by giving you written notice within thirty (30) days after the date of the Termination Event. We have the unrestricted right to assign this option to purchase. If we purchase your Studio and/or the Premises, we are entitled to all customary warranties and representations in our asset purchase, including representations and warranties as to ownership and condition of and title to assets; liens and encumbrances on assets; validity of contracts and agreements; and liabilities affecting the assets, contingent or otherwise.

If you lease the Premises from an unaffiliated lessor, or if we choose not to purchase the Premises from you (or one of your affiliates), you agree, at our election to (1) assign your Lease to us or our assignee, (2) enter into a sublease with us or our assignee for the remainder of the Lease term on the same terms (including renewal options) as the Lease, or (3) lease the Premises to us or our assignee for an initial term of five (5) years with, at our option, up to three (3) additional terms of five (5) years each, on commercially reasonable terms.

We (or our assignee) will pay the purchase price (calculated as described below) for your Studio and/or Premises at the closing, which will take place not later than sixty (60) days after the purchase price is determined, although we (or our assignee) may decide after the purchase price is determined not to purchase your Studio and/or the Premises. We may set off against the purchase price, and reduce the purchase price by, any and all amounts you or your owners owe us or our affiliates. At the closing, you agree to deliver instruments transferring to us (or our assignee):

- a) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us), with all sales and other transfer taxes paid by you;
- b) all of your Studio's licenses and permits which may be assigned or transferred; and
- c) the ownership interest or leasehold interest (as applicable) in the Premises and improvements or a lease assignment or lease or sublease, as applicable.

If you cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, we and you will close the sale through an escrow. You and your owners further agree to execute general releases, in a form satisfactory to us, of any and all claims against us and our owners, officers, managers, employees, agents, successors and assigns.

A "Termination Event" occurs if, (i) you terminate this Agreement (other than in accordance with Section 14.A.), (ii) we terminate this Agreement for any reason, or (iii) the term of this Agreement (including any successor term) expires.

If we purchase your Studio upon a Termination Event, the purchase price for your Studio and the Premises will be their reasonable fair market value at the time of the Termination Event, provided that these items will not include any value for the rights granted by this Agreement, any goodwill attributable to our Marks, brand image, and other intellectual property, or any

participation in the network of Studios. We may exclude from the assets purchased any Operating Assets and supplies that are not reasonably necessary (in function or quality) to your Studio's operation or that we have not approved as meeting System Standards, and the purchase price will reflect these exclusions.

If we and you cannot agree on a fair market value, the fair market value will be determined by one (1) independent accredited appraiser selected by us who will conduct an appraisal and, in doing so, be bound by the criteria for the purchase price described above. You and we will share equally the appraisers' fees and expenses. The appraiser must complete its appraisal within thirty (30) days after its appointment.

#### F. Covenant Not to Compete.

~~valuable information that comprises the Proprietary Assets, including without limitation, operations, marketing, advertising and related information and materials. You further agree that the value of this information arises not only from the time, effort and money expended on compiling the information, but also from all franchisees' use of the information. You and the other Bound Parties expressly acknowledge that you and they~~ Upon termination, transfer, or expiration of this Agreement for any reason, you and your owners and guarantors agree that, for two (2) years beginning on the effective date of termination or expiration, neither you nor any of your owners (or their immediate family members) will have any direct or indirect interest as an owner (whether of record, beneficially, or otherwise), investor, partner, director, officer, employee, consultant, lessor, representative, or agent in any Competitive Business located or operating at the Premises or within a three (3) mile radius of the Premises or any other Studio then in existence or under construction.

If any person restricted by this Section 15.F. fails to comply with these obligations as of the date of termination or expiration, the two (2) year restricted period for that person will commence on the date the person begins to comply with this Section 15.F., which may be the date a court order is entered enforcing this provision.

~~You and your owners expressly acknowledge that you possess other skills, experience, education and abilities of a general nature and have other opportunities for exploiting such other these skills, experience, education and abilities to derive income from other endeavors.~~ Consequently, enforcement of our enforcing the covenants made in this Section 12 is fair and reasonable, and 15.F. will not deprive you or them of their your personal goodwill or ability to earn a living.

#### G. Non-Solicitation and Non-Interference.

On termination or expiration of this Agreement for any reason, you and your owners agree that, for two (2) years beginning on the effective date of termination or expiration or the date on which all persons restricted by this Section 15.G. begin to comply with this Section 15.G., whichever is later, neither you nor any of your owners or guarantors (or their immediate family members) will: (1) solicit, interfere, or attempt to interfere with our or our affiliates' relationships with any clients, vendors, consultants, or other franchisees; or (2) engage in any other activity that might injure the goodwill of the Marks and/or the Franchise System.

## H. Obligations Regarding Clients.

You acknowledge that, as between you and us, we have the sole right to, and interest in, the Client Information. Accordingly, upon expiration or termination of this Agreement for any reason, we or our designee may, but are not obligated to, contact clients of your Studio and offer such clients continued rights to use one or more Studios on such terms and conditions we deem appropriate, which in no event will include assumption of any then-existing liability arising out of or relating to any Membership Agreement or act or failure to act by you or arising from the operation of your Studio. If, upon expiration or termination of this Agreement, clients of your Studio are legally entitled to full or partial refund of any monies paid to you, you will refund such monies promptly and in full and will cooperate with us to preserve client goodwill with such clients.

## I. Continuing Obligations.

All of our and your (and your owners') obligations which expressly or otherwise impose ~~any undue hardship on you~~ by their nature survive this Agreement's expiration or ~~them~~ termination will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature expire.

## 16. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION.

### A. Independent Contractors.

You ~~further acknowledge~~ and we understand and agree that ~~any violation~~ each of us is an independent business and that you and we are and will be independent contractors. This Agreement does not create a fiduciary relationship between you and us, and that nothing in this Agreement is intended to make either you or us a general or special agent, joint venturer, partner, or employee of the ~~foregoing covenants will result in irreparable harm to us and~~ other for any purpose. You agree to identify yourself conspicuously to all persons (including clients, suppliers, public officials, and your Studio employees) as your Studio's owner, and indicate clearly that you operate your Studio separately and independently from our business operations. You agree to place notices of independent ownership on all interior and exterior signage, forms, business cards, stationery, advertising, and other materials that we may require from time to time. You may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in our name or on our behalf or represent that your and our relationship is anything other than franchisor and franchise owner.

We have no right or duty to supervise, manage, control or direct your employees in the course of their employment for you. You are solely responsible for all terms and conditions of employment of your employees.

### B. No Liability for Acts of Other Party.

We and you may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in the name or on behalf of the other or represent that our respective relationship is other than franchisor and franchisee. We will not be obligated for any

damages to any person or property directly or indirectly arising out of your Studio’s operation or the business you conduct under this Agreement.

If any party fails to perform any obligation under this Agreement due to a cause beyond the control of and without the negligence of such party (and not related to the availability of funds to such party), such failure will not be deemed a breach of this Agreement, provided such party uses reasonable best efforts to perform such obligations as soon as possible under the circumstances. Such causes include strikes, wars, riots, civil commotion, and acts of government, except as may be specifically provided for elsewhere in this Agreement.

#### C. Taxes.

We will have no liability for any sales, use, service, occupation, excise, gross revenue, income, property, or other taxes, whether levied on you or your Studio, due to the business you conduct (except for our income taxes). You are responsible for paying these taxes and must reimburse us for any taxes that we must pay to any state taxing authority on account of either your operation or payments that you make to us (except for our income taxes).

#### D. Indemnification.

You agree to indemnify, defend, and hold harmless us, our affiliates. ~~If any covenant is held by any,~~ and our and their respective shareholders, directors, officers, employees, agents, successors, and assignees (the “**Indemnified Parties**”) against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of your Studio’s operation, the business you conduct under this Agreement, or your breach of this Agreement, including claims or damages alleged to have been caused by the Indemnified Party’s gross negligence or willful misconduct, unless (and then only to the extent that) the claims, obligations, or damages are determined to be caused solely by our gross negligence or willful misconduct in a final, unappealable ruling issued by a court or arbitrator ~~or court of~~ with competent jurisdiction.

For purposes of this indemnification, “claims” include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including reasonable accountants’, arbitrators’, attorneys’, and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation, arbitration, or alternative dispute resolution, regardless of whether litigation, arbitration, or alternative dispute resolution is commenced. Each Indemnified Party may defend any claim against it at your expense and agree to settlements or take any other remedial, corrective, or other actions.

This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement’s expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim for indemnity under this Section 16.D. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover under this Section 16.D.

## 17. ENFORCEMENT.

### A. Security Interest.

As security for the performance of your obligations under this Agreement, including payments owed to us or our affiliates, you shall grant us a security interest in all of the furniture, fixtures, equipment, signage, and realty (including your interests under all real property and personal property leases) of your Studio, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof (including cash derived from the operation of your Studio), wherever located, used in connection with your Studio. You agree to execute such other documents as we may reasonably request in order to further document, perfect, and record our security interest. If you default in any of your obligations under this Agreement, we may exercise all rights of a secured creditor granted to us by law, in addition to our other rights under this Agreement and at law. This Agreement shall be deemed to be a Security Agreement and Financing Statement and may be filed for record as such in the records of any county and/or state that we deem appropriate to protect our interests. ~~to be broader in time,~~ If a third-party lender requests that we subordinate our security interest in the assets of your Studio as a condition to issuing a loan to you, we will agree to do so in accordance with our then-current form of subordination agreement.

### B. Severability and Substitution of Valid Provisions.

Except as expressly provided to the contrary in this Agreement, each section, paragraph, term, and provision of this Agreement is severable, and if any part of this Agreement is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation for any reason (in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction), that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties.

If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope, ~~or subject matter than legally permitted, then we and you authorize the~~ in terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, you and we agree that the judge or arbitrator ~~or court to impose that covenant to the maximum lawful extent. We are permitted at any time to reduce the time, scope, or subject matter of any~~ has the power and authority to modify the covenant ~~to render it enforceable under applicable laws~~ such that it will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity.

If any applicable and binding law or rule of any jurisdiction requires more notice of this Agreement's termination or of our refusal to enter into a successor franchise agreement, than this Agreement requires, or some other action that this Agreement does not require, or any provision of this Agreement or any System Standard is invalid, unenforceable, or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and we may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. You agree to be bound by any promise or covenant imposing the maximum duty the law permits which

is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

### C. Waiver of Obligations.

We and you may by written instrument unilaterally waive or reduce any obligation of or restriction on the other under this Agreement, effective on delivery of written notice to the other or another effective date stated in the notice of waiver. Any waiver granted will be without prejudice to any other rights we or you have, will be subject to continuing review, and may be revoked at any time and for any reason effective on delivery of ten (10) days' prior written notice.

We and you will not waive or impair any right, power, or option this Agreement reserves (including our right to demand exact compliance with every term, condition, and covenant or to declare any breach to be a default and to terminate this Agreement before its term expires) because of any custom or practice at variance with this Agreement's terms; our or your failure, refusal, or neglect to exercise any right under this Agreement or to insist on the other's compliance with this Agreement, including any System Standard; our waiver of or failure to exercise any right, power, or option, whether of the same, similar, or different nature, with other Studios; the existence of franchise agreements for other Studios which contain provisions different from those contained in this Agreement; or our acceptance of any payments due from you after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to us will be a waiver, compromise, settlement, or accord and satisfaction. We are authorized to remove any legend or endorsement, which then will have no effect.

Neither we nor you will be liable for loss or damage or be in breach of this Agreement if our or your failure to perform our or your obligations results from: (1) compliance with the orders, requests, regulations, or recommendations of any federal, state, or municipal government; (2) acts of God; (3) fires, strikes, embargoes, war, acts of terrorism or similar events, or riot; or (4) any other similar event or cause. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that these causes will not excuse payments of amounts owed at the time of the occurrence or payment of Royalties or Brand Marketing Fund contributions due afterward.

### D. Costs and Attorneys' Fees.

The prevailing party in any arbitration or litigation shall be entitled to recover from the other party all costs and expenses, including arbitration and court costs, witness fees, and reasonable attorneys' fees, incurred by the prevailing party in connection with such arbitration or litigation. In addition, if you withhold amounts owed to us and we pursue collection of such amounts, you must pay to us all of our costs and expenses, including arbitration and court costs, attorneys' fees, the value of our employees' time, witness fees and travel expenses in connection with our collection efforts.

E. Rights of Parties Are Cumulative.

Our and your rights under this Agreement are cumulative, and our or your exercise or enforcement of any right or remedy under this Agreement will not preclude our or your exercise or enforcement of any other right or remedy which we or you are entitled by law to enforce.

F. Arbitration.

~~13. NOTICES~~

~~ALL NOTICES REQUIRED TO BE GIVEN UNDER THIS AGREEMENT SHALL BE IN WRITING AND SHALL BE HAND DELIVERED OR SENT BY A NATIONALLY RECOGNIZED OVERNIGHT MAIL DELIVERY SERVICE, REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, OR BY ANY DELIVERY SERVICE PROVIDING DOCUMENTATION OF RECEIPT, TO THE ADDRESS SET FORTH ON PAGE 1 OF THIS AGREEMENT, OR TO SUCH OTHER ADDRESS AS SPECIFIED IN A WRITTEN NOTICE GIVEN TO THE OTHER PARTY FROM TIME TO TIME, AND/OR WITH RESPECT TO ANY NOTICES THAT WE PROVIDE TO YOU OR YOUR OWNERS TO THE STUDIO'S ADDRESS. ANY SUCH NOTICE SHALL BE DEEMED DELIVERED (A) ON THE DATE SHOWN ON THE RETURN RECEIPT OR IN THE COURIER'S RECORDS AS OF THE DATE OF DELIVERY, OR (B) ON THE DATE OF FIRST ATTEMPTED DELIVERY, IF ACTUAL DELIVERY CANNOT BE MADE FOR ANY REASON.~~

~~14. GOVERNING LAW; JURISDICTION AND VENUE; ARBITRATION~~

~~N.A. Governing Law.~~

~~ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE UNITED STATES FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) (THE "LANHAM ACT"), OR OTHER UNITED STATES FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED (CURRENTLY, COLORADO) WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES, EXCEPT THAT ANY STATE LAW REGULATING THE OFFER OR SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS PARAGRAPH.~~

~~14.1. Jurisdiction and Venue. SUBJECT TO SECTION 14.5, YOU AND THE BOUND PARTIES AGREE THAT ALL ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED EXCLUSIVELY IN A STATE OR FEDERAL COURT IN THE LOCATION IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS~~

~~LOCATED, WHICH IS CURRENTLY ENGLEWOOD, COLORADO, AND WE AND YOU (AND EACH OWNER) IRREVOCABLY CONSENT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS.~~

- ~~14.2. Waiver of Jury Trial, Punitive Damages, Class Actions, Joinder, Consolidation, and Commencing Action with Other Franchisee(s). WE, YOU AND THE OTHER BOUND PARTIES EACH IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT BY ANY PARTY. EXCEPT FOR YOUR OBLIGATION TO INDEMNIFY US FOR THIRD PARTY CLAIMS UNDER SECTION 9, WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS. WE AND YOU AGREE THAT ANY PROCEEDING WILL BE CONDUCTED ON AN INDIVIDUAL BASIS AND THAT ANY PROCEEDING BETWEEN US AND ANY OF OUR AFFILIATES, OR OUR AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, ON THE ONE HAND, AND YOU (OR YOUR OWNERS, GUARANTORS, AFFILIATES, AND EMPLOYEES), ON THE OTHER HAND, MAY NOT BE: (I) CONDUCTED ON A CLASS WIDE BASIS, (II) COMMENCED, CONDUCTED OR CONSOLIDATED WITH ANY OTHER PROCEEDING, (III) JOINED WITH ANY CLAIM OF AN UNAFFILIATED THIRD PARTY, OR (IV) BROUGHT ON YOUR BEHALF BY ANY ASSOCIATION OR AGENT.~~
- ~~14.3. Remedies. We and you agree that any claim for lost earnings or profits by you shall be limited to a maximum amount equal to the net profits of the Studio for the prior year as shown on your federal income tax return.~~

~~O.A. Arbitration~~

~~We~~ Except for injunctive relief and actions for amounts that you owe us, we and you agree that, ~~except as set forth below~~, all controversies, disputes, or claims between us or any of our affiliates, and our and their respective shareholders, officers, directors, agents, and employees, on the one hand, and you (and your owners, guarantors, affiliates, and employees), on the other hand, arising out of or related to:

- ~~(a)~~ — (1) this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates);
- ~~(b)~~ — (2) our relationship with you;
- ~~(c)~~ — (3) the scope or validity of this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates) or any provision of any of such agreements (including the validity and scope of the arbitration provision under this Section ~~14.5~~, which we and you acknowledge is to be determined by an arbitrator, not a court); or

~~(d)~~ — (4) any System Standard;

must be submitted ~~for~~to binding arbitration, on demand of either party, to the American Arbitration Association ~~(the “AAA”).~~ The arbitration proceedings will be conducted by ~~one~~ arbitrator and, except as this Section otherwise provides, according to the AAA’s then-current Commercial Arbitration Rules. All proceedings will be conducted at a suitable location chosen by the arbitrator that is within 50 miles of our then-current principal place of business (currently, Englewood, Colorado). All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the ~~arbitrator’s~~arbitrator's awards may be entered in any court of competent jurisdiction.

The arbitrator must have a minimum of five (5) years’ experience in franchising or distribution law. The arbitrator has the right to award or include in his or her ~~award~~awards any relief which he or she deems proper, including, ~~without limitation,~~ money damages ~~(with, pre- and post-award~~ interest ~~on unpaid amounts from the date due),~~ interim costs and attorneys’ fees, specific performance, and injunctive relief, ~~and attorneys’ fees and costs,~~ provided that the arbitrator may not declare any of the trademarks owned by us or our affiliates generic or otherwise invalid, or, ~~except as expressly provided in this Section 14.5 or 14.3 above,~~ award any punitive, or exemplary, ~~or multiple~~ damages against any party to the arbitration proceeding (we and you hereby waiving to the fullest extent permitted by law any such right to or claim for any punitive, or exemplary, ~~or multiple~~ damages against any party to the arbitration ~~proceedings).~~proceeding). Further, at the conclusion of the arbitration, the arbitrator shall award to the prevailing party its attorneys’ fees and costs.

We and you agree to be bound by the provisions of any applicable contractual or statutory limitations provision, whichever expires earlier. We and you further agree that, in any arbitration proceeding, each party must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding. Any claim which is not submitted or filed as required will be forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us.

We and you agree that arbitration will be conducted on an individual basis and that an arbitration proceeding between us and any of our affiliates, or our and their respective shareholders, officers, directors, agents, and employees, on the one hand, and you (or your owners, guarantors, affiliates, and employees), on the other hand, may not be: (i) conducted on a class-wide basis, (ii) commenced, conducted or consolidated with any other arbitration proceeding, (iii) joined with any separate claim of an unaffiliated third-party, or (iv) brought on your behalf by any association or agent. Notwithstanding the foregoing, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute, controversy or claim that otherwise would be subject to arbitration under this Section, then all parties agree that this arbitration clause shall not apply to that dispute, controversy or claim and that such dispute, controversy or claim shall be resolved in a judicial proceeding in accordance with the dispute resolution provisions of this Agreement.

We and you agree that, in any arbitration arising as described in this Section, the arbitrator shall have full authority to manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute. The parties may only serve reasonable requests for documents, which must be limited to documents upon which a party intends to rely or documents that are directly relevant and material to a significant disputed issue in the case or to the case's outcome. -The document requests shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain, and shall not include broad phraseology such as "all documents directly or indirectly related to." -You and we further agree that no interrogatories or requests to admit shall be ~~propounded~~allowed, unless the parties ~~later~~ mutually agree to their use.-

With respect to any discovery of electronically stored information, you and we agree that such requests must balance the need for production of electronically stored information relevant and material to the outcome of a disputed issue against the cost of locating and producing such information. You and we agree that:

- a) production of electronically stored information need only be from sources used in the ordinary course of business.- No party shall be required to search for or produce information from back-up servers, tapes, or other media;
- b) the production of electronically stored information shall normally be made on the basis of generally available technology in a searchable format which is usable by the party receiving the information and convenient and economical for the producing party.- Absent a showing of compelling need, the parties need not produce metadata, with the exception of header fields for email correspondence;
- c) the description of custodians from whom electronically stored information may be collected shall be narrowly tailored to include only those individuals whose electronically stored information may reasonably be expected to contain evidence that is relevant and material to the outcome of a disputed issue;
- d) the parties shall attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters; and
- e) where the costs and burdens of electronic discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the arbitrator shall either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, which cost advance will not be awarded to the prevailing party in any final award.

In any arbitration each side may take no more than ~~3~~three depositions, unless the parties mutually agree to additional depositions. Each side's depositions are to consume no more than a total of fifteen (15) hours, and each deposition shall be limited to five (5) hours, unless the parties mutually agree to additional time.

The provisions of this Section are intended to benefit and bind certain third-party non-signatories.

The provisions of this Section will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

Any provisions of this Agreement below that pertain to judicial proceedings shall be subject to the agreement to arbitrate contained in this Section.

G. Governing Law.

Limitation ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED (CURRENTLY, COLORADO) WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES, EXCEPT THAT ANY STATE LAW REGULATING THE OFFER OR SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS SECTION.

H. Consent to Jurisdiction.

SUBJECT TO SECTION 17.F. ABOVE AND THE PROVISIONS BELOW, WE AND YOU (AND YOUR OWNERS) AGREE THAT ALL ACTIONS ARISING UNDER THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED IN THE STATE OR FEDERAL COURT CLOSEST TO OUR THEN-CURRENT PRINCIPAL PLACE OF BUSINESS (CURRENTLY, ENGLEWOOD, COLORADO), AND WE AND YOU (AND EACH OWNER) IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS. NONETHELESS, WE AND YOU (AND YOUR OWNERS) AGREE THAT ANY OF US MAY ENFORCE ANY ARBITRATION ORDERS AND AWARDS IN THE COURTS OF THE STATE OR STATES IN WHICH YOU ARE DOMICILED OR YOUR STUDIO IS LOCATED.

~~14.4.—Waiver of Claims. You Punitive Damages and the other Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Except for claims arising from your nonpayment or underpayment of amounts you owe us, any and all claims arising out of or relating to this Agreement or our relationship with you will be barred unless a judicial or arbitration proceeding is commenced in accordance with this Agreement within 1 year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claims. The parties understand that such time limit might be shorter than~~

~~otherwise allowed by law. You and the other Bound Parties agree that your sole recourse for claims arising between the parties shall be against us or our successors or assigns. You and the Bound Parties agree that the members, managers, shareholders, directors, officers, employees, and agents of us and our affiliates shall not be personally liable nor named as a party in any action between us and you or any Bound Party; provided, however, that this shall not preclude claims you have directly against an area director. The parties agree that claims of any other party or parties shall not be joined with any claims asserted in any action or proceeding between us and you. No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement.~~Jury Trial.

~~**Q.A. Costs and Attorneys' Fees.**~~

~~The prevailing party in any arbitration or litigation shall be entitled to recover from the other party all damages, costs and expenses, including arbitration and court costs and reasonable attorneys' fees, incurred by the prevailing party in connection with such arbitration or litigation.~~

EXCEPT FOR YOUR OBLIGATION TO INDEMNIFY US FOR THIRD-PARTY CLAIMS UNDER SECTION 16.D., WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.

WE AND YOU IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING, BROUGHT BY EITHER OF US.

**R.J. Injunctive Relief.**

–Nothing in this Agreement, including the provisions of Section ~~14.5,17.F.~~, bars our right to obtain specific performance of the provisions of this Agreement and injunctive relief against any threatened or actual conduct that will cause us, the Marks, or the Franchise System loss or damage, under customary equity rules, including applicable rules for obtaining restraining orders and temporary or preliminary injunctions. -You agree that we may seek such relief from any court of competent jurisdiction in addition to such further or other relief as may be available to us at law or in equity. -You agree that we will not be required to post a bond to obtain injunctive relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing (all claims for damages by injunction being expressly waived hereby).

## ~~15. MISCELLANEOUS PROVISIONS~~

~~15.1. Remedies. All rights and remedies enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, shall not exclude any other rights or remedies allowed at law or in equity, and said rights and remedies may be exercised and enforced concurrently.~~

~~15.2. Modification/Exercise of Judgment. No amendment, waiver, or modification of this Agreement shall be effective unless it~~  
K. Binding Effect.

~~This Agreement is in writing and signed by binding on us and you. You acknowledge that we may unilaterally modify and our System Standards and other standards and specifications and operating and marketing techniques, whether set forth in the and your respective executors, administrators, heirs, beneficiaries, permitted assigns, and successors in interest. Subject to our right to modify the Operations Manual and System Standards, this Agreement may not be modified except by a written agreement signed by both our and your duly authorized officers.~~

### L. Limitations of Claims and Class Action Bar.

EXCEPT FOR CLAIMS ARISING FROM YOUR NON-PAYMENT OR UNDERPAYMENT OF AMOUNTS, REIMBURSEMENTS, AND OTHER PAYMENTS YOU OWE US, ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU WILL BE BARRED UNLESS A JUDICIAL OR ARBITRATION PROCEEDING IS COMMENCED IN ACCORDANCE WITH THIS AGREEMENT WITHIN ONE (1) YEAR FROM THE DATE ON WHICH THE PARTY ASSERTING THE CLAIM KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THE CLAIMS.

WE AND YOU AGREE THAT ANY PROCEEDING WILL BE CONDUCTED ON AN INDIVIDUAL BASIS AND THAT ANY PROCEEDING BETWEEN US AND ANY OF OUR AFFILIATES, OR OUR AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, ON THE ONE HAND, AND YOU (OR YOUR OWNERS, GUARANTORS, AFFILIATES, AND EMPLOYEES), ON THE OTHER HAND, MAY NOT BE: (I) CONDUCTED ON A CLASS-WIDE BASIS, (II) COMMENCED, CONDUCTED OR CONSOLIDATED WITH ANY OTHER PROCEEDING, (III) JOINED WITH ANY CLAIM OF AN UNAFFILIATED THIRD-PARTY, OR (IV) BROUGHT ON YOUR BEHALF BY ANY ASSOCIATION OR AGENT.

NO PREVIOUS COURSE OF DEALING SHALL BE ADMISSIBLE TO EXPLAIN, MODIFY, OR CONTRADICT THE TERMS OF THIS AGREEMENT. NO IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING SHALL BE USED TO ALTER THE EXPRESS TERMS OF THIS AGREEMENT.

## M. Construction.

The preambles and exhibits are a part of this Agreement which constitutes our and your entire agreement, and there are no other oral or written understandings or agreements between us and you, or oral or otherwise, under any conditions and written representations by us, relating to the extent we deem necessary to protect, promote or improve subject matter of this Agreement, the Marks, the Proprietary Assets franchise relationship, or your Studio. Any understandings or agreements reached, or any representations made, before this Agreement are superseded by this Agreement. Nothing in this or in any related agreement, however, is intended to disclaim the representations we made in the franchise disclosure document that we furnished to you.

Any policies that we adopt and implement from time to time to guide us in our decision-making are subject to change, are not a part of this Agreement, and are not binding on us.

Except as expressly provided in this Agreement, nothing in this Agreement is intended or deemed to confer any rights or remedies on any person or legal entity not a party to this Agreement.

Except where this Agreement expressly obligates us reasonably to approve or not unreasonably to withhold our approval of any of your actions or requests, we have the absolute right to refuse any request you make or to withhold our approval of any of your proposed, initiated, or completed actions that require our approval. The headings of the sections and paragraphs are for convenience only and do not define, limit, or construe the contents of these sections or paragraphs.

References in this Agreement to “we,” “us,” and “our,” with respect to all of our rights and all of your obligations to us under this Agreement, include any of our affiliates with whom you deal. The term “affiliate” means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling you or us. The term “control” means the power to direct or cause the direction of management and policies. The use of the term “including” in this Agreement, means in each case “including, without limitation”.

If two or more persons are at any time the owners of your Studio, whether as partners or joint venturers, their obligations and liabilities to us will be joint and several. References to “owner” mean any person holding a direct or indirect ownership interest (whether of record, beneficially, or otherwise) or voting rights in you (or a transferee of this Agreement and your Studio or an ownership interest in you), including any person who has a direct or indirect interest in you (or a transferee), this Agreement or your Studio and any person who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights, or assets.

References to a “controlling ownership interest” in you or one of your owners (if an Entity) mean the percent of the voting shares or other voting rights that results from dividing one hundred percent (100%) of the ownership interests by the number of owners. In the case of a proposed transfer of an ownership interest in you or one of your owners, the determination of whether a “controlling ownership interest” is involved must be made as of both immediately before and immediately after the proposed transfer to see if a “controlling ownership interest” will be

transferred (because of the number of owners before the proposed transfer) or will be deemed to have been transferred (because of the number of owners after the proposed transfer).

The term “person” means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative, or other legal or functional entity.

Unless otherwise specified, all references to a number of days shall mean calendar days and not business days.

The term “your Studio” includes all of the assets of the Studio you operate under this Agreement, including its revenue and the Lease.

## 18. DELEGATION OF PERFORMANCE.

You agree that we have the right to delegate the performance of any portion or all of our obligations under this Agreement to third-party designees, whether these designees are our agents or independent contractors with whom we have contracted to perform these obligations. If we do so, such third-party designees will be obligated to perform the delegated functions for you in compliance with this Agreement.

## 19. NOTICES AND PAYMENTS.

All written notices, reports, and payments permitted or required to be delivered by this Agreement or the Operations Manual will be deemed to be delivered:

- a) at the time delivered by hand;
- b) at the time delivered electronically or by e-mail and, in the case of the Royalty, Brand Marketing Fund contributions, and other amounts due, at the time we actually receive payment via the Automatic Bank Draft Authorization;
- c) one (1) business day after being placed in the hands of a nationally recognized commercial courier service for next-business-day delivery; or
- d) three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid.

Any notice must be sent to the party to be notified at its most current principal business address of which the notifying party has notice; except that, it will always be deemed acceptable to send notice to you at the address of the Premises.

Any required payment or report which we do not actually receive during regular business hours on the date due (or postmarked by postal authorities at least two (2) days before then) will be deemed delinquent.

## 20. BUSINESS JUDGMENT.

~~We retain the right to operate, develop and change the Franchise System, so long as such modifications are not and the products and services offered by Studios in any manner that is not specifically prohibited by~~in this Agreement.

~~WHENEVER WE RESERVE~~HAVE RESERVED THE RIGHT IN THIS AGREEMENT TO TAKE OR ~~WITHHOLD~~REFRAIN FROM TAKING ~~AN~~ANY ACTION, OR TO ~~GRANT OR DECLINE TO GRANT YOU A RIGHT TO TAKE OR OMIT~~AN~~PROHIBIT YOU FROM TAKING OR REFRAINING FROM ANY~~ ACTION, WE MAY, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, MAKE OUR DECISION OR EXERCISE OUR RIGHTS BASED ON THE INFORMATION THEN READILY AVAILABLE TO US AND ON OUR JUDGMENT OF WHAT IS IN OUR ~~AND/OR THE FRANCHISE SYSTEM'S~~ BEST INTERESTS, THE BEST INTERESTS OF OUR AFFILIATES AND/OR THE BEST INTERESTS OF STUDIOS AS A WHOLE AT THE TIME ~~WE MAKE OUR~~THE DECISION, ~~WITHOUT REGARD TO IS MADE, REGARDLESS OF WHETHER OR~~NOT WE COULD HAVE MADE OTHER REASONABLE, OR EVEN ARGUABLY PREFERABLE, ALTERNATIVE DECISIONS ~~OR~~AND REGARDLESS OF WHETHER ~~OR NOT~~ OUR DECISION OR ACTION PROMOTES OUR ~~FINANCIAL OR OTHER~~ INTERESTS.

~~15.3. No Waiver. No waiver, those of any term, covenant or condition of this Agreement, or failure to exercise a right or remedy by us or you shall constitute or imply a further waiver of the same or any other covenant or condition. Our subsequent acceptance of any payments due to us under this Agreement shall not be deemed to be a waiver by us of any preceding breach by you of any terms, covenants or conditions of this Agreement. Whenever this Agreement requires our prior approval or consent, such approval or consent shall be obtained in writing. We make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you, in connection with any waiver, approval or consent we may grant to you in connection with this Agreement, or by reason of any neglect, delay or denial of any waiver or request for waiver under this Agreement. Any waiver granted by us shall be subject to our continuing review, may subsequently be revoked for any reason effective upon 10 days prior written notice, and shall be without prejudice to any other rights we may have. Our waiver of any term, covenant or condition of this Agreement, or failure to exercise a right or remedy by us as to another franchisee shall not constitute or imply a waiver of the same~~affiliates or any other similar covenant or condition as to you person or entity.

~~15.4. Severability/Invalidity. If any provision of this Agreement or the application of any provision to any person or circumstances shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Agreement or the application of such provisions to any other person or circumstances, all of which shall remain in full force and effect. It is the intention of the parties that if any provision of this Agreement is susceptible to 2 or more interpretations, one of which would render it enforceable, then the provision shall have the meaning that renders it enforceable.~~

~~15.5. Entire Agreement. This Agreement constitutes the entire agreement between us regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements between us regarding such subject matter. No officer, employee, servant or agent of ours or yours has been authorized to make any representation, warranty or other promise not contained in this Agreement or in the accompanying Franchise Disclosure Document. Nothing in this Agreement or in any related agreement, however, is intended to disclaim the representations we made in the Franchise Disclosure Document that we furnished to you. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.~~

~~15.6. Delegation by Us. We shall have the right to delegate the performance of any portion or all of our obligations and duties under this Agreement to third parties, whether they are our affiliates, agents, representatives and/or area directors or other individuals or entities with which we have contracted to perform such obligations, duties or services. You agree in advance to any such delegation and acknowledge and agree that we will not be bound, and this Agreement may not be modified, by any third party (including area directors) without our prior written consent. You acknowledge and agree that any delegation of our duties and obligations to third parties does not assign or confer any rights under this Agreement to such third parties and that they are not third party beneficiaries of this Agreement.~~

~~15.7. Effective Date of Agreement. EXECUTION~~

~~This Agreement shall not be effective until accepted by us as evidenced by the signature of an officer or other duly authorized representative of ours and the dating of the Agreement as of the date of such signature. Notwithstanding the foregoing, we reserve the right to make the effective date of this Agreement the date on which you sign the Agreement.~~

~~15.8. Review of Agreement. You acknowledge that you have had a copy of the Franchise Disclosure Document in your possession for not less than 14 full calendar days, during which time you have had the opportunity to submit the Franchise Disclosure Document and this Agreement and other documents and agreements related thereto for professional review and advice of your choosing prior to freely executing this Agreement.~~

~~15.8. Survival. All of our and your (and your owners' and other Bound Parties') obligations that expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to, and notwithstanding, its expiration or termination until they are satisfied in full or by their nature expire, including, without limitation, the post termination restrictive covenants contained in Section 12.2, dispute resolution covenants and notice and confidentiality provisions.~~

~~15.9. Joint and Several Liability. If you consist of more than 1 individual, the liability of all individuals is deemed to be joint and several.~~

~~15.10. Counterparts; Paragraph Headings; Pronouns. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and, but all of which taken together shall constitute one and the same agreement. The parties agree that faxed, scanned Agreement. This Agreement and all other documents related to this Agreement may be executed by manual or electronic signatures shall have the same effect and validity, and may be relied upon in the same manner, signature. Either party may rely on the~~

~~receipt of a document executed or delivered electronically, as if an original signatures. The paragraph headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof. Each pronoun used herein shall be deemed to include the other gender and number had been received.~~

## ~~16. ACKNOWLEDGMENTS~~

~~BEFORE SIGNING THIS AGREEMENT, YOU SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. YOU ACKNOWLEDGE THAT:~~

- ~~(A) THE SUCCESS OF THIS BUSINESS VENTURE INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON YOUR ABILITY AS AN INDEPENDENT BUSINESS PERSON AND YOUR ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS;~~
- ~~(B) YOU HAVE NOT BEEN GIVEN ANY ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, BY US OR OUR REPRESENTATIVES AS TO THE POTENTIAL SUCCESS OF YOUR STUDIO OR FRANCHISE BUSINESS, THE VIABILITY OF ANY STUDIO LOCATION OR THE EARNINGS OR PROFITS LIKELY TO BE ACHIEVED FROM THE OPERATION OF THE STUDIO, NOR HAVE YOU RELIED UPON ANY SUCH ASSURANCE OR WARRANTY IN EXECUTING THIS AGREEMENT;~~
- ~~(C) WHILE WE HAVE OFFERED ASSISTANCE, YOU HAVE FINAL APPROVAL OF THE SITE SELECTED, LEASE EXECUTED AND OTHER DECISIONS CONCERNING YOUR FRANCHISE PURCHASE, STUDIO LOCATION AND THE OPERATIONS OF YOUR STUDIO;~~
- ~~(D) NO STATEMENT, REPRESENTATION, OR OTHER ACT, EVENT, OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS DOCUMENT AND IN ANY FRANCHISE DISCLOSURE DOCUMENT SUPPLIED TO YOU, IS BINDING UPON US IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT;~~
- ~~(E) YOU ARE AWARE THAT (1) OTHER FRANCHISEES MAY OPERATE THEIR STUDIOS UNDER DIFFERENT FORMS OF AGREEMENTS AND, CONSEQUENTLY, THAT OUR OBLIGATIONS AND RIGHTS WITH RESPECT TO THEM MAY DIFFER MATERIALLY THAN OUR OBLIGATIONS AND RIGHTS WITH RESPECT TO YOU IN CERTAIN CIRCUMSTANCES AND (2) OUR WAIVER OF ANY TERM, COVENANT OR CONDITION OF THIS AGREEMENT, OR FAILURE TO EXERCISE A RIGHT OR REMEDY BY US AS TO ANOTHER FRANCHISEE SHALL NOT CONSTITUTE OR IMPLY A WAIVER OF THE SAME OR ANY OTHER SIMILAR COVENANT OR CONDITION AS TO YOU;~~
- ~~(F) THE INDIVIDUALS EXECUTING THIS AGREEMENT ON YOUR BEHALF REPRESENT AND WARRANT THAT THE SIGNATURES LISTED BELOW~~

~~CONSTITUTE ALL OF THE INDIVIDUALS, PARTNERS, LIMITED PARTNERS, MEMBERS, DIRECTORS, OFFICERS AND/OR SHAREHOLDERS OF YOURS NECESSARY TO BIND YOU AND THAT THEY HAVE READ, UNDERSTAND AND CONSENT TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.~~

*[SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the Effective Date ~~stated below~~.

FITNESS TOGETHER FRANCHISE, LLC,  
a Delaware limited liability company

Sign: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DATED\*:** \_\_\_\_\_  
(\*This is the Effective Date of this Agreement)

~~FITNESS TOGETHER FRANCHISE,~~  
LLC OWNER

**FRANCHISEE:**  
\_\_\_\_\_  
\_\_\_\_\_  
(Name of Individual or Entity)

(IF YOU ARE A CORPORATION,  
LIMITED LIABILITY COMPANY, OR  
PARTNERSHIP):

FRANCHISE OWNER  
(IF YOU ARE AN INDIVIDUAL AND  
NOT A LEGAL ENTITY):

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Signature: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Printed Name: \_\_\_\_\_  
\_\_\_\_\_

Printed \_\_\_\_\_  
Print Name: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_  
(Title of Signor, if applicable)

\*Date: \_\_\_\_\_  
(\*Effective Date of this Agreement)

**DATED:** \_\_\_\_\_

**DATED:** \_\_\_\_\_





**EXHIBIT A**

**TO THE FRANCHISE AGREEMENT**

**You and Your Owners**

1. Form of Owner.

(a) You operate as a sole proprietorship: Yes \_\_\_ No \_\_\_

(b) You operate as a \_\_\_ corporation, \_\_\_ limited liability company, or \_\_\_ partnership (CHECK ONE). You were formed on \_\_\_, 20\_\_\_, under the laws of the State of \_\_\_. You have not conducted business under any name other than your corporate, limited liability company, or partnership name and (INSERT ANY ASSUMED NAME OR DBA THAT YOU HAVE USED).

2. Management. The following is a list of your managers, directors, and officers, as applicable, as of the date of this Agreement:

<u>Name</u>	<u>Position(s) Held</u>

3. Owners. The following list includes the full name of each individual who is one of your owners, or an owner of one of your owners, and fully describes the nature of each owner's interest (attach additional pages if necessary).

<u>Owner's Name</u>	<u>Percentage/Description of Interest</u>

**4. Name and Address of Operating Partner.**

(a) Name: \_\_\_\_\_

(b) Postal Address: \_\_\_\_\_  
\_\_\_\_\_

(c) E-mail Address: \_\_\_\_\_

(d) Telephone Number: \_\_\_\_\_

**5. Name and Address of Designated Manager (if applicable).**

(a) Name: \_\_\_\_\_

(b) Postal Address: \_\_\_\_\_  
\_\_\_\_\_

(c) E-mail Address: \_\_\_\_\_

(d) Telephone Number: \_\_\_\_\_

**EXHIBIT TERRITORY DESCRIPTION**

Franchisee: \_\_\_\_\_

Franchise Agreement Effective Date: \_\_\_\_\_

~~The territory in which you will locate~~**B**

**TO THE FRANCHISE AGREEMENT**

**SEARCH TERRITORY / PREMISES, PROTECTED AREA & INITIAL FRANCHISE FEE**

1. The Search Territory consists of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~1.2. The Premises of your Studio shall be as follows:~~will be located at [insert address]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The Protected Area shall be [select one]:

The circular geographic area having a radius of one and one-half (1.5) miles and its center point located at the front door of the Premises (as described above in this Exhibit B); or

The geographic area described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~Exhibit 1~~

~~FFB-1~~

4. The Initial Franchise Fee shall be [select one]:

\$39,900; or

\_\_\_\_\_ (Section 4(a) shall apply by default if this line is blank)

Exhibit 2

~~FF~~B-2

FTE Studio (Unit)

~~September 2019 Amended~~ March 2020 FDD | Ex. B – Franchise Agreement

[\_\_\_\_\_]

**EXHIBIT C**  
**TO THE FRANCHISE AGREEMENT**  
**REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT**

~~FITNESS TOGETHER FRANCHISE,~~  
~~LLC~~

**FRANCHISEE:**

\_\_\_\_\_  
\_\_\_\_\_  
(Name of Individual or Entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_  
(Title of Signor, if applicable)

~~Exhibit 1~~  
~~FTB-1~~

**EXHIBIT 2**

**AUTOMATIC BANK DRAFT AUTHORIZATION**

Franchisee: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
\_\_\_\_\_ (if different from owner)

Address: \_\_\_\_\_

I hereby authorize Fitness Together Franchise, LLC (“Franchisor”) to initiate entries to my checking or savings account identified below for Royalty (as defined in my Franchise Agreement with Franchisor), loan payments to Franchisor, software, website, default, late and other fees and amounts that may be incurred by me under the Franchise Agreement or otherwise and, if necessary, to initiate any adjustments for transactions credited in error.

Name and Address on Account: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pay to the order of: ~~Fitness Together Franchise, LLC~~

Your Financial Institution: \_\_\_\_\_  
(Name, Address & Phone #) \_\_\_\_\_  
\_\_\_\_\_

Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

**PLEASE ATTACH A VOIDED CHECK**

The purpose of this Statement is to demonstrate to Fitness Together Franchise, LLC (“Franchisor”) that the person(s) signing below (“I,” “me” or “my”), whether acting individually or on behalf of any legal entity established to acquire the franchise rights, (a) fully understands that the purchase of a Fitness Together® franchise is a significant long-term commitment, complete with its associated risks, and (b) is not relying on any statements, representations, promises or assurances that are not specifically set forth in Franchisor’s Franchise Disclosure Document and Exhibits (collectively, the “FDD”) in deciding to purchase the franchise.

In that regard, I represent to Franchisor and acknowledge that:

Exhibit 1

FFB-1

<p><u>I understand that buying a franchise is not a guarantee of success. Purchasing or establishing any business is risky, and the success or failure of the franchise is subject to many variables such as my skills and abilities (and those of my partners, officers, employees), the time my associates and I devote to the business, competition, interest rates, the economy, inflation, operation costs, location, lease terms, the market place generally and other economic and business factors. I am aware of and am willing to undertake these business risks. I understand that the success or failure of my business will depend primarily upon my efforts and not those of Franchisor.</u></p>	<p><u>INITIAL:</u></p>
<p><u>I received a copy of the FDD, including the Franchise Agreement, at least 14 calendar days (10 business days in Michigan and New York) before I executed the Franchise Agreement. I understand that all of my rights and responsibilities and those of Franchisor in connection with the franchise are set forth in these documents and only in these documents. I acknowledge that I have had the opportunity to personally and carefully review these documents and have, in fact, done so. I have been advised to have professionals (such as lawyers and accountants) review the documents for me and to have them help me understand these documents. I have also been advised to consult with other franchisees regarding the risks associated with the purchase of the franchise.</u></p>	<p><u>INITIAL:</u></p>
<p><u>Neither the Franchisor nor any of its officers, employees or agents (including any franchise broker) has made a statement, promise or assurance to me concerning any matter related to the franchise (including those regarding advertising, marketing, training, support service or assistance provided by Franchisor) that is contrary to, or different from, the information contained in the FDD or as indicated below (write “None” if none provided):</u></p> <p>_____.</p>	<p><u>INITIAL:</u></p>
<p><u>My decision to purchase the franchise has not been influenced by any oral representations, assurances, warranties, guarantees or promises whatsoever made by the Franchisor or any of its officers, employees or agents (including any franchise broker), including as to the likelihood of success of the franchise.</u></p>	<p><u>INITIAL:</u></p>
<p><u>I have made my own independent determination as to whether I have the capital necessary to fund the business and my living expenses, particularly during the start-up phase.</u></p>	<p><u>INITIAL:</u></p>
<p><u>I have not received any information from the Franchisor or any of its officers, employees or agents (including any franchise broker) concerning actual, average, projected or forecasted sales, revenues, income, profits or earnings of the franchise business (including any statement, promise or assurance concerning the likelihood of my success) except as contained in the FDD or as indicated below (write “None” if none provided):</u></p> <p>_____.</p>	<p><u>INITIAL:</u></p>

Exhibit 2

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[Signature Page Follows]

Exhibit 3

FFB-3

FTF Studio (Unit)

September 2019 Amended March 2020 FDD | Ex. B – Franchise Agreement

[ ]

Sign here if you are taking the franchise as an INDIVIDUAL(S)

(Note: use these blocks if you are an individual or a partnership but the partnership is not a separate legal entity)

Sign here if you are taking the franchise as a CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name of Legal Entity

By: \_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

NOTE TO MARYLAND RESIDENTS OR FRANCHISEES WITH A STUDIO LOCATED IN

MARYLAND: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_

Printed Name: \_\_\_\_\_

Fitness Together Account Number: \_\_\_\_\_ Studio Name: \_\_\_\_\_

\_\_\_\_\_ This Representations and Acknowledgment Statement is not intended to and shall not waive any liability Franchisor may have under the Maryland Franchise Registration and Disclosure Law.

Exhibit 4

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**EXHIBIT E**  
**FINANCIAL STATEMENTS OF**  
**FITNESS TOGETHER FRANCHISE, LLC**

|

Exhibit ~~5~~

~~FF~~B-5

FTE Studio (Unit)

September 2019 Amended March 2020 FDD | Ex. B – Franchise Agreement

[ ]

|

~~EXHIBIT 3~~

STATEMENT OF OWNERSHIP

Name of Franchisee Legal Entity: \_\_\_\_\_

Date of Formation: \_\_\_\_\_ State of Formation: \_\_\_\_\_

Type of Entity: \_\_\_\_\_

All Shareholders, Members and Partners: \_\_\_\_\_

Name \_\_\_\_\_ % Interest

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

~~The Entity's activities must be confined exclusively to operating the Studio and Fitness Together franchise business, unless we otherwise agree in writing.~~

~~Each shareholder, member, partner or other beneficial owner personally guarantees the Entity's performance under the Franchise Agreement.~~

~~The Entity must maintain a current list of all shareholders, members, partners, and other beneficial owners, and must furnish an updated list to us prior to making any ownership changes. We must approve the ownership changes described in the Franchise Agreement.~~

Documents to be provided to us:

- ~~Certificate and Articles of Incorporation or Organization~~
- ~~By Laws, Operating Agreement or Partnership Agreement~~
- ~~Other, as reasonably requested by Franchisor~~

**EXHIBIT 4**  
**GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS**

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS ("Guaranty") is given on \_\_\_\_\_, by \_\_\_\_\_ (the "Guarantor").

In consideration of, and as an inducement to the execution of that certain Franchise Agreement of even date herewith (the "Agreement") by Fitness Together Franchise, LLC (the "Franchisor"), and \_\_\_\_\_ ("Franchisee"), each Guarantor hereby personally and unconditionally (a) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities.

~~Each Guarantor waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations guaranteed; and (4) any right he or she may have to require that an action be brought against Franchisee or any other person as a condition of liability.~~

~~Each Guarantor hereby consents and agrees that:~~

~~(a) his or her liability under this undertaking shall be direct, immediate, and independent of the liability of, and shall be joint and several with, Franchisee and the other owners of Franchisee;~~

~~(b) liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may grant to Franchisee or to any other person, including the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Agreement;~~

~~(c) Guarantor shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;~~

~~(d) this undertaking will continue unchanged by the occurrence of any bankruptcy with respect to Franchisee or any assignee or successor of Franchisee or by any abandonment of the Agreement by a trustee of Franchisee. Neither Guarantor's obligations to make payment or render performance in accordance with the terms of this undertaking nor any remedy for enforcement shall be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Franchisee or its estate in bankruptcy or of any remedy for enforcement, resulting from the~~

Exhibit 4

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~~operation of any present or future provision of the U.S. Bankruptcy Act or other statute, or from the decision of any court or agency;~~

~~===== (e) Franchisor may proceed against Guarantor and Franchisee jointly and severally, or Franchisor may, at its option, proceed against Guarantor, without having commenced any action, or having obtained any judgment against Franchisee. Guarantor hereby waives the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation hereby guaranteed;~~

~~===== (f) Guarantor agrees to pay all reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempt to collect amounts due pursuant to this undertaking or any negotiations relative to the obligations hereby guaranteed or in enforcing this undertaking against Guarantor; and~~

~~===== (g) Guarantor is bound by the restrictive covenants, confidentiality provisions, and indemnification provisions contained in the Agreement.~~

~~Guarantor agrees to be personally bound by the arbitration obligations under Section 14.5 of the Agreement, including, without limitation, the obligation to submit to binding arbitration the claims described in Section 14.5 of the Agreement in accordance with its terms.~~

~~Each Guarantor represents and warrants that, if no signature appears below for such Guarantor's spouse, such Guarantor is either not married or, if married, is a resident of a state which does not require the consent of both spouses to encumber the assets of a marital estate.~~

~~*[Signature page follows]*~~

~~IN WITNESS WHEREOF~~, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was executed.

~~GUARANTOR(S):~~

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

~~The undersigned, as the spouse of the Guarantor indicated below, acknowledges and consents to the guaranty given herein by his/her spouse. Such consent also serves to bind the assets of the marital estate to Guarantor's performance of this Guaranty.~~

\_\_\_\_\_  
~~Name of Guarantor~~

\_\_\_\_\_  
~~Name of Guarantor's Spouse~~

\_\_\_\_\_  
~~Signature of Guarantor's Spouse~~

\_\_\_\_\_  
~~Name of Guarantor~~

\_\_\_\_\_  
~~Name of Guarantor's Spouse~~

\_\_\_\_\_  
~~Signature of Guarantor's Spouse~~

\_\_\_\_\_  
~~Name of Guarantor~~

\_\_\_\_\_  
~~Name of Guarantor's Spouse~~

\_\_\_\_\_  
~~Signature of Guarantor's Spouse~~

\_\_\_\_\_  
~~Name of Guarantor~~

\_\_\_\_\_  
~~Name of Guarantor's Spouse~~

\_\_\_\_\_  
~~Signature of Guarantor's Spouse~~

**EXHIBIT 5**

**~~FORM OF CONFIDENTIALITY AND NON-SOLICITATION~~**

**TO THE FRANCHISE AGREEMENT**

**CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT**

Exhibit 5

~~**CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT**~~

— This Confidentiality and Non-Solicitation Agreement (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, by and among \_\_\_\_\_ (“Employer”) and \_\_\_\_\_ (“Employee”).

**1. RECITALS.**

~~1. **RECITALS.**~~

A. Employer is a party to a franchise agreement (the “Franchise Agreement”) with Fitness Together Franchise, LLC (“Franchisor”), under which Franchisor granted Employer certain rights with regard to a Fitness Together® studio located at the following address: \_\_\_\_\_ (the “Studio”);

B. Employer has hired Employee to perform services ~~as a [personal fitness instructor]~~ at Employer’s Studio;

~~C. Before allowing Employee to have access to the Confidential Information and as a material term of the Franchise Agreement necessary to protect Franchisor’s confidential know-how and distinctive systems, designs, décor, trade dress, specifications, standards, techniques and procedures authorized or required by Franchisor from time to time for use in the operation of Employer’s Studio (the “Franchise System”), Employer requires that Employee enter into this Agreement; and~~

~~D. As a condition of employment or continued employment by Employer, Employee has agreed to enter into this Agreement.~~

**2. DEFINITIONS.**

~~Certain terms that are capitalized in this Agreement are defined in this section or at the places they first appear.~~

~~(a) The term “Client” as used in this Agreement means any individual who is or was a client of the Studio or the Franchise System at any time during the term of Employee’s employment with the Employer.~~

~~**B.A.**~~

~~C.A. Before allowing Employee to have access to the Confidential Information and as a material term of the Franchise Agreement necessary to protect Franchisor’s confidential know-how and distinctive systems, designs, décor, trade dress, specifications, standards, techniques and procedures authorized or required by Franchisor from time to time for use in the operation of Employer’s Studio (the “Franchise System”), Employer requires that Employee enter into this Agreement; and~~

~~D.A. As a condition of employment or continued employment by Employer, Employee has agreed to enter into this Agreement.~~

## ~~2.1. DEFINITIONS:~~

~~Certain terms that are capitalized in this Agreement are defined in this section or at the places they first appear.~~

~~(a) The term “Client” as used in this Agreement means any individual who is or was a client of the Studio or the Franchise System at any time during the term of Employee’s employment with the Employer.~~

~~(b) The term “Competitive Business” as used in this Agreement means any business (other than a Studio) (i) operating or granting franchises or licenses to others to operate one-on-one and personal small group physical fitness studios or any other physical fitness or nutrition service business, or (ii) offering or selling products or educational materials or conducting workshops for services that are the same as, similar to or competitive with the Franchise System or the Studios.~~

~~(e)(b) The term “Confidential Information” as used in this Agreement means certain confidential and proprietary information relating to the development and operation of the Studios, which includes, but is not limited to: (i) the interior layout and design, color scheme, signage and equipment, copyrights, titles, symbols, emblems, slogans, insignia, designs, diagrams, artworks, advertising and promotional materials, audio and written materials, worksheets, originals, manuals, techniques, rules, ideas, philosophies, illustrations, course materials, confidential operations manual, other manuals, technical bulletins, other written or videotaped materials and other materials and documents related to the operation of the Studio; (ii) standards and specifications of the Franchise System; (iii) (1) training and operations materials, including the operations manual; (2) the methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in developing and operating Studios; (3) market research, promotional, marketing and advertising strategies and programs for Studios; (4) strategic plans, including expansion strategies and targeted demographics; (5) knowledge of, specifications for and suppliers of, and methods of ordering, Studio assets and other products and supplies; (6) any computer software or similar technology which is proprietary to Franchisor or the Franchise System, including digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology; (7) knowledge of the operating results and financial performance of the Studio and other Studios; (8) information generated by, or used or developed in, the Studio’s operation, including information relating to clients such as client names, addresses, telephone numbers, e-mail, email addresses, buying habits, preferences, demographic information and related information, and (iv) other methods, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques and knowledge of and experience in the operation and franchising of Studios; any other information contained from time to time in the Studio’s computer system (“Client Information”); and (9) any other information designated as confidential or proprietary by Franchisor or Employer.~~

(dc) The term “Services” as used in this Agreement means ~~one-on-one and personal small group physical training~~ fitness services or any other physical fitness or nutrition services and other services and products that the Studio and the Franchise System may offer in the future.

### 3. PROTECTION OF CONFIDENTIAL INFORMATION.

#### 3.1. Employee agrees to use the Confidential Information only to the extent reasonably necessary to perform his or her duties on behalf of Employer taking into consideration the confidential nature of the Confidential Information. PROTECTION OF CONFIDENTIAL INFORMATION.

~~Employee agrees to use the Confidential Information only to the extent reasonably necessary to perform his or her duties on behalf of Employer taking into consideration the confidential nature of the Confidential Information.~~ Employee may disclose the Confidential Information only as an agent for Employer. ~~Employee acknowledges and agrees that neither Employee nor any other person or entity will acquire any interest in or right to use the Confidential Information under this Agreement or otherwise other than the right to utilize it as authorized in this Agreement and that the unauthorized use or duplication of the Confidential Information, including, without limitation, in connection with any other business would be detrimental to Franchisor and Employer and would constitute a breach of Employee's obligations of confidentiality and an unfair method of competition with Franchisor and/or other Studios owned by Employer or franchised by Franchisor.~~

Employee acknowledges and agrees that the Confidential Information is confidential to, and a valuable asset of, Franchisor. ~~The Confidential Information will be disclosed to Employee solely on the condition that Employee agrees to the terms and conditions of this Agreement. Franchisor. The Confidential Information will be disclosed to Employee solely on the condition that Employee agrees to the terms and conditions of this Agreement.~~ Employee therefore agrees that during the term of the Franchise Agreement and thereafter, he or she: (a) will not use the Confidential Information in any other business or capacity; (b) will maintain the absolute confidentiality of the Confidential Information; (c) will not make unauthorized copies of any portion of the Confidential Information disclosed or in written form; and (d) will adopt and implement all reasonable procedures prescribed from time to time by Franchisor and Employer to prevent the unauthorized use or disclosure of or access to the Confidential Information.

Notwithstanding anything to the contrary contained in this Agreement, the restrictions on Employee do not apply to (a) disclosure or use of information, methods, or techniques which are generally known and used in the industry (as long as the availability is not because of an unauthorized disclosure by Employee or Employee's agents), provided that Employee has first given Franchisor written notice of his or her intended disclosure and/or use; and (b) disclosure of the Confidential Information in legal proceedings when Employee is legally required to disclose it, provided that Employee has first given Franchisor the opportunity to obtain an appropriate legal protective order or other assurance satisfactory to Franchisor that the information required to be disclosed will be treated confidentially.

Notwithstanding any provisions in this Agreement or Employer policy applicable to the unauthorized use or disclosure of trade secrets, you are hereby notified that, pursuant to the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1833(b):

**An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.**

**Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.**

4. **NON-SOLICITATION.**

—Employee agrees that during the term of Employee’s employment with Employer and for a period of 1 year following the first to occur of: ~~-(a) termination or expiration without renewal of the Franchise Agreement; or (b) the date as of which Employee is no longer an employee of, or otherwise providing Services for, Employer (each of these events is referred to as a “Termination Event”), Employee shall not, directly or indirectly, on Employee’s own behalf or on behalf of any other person, whether as owner, employee, agent, consultant or in any other capacity; ~~(i), solicit, induce or attempt to solicit or induce any Client to terminate or modify its use of the Services at Employer’s Studio; or (ii) solicit, induce or attempt to solicit or induce for employment any person who is then or was, within the immediately preceding 12 months, an employee or contractor of Employer or Franchisor (or their affiliates).~~~~

5. **SURRENDER OF DOCUMENTS.**

—Employee agrees that as of the effective date of a Termination Event, Employee shall immediately cease to use the Confidential Information disclosed to or otherwise learned or acquired by Employee and return to Employer or to Franchisor (if directed by Franchisor) all copies of the Confidential Information loaned or made available to Employee.

6. **INJUNCTIVE RELIEF AND DAMAGES.**

Both parties recognize that the services to be rendered by Employee for Employer are special, unique and of an extraordinary character. ~~-Upon breach of this Agreement, Franchisor or Employer shall be entitled, if it/they so elects, to seek injunctive relief in any court of competent jurisdiction to enforce the covenants set forth herein. -In addition to injunctive relief, Franchisor or Employer shall be entitled to seek such other and further relief, including, ~~but not limited to,~~ the recovery of damages as may be permitted by law or in equity. Employee expressly acknowledges that he/she possesses other skills, experience, education and abilities of a general nature and has other opportunities for exploiting such other skills, experience, education and abilities to derive income from other endeavors. -Consequently, enforcement of the covenants made in this~~

Agreement is fair and reasonable, and will not deprive Employee of his/her personal goodwill or ability to earn a living, or otherwise impose any undue hardship on him/her. Employee further acknowledges and agrees that any violation of the covenants contained in this Agreement will result in irreparable harm to Employer, Franchisor, and its affiliates. If any covenant is held by any arbitrator or court of competent jurisdiction to be broader in time, scope, or subject matter than legally permitted, then the parties authorize the arbitrator or court to impose that covenant to the maximum lawful extent. -Employer is permitted at any time to reduce the time, scope, or subject matter of any covenant to render it enforceable under applicable law.

7. **COSTS AND ~~ATTORNEYS'~~ATTORNEYS' FEES.**

—In the event that Franchisor or Employer is required to enforce this Agreement in an action against Employee, Employee shall reimburse Franchisor and/or Employer if it/they prevail (whether or not awarded a money judgment) for its/their reasonable ~~attorneys'~~attorneys' fees, whether such fees are incurred before, during or after any trial or administrative proceeding or on appeal.

8. **WAIVER.**

—Failure to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any right or remedy hereunder at any one or more times be deemed a waiver or relinquishment of such right or remedy at any other time or times.

9. **SEVERABILITY.**

—Each section, paragraph, term and provision of this Agreement and any portion thereof shall be considered severable and if for any reason any such provision is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which Franchisor is a party, that ruling shall not impair the operation of or have any other effect upon such other portions of this Agreement as may remain otherwise intelligible. Such other portions shall continue to be given full force and effect and bind the parties hereto. -Any portion held to be invalid shall be deemed not to be a part of this Agreement from the date the time for appeal expires if Employee is a party thereto or upon ~~Employee's~~Employee's receipt of a notice from Franchisor that it will not enforce the section, paragraph, term or provision in question.

10. **RIGHTS OF PARTIES ARE CUMULATIVE.**

—The rights of the parties hereunder are cumulative and no exercise or enforcement by a party hereto of any right or remedy granted hereunder shall preclude the exercise or enforcement by them of any other right or remedy hereunder or which they are entitled by law to enforce.

11. **BENEFIT.**

— This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Franchisor shall be deemed a third-party beneficiary of this Agreement and shall have the right to enforce this Agreement directly.

12. **GOVERNING LAW.**

— This Agreement and the relationship between the parties hereto shall be construed and governed in accordance with the internal laws of the State of Colorado without regard to its conflict of laws principles.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in multiple counterparts as of the day and year first above written.

**EMPLOYER:**

If a Legal Entity:

[Name of Employer]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

If an Individual:

\_\_\_\_\_  
[Name]

**EMPLOYEE:**

\_\_\_\_\_  
[Name]

**EXHIBIT 6**

EXHIBIT E

TO THE FRANCHISE AGREEMENT

GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS ("Guaranty") is given this  
day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_  
(the "Guarantor").

In consideration of, and as an inducement to the execution of that certain Franchise Agreement of even date herewith (the "Agreement") by Fitness Together Franchise, LLC (the "Franchisor"), and \_\_\_\_\_ ("Franchisee"), each Guarantor hereby personally and unconditionally (a) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities.

Each Guarantor waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations guaranteed; and (4) any right he or she may have to require that an action be brought against Franchisee or any other person as a condition of liability.

Each Guarantor hereby consents and agrees that:

(a) his or her liability under this undertaking shall be direct, immediate, and independent of the liability of, and shall be joint and several with, Franchisee and the other owners of Franchisee;

(b) liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may grant to Franchisee or to any other person, including the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Agreement;

(c) Guarantor shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;

(d) this undertaking will continue unchanged by the occurrence of any bankruptcy with respect to Franchisee or any assignee or successor of Franchisee or by any abandonment of the Agreement by a trustee of Franchisee. Neither Guarantor's obligations to

make payment or render performance in accordance with the terms of this undertaking nor any remedy for enforcement shall be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Franchisee or its estate in bankruptcy or of any remedy for enforcement, resulting from the operation of any present or future provision of the U.S. Bankruptcy Act or other statute, or from the decision of any court or agency;

(e) Franchisor may proceed against Guarantor and Franchisee jointly and severally, or Franchisor may, at its option, proceed against Guarantor, without having commenced any action, or having obtained any judgment against Franchisee. Guarantor hereby waives the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation hereby guaranteed;

(f) Guarantor agrees to pay all reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempt to collect amounts due pursuant to this undertaking or any negotiations relative to the obligations hereby guaranteed or in enforcing this undertaking against Guarantor; and

(g) Guarantor is bound by the restrictive covenants, confidentiality provisions, and indemnification provisions contained in the Agreement.

Guarantor agrees to be personally bound by the arbitration obligations under Section 17.F. of the Agreement, including, without limitation, the obligation to submit to binding arbitration the claims described in Section 17.F. of the Agreement in accordance with its terms.

Each Guarantor represents and warrants that, if no signature appears below for such Guarantor's spouse, such Guarantor is either not married or, if married, is a resident of a state which does not require the consent of both spouses to encumber the assets of a marital estate.

*[Signature page follows]*

IN WITNESS WHEREOF, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was executed.

**GUARANTOR(S):**

Signature: \_\_\_\_\_  
\_\_\_\_\_  
Print Name: \_\_\_\_\_

The undersigned, as the spouse of the Guarantor indicated below, acknowledges and consents to the guaranty given herein by his/her spouse. Such consent also serves to bind the assets of the marital estate to Guarantor's performance of this Guaranty.

\_\_\_\_\_  
Name of Guarantor  
\_\_\_\_\_  
Name of Guarantor's Spouse  
\_\_\_\_\_  
Signature of Guarantor's Spouse

\_\_\_\_\_  
Name of Guarantor  
\_\_\_\_\_  
Name of Guarantor's Spouse  
\_\_\_\_\_  
Signature of Guarantor's Spouse

\_\_\_\_\_  
Name of Guarantor  
\_\_\_\_\_  
Name of Guarantor's Spouse  
\_\_\_\_\_  
Signature of Guarantor's Spouse

\_\_\_\_\_  
Name of Guarantor  
\_\_\_\_\_  
Name of Guarantor's Spouse  
\_\_\_\_\_  
Signature of Guarantor's Spouse

**EXHIBIT F**  
**TO THE FRANCHISE AGREEMENT**

**LEASE RIDER**

Exhibit 6

|

## Exhibit 6

**RIDER AND SPECIAL STIPULATIONS**

TO LEASE AGREEMENT DATED \_\_\_\_\_  
BY AND BETWEEN \_\_\_\_\_

\_\_\_\_\_, AS "LANDLORD"  
AND

\_\_\_\_\_, AS "TENANT" FOR THE DEMISED  
PREMISES ("PREMISES") DESCRIBED THEREIN

---

This Rider and Special Provisions (the “**Rider**”) and the provisions hereof are hereby incorporated into the body of the lease to which this Rider is attached (the "**Lease**"), and the provisions hereof shall be cumulative of those set forth in the Lease, but to the extent of any conflict between any provisions of this Rider and the provisions of the Lease, this Rider shall govern and control.

1. Consent to Collateral Assignment to Franchisor; Disclaimer. Landlord acknowledges that Tenant intends to operate **ana** FITNESS TOGETHER® studio in the Premises, and that Tenant's rights to operate **ana** FITNESS TOGETHER® studio and to use the FITNESS TOGETHER® franchise system’s trade and service marks are solely pursuant to a franchise agreement dated \_\_\_\_\_, 20\_\_ (the "**Franchise Agreement**") between Tenant and Fitness Together Franchise, LLC (the "**Franchisor**"). -Tenant's operations at the Premises are independently owned and operated.- Landlord acknowledges that Tenant alone is responsible for all obligations under the Lease unless and until Franchisor or another franchisee expressly, and in writing, assumes such obligations and takes actual possession of the Premises. -Notwithstanding any provisions of this Lease to the contrary, Landlord hereby consents, without payment of a fee and without the need for further Landlord consent, to (i) the collateral assignment of Tenant's interest in this Lease to Franchisor to secure Tenant's obligations to Franchisor under the Franchise Agreement, and/or (ii) Franchisor's (or any entity owned or controlled by, or under common control or ownership with, Franchisor) succeeding to Tenant's interest in the Lease by mutual agreement of Franchisor and Tenant, or as a result of Franchisor's exercise of rights remedies under such collateral assignment or as a result of Franchisor’s termination of, or exercise of rights or remedies granted in or under, any other agreement between Franchisor and Tenant, and/or (iii) Tenant’s, Franchisor’s and/or any other franchisee of Franchisor’s assignment of the Lease to another franchisee of Franchisor with whom Franchisor has executed its then-standard franchise agreement, Landlord, Tenant and Franchisor agree and acknowledge that simultaneously with such assignment pursuant to the immediately preceding sentence, Franchisor shall be released from all liability under the Lease or otherwise accruing after the date of such assignment (in the event Franchisor is acting as the assignor under such assignment), but neither Tenant nor any other franchisee shall be afforded such release in the event Tenant/such franchisee is the assignor unless otherwise agreed by Landlord. Landlord further agrees that all unexercised renewal or extension rights and other rights stated to be personal to Tenant shall not be terminated in the event of any assignment referenced herein, but shall inure to the benefit of the applicable assignee.
2. Notice and Cure Rights to Franchisor.- Prior to exercising any remedies hereunder (except in the event of imminent danger to the Premises), Landlord shall give Franchisor written notice of any default by Tenant, and commencing upon receipt thereof by Franchisor, Franchisor shall have five (5) additional

Ex. F-1

days to the established cure period as is given to Tenant under the Lease for such default, provided that in no event shall Franchisor have a cure period of less than five (5) days after Franchisor's receipt of such notice. -Landlord agrees to accept cure tendered by Franchisor as if the same was tendered by Tenant, but Franchisor has no obligation to cure such default. -The initial address for notices to Franchisor is as follows:

\_\_\_\_\_  
Fitness Together Franchise, LLC  
9780 South Meridian Blvd, Suite 400  
Englewood, CO 80112  
Attention: -Legal Department\_\_\_\_

With a copy to:

\_\_\_\_\_  
~~Moye White~~  
~~Arnall Golden Gregory, LLP~~  
~~1400 16<sup>th</sup> Street, 6<sup>th</sup> Floor~~  
~~Denver, CO 80202-1486~~  
Attention: ~~David Katalinas~~Jonathan L. Neville, Esq.\_\_\_\_\_

\_\_\_\_\_  
171 17<sup>th</sup> Street, Suite 2100  
Atlanta, GA 30363

3. Assignment Rights of Franchisor and Affiliates.- Notwithstanding anything to the contrary contained in the Lease or this Rider, in the event Franchisor (or any entity owned or controlled by, or under common control or ownership with, Franchisor) -becomes the- “Tenant” entity under the Lease, whether pursuant to the terms of Section 1 of this Rider or otherwise consistent with the terms of the Lease, then as of and following such date of Franchisor’s (or any entity owned or controlled by, or under common control or ownership with, Franchisor’s) becoming “Tenant”: (i) the transfer of equity interests among existing holders of equity interests in Tenant or any direct or indirect parent thereof, to or among family members, or to trusts for the benefit of any of such parties, (ii) the transfer of equity interests in Tenant or any direct or indirect parent thereof in connection with a public offering of equity interests, (iii) any transfer of equity interests in Tenant or any direct or indirect parent thereof, -if Tenant or any direct or indirect parent of Tenant is a public company, (iv) any direct or indirect transfers, including any sale, of equity interests in Tenant or any affiliate thereof, or (v) any change in the members of the board of managers, directors, management or organization of Tenant or any affiliate thereof, shall not be deemed an assignment, subletting, change of control or other transfer of Tenant’s interest in and to this Lease.
4. Radius and Relocation Clauses Ineffective.- Notwithstanding anything as set forth in the Lease to the contrary or in conflict, in the event Franchisor (or any entity owned or controlled by, or under common control or ownership with, Franchisor) -becomes the- “Tenant” entity under the Lease, whether pursuant to the terms of Section 1 of this Rider or otherwise consistent with the terms of the Lease, then as of and following such date of Franchisor’s (or any entity owned or controlled by, or under common control or ownership with, Franchisor’s) becoming “Tenant”: (i) all “radius” restrictions or other limitations contained within the Lease limiting the operation of other locations/stores/units within a certain geographic area shall be of no further force or effect; and (ii) all rights of Landlord to directly or indirectly relocate the Premises shall be of no further force or effect.
5. Franchisor’s Right to Enter.- Landlord acknowledges that, under the Franchise Agreement, Franchisor or its appointee has the right to assume the management and operation of the Tenant’s business, on

Ex. F-2

Tenant's behalf, under certain circumstances (to-wit: Tenant's abandonment, Tenant's failure to timely cure its default of the Franchise Agreement, and while Franchisor evaluates its right to purchase the FITNESS TOGETHER® studio).- Landlord agrees that Franchisor or its appointee may enter upon the Premises for purposes of assuming the management and operation of the FITNESS TOGETHER® studio or taking other corrective actions as provided in the Franchise Agreement and, if it chooses to do so, it will do so in the name of the Tenant and without assuming any direct liability under the Lease unless Franchisor exercises such rights to assume the Lease as set forth in Section 1 of this Rider. Further, upon the expiration or earlier termination of this Lease or the Franchise Agreement, Franchisor or its designee may enter upon the Premises for the purpose of removing all signs and other material bearing the FITNESS TOGETHER® ~~Trademarks~~trademarks or other commercial symbols of Franchisor.

6. Third Party Beneficiary.– For so long as Franchisor holds a collateral assignment of the Lease, Franchisor is a third party beneficiary of the Lease, including, without limitation, this Rider, and as a result thereof, shall have all rights (but not the obligation) to enforce the same.
7. Amendments. Tenant agrees that the Lease may not be terminated, modified or amended without Franchisor's prior written consent, nor shall Landlord accept surrender of the Premises without Franchisor's prior written consent. Tenant agrees to promptly provide Franchisor with copies of all proposed modifications or amendments and true and correct copies of the signed modifications and amendments.
8. Default Under Franchise Agreement. -Any default under the Lease which is not cured by Tenant within any applicable cure period also constitutes grounds for termination of the Franchise Agreement.
9. Remaining Provisions Unaffected. -Those parts of the Lease that are not expressly modified by this Rider remain in full force and effect.
10. Counterparts. –This Rider may be executed in one or more counterparts, each of which shall cumulatively constitute an original. -PDF/Faxed signatures of this Rider shall constitute originals of the same.

\*\*\*\*

AGREED and executed and delivered under seal by the parties hereto as of the day and year of the Lease.

**LANDLORD:**

**TENANT:**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Ex. F-3

**EXHIBIT G**

**TO THE FRANCHISE AGREEMENT**

**AUTOMATIC BANK DRAFT AUTHORIZATION**

Franchisee: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
(if different from owner)

Address: \_\_\_\_\_

I hereby authorize Fitness Together Franchise, LLC and its successors and assigns (“Franchisor”) to initiate entries to my checking or savings account identified below for Royalty (as defined in my Franchise Agreement with Franchisor), technology, website, default, late and other fees and amounts that may be incurred by me under the Franchise Agreement or otherwise and, if necessary, to initiate any adjustments for transactions credited in error.

Name and Address on Account: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pay to the order of: Fitness Together Franchise, LLC

Your Financial Institution: \_\_\_\_\_  
(Name, Address & Phone #) \_\_\_\_\_  
\_\_\_\_\_

Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

**PLEASE ATTACH A VOIDED CHECK**

**EXHIBIT 7**

**REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT**

Exhibit 7

**REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT**

The purpose of this Statement is to demonstrate to Fitness Together Franchise, LLC (“Franchisor”) that the person(s) signing below (“I,” “me” or “my”), whether acting individually or on behalf of any legal entity established to acquire the franchise rights, (a) fully understands that the purchase of a Fitness Together Studio franchise is a significant long term commitment, complete with its associated risks, and (b) is not relying on any statements, representations, promises or assurances that are not specifically set forth in Franchisor’s Franchise Disclosure Document and Exhibits (collectively, the “FDD”) in deciding to purchase the franchise.

In that regard, I represent to Franchisor and acknowledge that:

<del>I understand that buying a franchise is not a guarantee of success. Purchasing or establishing any business is risky, and the success or failure of the franchise is subject to many variables such as my skills and abilities (and those of my partners, officers, employees), the time my associates and I devote to the business, competition, interest rates, the economy, inflation, operation costs, location, lease terms, the market place generally and other economic and business factors. I am aware of and am willing to undertake these business risks. I understand that the success or failure of my business will depend primarily upon my efforts and not those of Franchisor.</del>	<b>INITIAL:</b>
<del>I received a copy of the FDD, including the Franchise Agreement, at least 14 calendar days (10 business days in Michigan) before I executed the Franchise Agreement. I understand that all of my rights and responsibilities and those of Franchisor in connection with the franchise are set forth in these documents and only in these documents. I acknowledge that I have had the opportunity to personally and carefully review these documents and have, in fact, done so. I have been advised to have professionals (such as lawyers and accountants) review the documents for me and to have them help me understand these documents. I have also been advised to consult with other franchisees regarding the risks associated with the purchase of the franchise.</del>	<b>INITIAL:</b>
<del>Neither the Franchisor nor any of its officers, employees or agents (including any franchise broker) has made a statement, promise or assurance to me concerning any matter related to the franchise (including those regarding advertising, marketing, training, support service or assistance provided by Franchisor) that is contrary to, or different from, the information contained in the FDD.</del>	<b>INITIAL:</b>
<del>My decision to purchase the franchise has not been influenced by any oral representations, assurances, warranties, guarantees or promises whatsoever made by the Franchisor or any of its officers, employees or agents (including any franchise broker), including as to the likelihood of success of the franchise.</del>	<b>INITIAL:</b>

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Studio Number: \_\_\_\_\_ Studio Name: \_\_\_\_\_

## EXHIBIT H

### TO THE FRANCHISE AGREEMENT

#### ASSIGNMENT OF CONTACT IDENTIFIERS AND ONLINE PRESENCES

The undersigned (“**Franchisee**”) hereby acknowledges and agrees that FITNESS TOGETHER FRANCHISE, LLC (“**Franchisor**”) has granted a franchise to Franchisee to operate a franchised business located at \_\_\_\_\_ (the “**Franchised Business**”), pursuant to a Franchise Agreement dated \_\_\_\_\_ (the “**Franchise Agreement**”); and that in connection with the operation of that Franchised Business, Franchisor may have authorized Franchisee to acquire and/or maintain certain: (1) telephone and facsimile numbers and other directory listings (each a “**Contact Identifier**”), and/or (2) website, domain name, email address, social media account, user name, other online presence or presence on any electronic medium of any kind (each an “**Online Presence**”).

1. Assignment. In the event of termination or expiration of the Franchise Agreement, Franchisee hereby sells, assigns, transfers and conveys to Franchisor all of its rights, title and interest in and to all Contact Identifiers and Online Presences pursuant to which Franchisee operated its Franchised Business in any manner, or which display, connect to, or are relating to the franchise system operated by Franchisor, or any tradenames, trademarks or other proprietary materials or symbols of any kind of Franchisor’s or its affiliates relating to such franchise system or the Franchised Business. Upon termination or expiration of the Franchise Agreement, Franchisee shall immediately notify the telephone company, listing agencies and any other third-party owning or controlling any Contact Identifiers, and any internet service provider, website hosting company, domain registrar, social network or other third-party owning or controlling any Online Presence (all such entities collectively “**Registrars**”) to assign the Contact Identifiers and Online Presences, as applicable, to Franchisor. This Assignment is for collateral purposes only and, except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment, unless Franchisor shall notify any applicable Registrar to effectuate the assignment pursuant to the terms hereof, and in such case, Franchisor’s liability will accrue exclusively from and after the date of such assignment.

2. Attorney-in-Fact. Franchisee irrevocably appoints Franchisor as Franchisee’s true and lawful attorney-in-fact, which appointment is coupled with an interest, to direct each Registrar to assign all Contact Identifiers and Online Presences to Franchisor and execute such documents and take such actions as may be necessary to effectuate the assignment. If Franchisee fails to promptly direct the Registrars to assign the Contact Identifiers and Online Presences to Franchisor, Franchisor shall direct the Registrars to effectuate the assignment contemplated hereunder to Franchisor. The parties agree that the Registrars may accept Franchisor’s written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor’s exclusive rights in and to the Contact Identifiers and Online Presences, as applicable, upon such termination or expiration. The parties further agree that if the Registrars require that the parties execute any assignment forms or other documentation at the time of termination or expiration of the Franchise Agreement, Franchisor’s execution of such forms or documentation on behalf of Franchisee shall effectuate Franchisee’s consent and agreement to the assignment.

3. Further Assurances. The parties agree that they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

4. Representation and Warranties of Franchisee. Franchisee hereby represents, warrants and covenants to Franchisor as of the date hereof, and as of the date of expiration or termination of the Franchise Agreement, that:

(a) All of Franchisee’s obligations and indebtedness related to its Contact Identifiers and Online Presences have been paid and are current;

(b) Franchisee has full power and legal right to enter into, execute, deliver and perform this Assignment;

(c) This Assignment is a legal and binding obligation of Franchisee, enforceable in accordance with the terms hereof;

(d) The execution, delivery and performance of this Assignment does not conflict with, violate, breach or constitute a default under any contract, agreement or instrument to which Franchisee is a party or by which Franchisee is bound, and no consent of nor approval by any third party is required in connection herewith; and

(e) Franchisee has the specific power to assign and transfer its right, title and interest in its telephone numbers, telephone listings and telephone directory advertisements, and Franchisee has obtained all necessary consents to this Assignment.

5. Miscellaneous. The validity, construction and performance of this Assignment shall be governed by the laws of the State of Colorado. All agreements, covenants, representations and warranties made herein shall survive the execution hereof. All rights of Franchisor shall inure to its benefit and to the benefit of its successors and assigns. Franchisor may assign its rights under this Assignment to any designee. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Assignment may be executed by manual or electronic signature. Either party may rely on the receipt of a document executed or delivered electronically.

~~I have made my own independent determination as to whether I have the capital necessary to fund the business and my living expenses, particularly during the start-up phase.~~

~~INITIAL:~~

~~I have not received any information from the Franchisor or any of its officers, employees or agents (including any franchise broker) concerning actual, average, projected or forecasted sales, revenues, income, profits or earnings of the franchise business (including any statement, promise or assurance concerning the likelihood of my success) except as contained in the FDD or as indicated below (write “None” if none provided):~~

~~INITIAL:~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

~~**Prohibited Parties Clause.** I acknowledge that Franchisor, its employees and its agents are subject to U.S. laws that prohibit or restrict (a) transactions with certain parties, and (b) the conduct of transactions involving certain foreign parties. These laws include, without limitation, U.S. Executive Order 13224, the U.S. Foreign Corrupt Practices Act, the Bank Secrecy Act, the International Money Laundering Abatement and Anti terrorism Financing Act, the Export Administration Act, the Arms Export Control Act, the U.S. Patriot Act, and the International Economic Emergency Powers Act, and the regulations issued pursuant to these and other U.S. laws. As part of the express consideration for the purchase of the franchise, I represent that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been listed on:~~

- ~~1. \_\_\_\_\_ the U.S. Treasury Department’s List of Specially Designated Nationals;~~
- ~~2. \_\_\_\_\_ the U.S. Commerce Department’s Denied Persons List, Unverified List, Entity List, or General Orders;~~
- ~~3. \_\_\_\_\_ the U.S. State Department’s Debarred List or Nonproliferation Sanctions; or~~
- ~~4. \_\_\_\_\_ the Annex to U.S. Executive Order 13224.~~

~~I warrant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been: (i) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or (ii) is owned or controlled by terrorists or sponsors of terrorism. I warrant that I am now, and have been, in compliance with U.S. anti money laundering and counter terrorism financing laws and regulations, and that any funds provided by me to Franchisor were legally obtained in compliance with these laws.~~

~~I further covenant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, will, during the term of the Franchise Agreement, become a person or entity described above or otherwise become a target of any anti terrorism law.~~

[Signature Page Follows]

Sign here if you are taking the franchise as an  
**INDIVIDUAL(S)**  
(Note: use these blocks if you are an individual  
or a partnership but the partnership is not a  
separate legal entity)

\_\_\_\_\_  
\_\_\_\_\_  
**Signature**  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Sign here if you are taking the franchise as a  
**CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP**

\_\_\_\_\_  
\_\_\_\_\_  
Print Name of Legal Entity

By: \_\_\_\_\_  
**Signature**

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed and delivered this assignment as of the dates indicated below.

FITNESS TOGETHER FRANCHISE, LLC,  
a Delaware limited liability company

Sign: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DATED:** \_\_\_\_\_

**FRANCHISE OWNER**

**(IF YOU ARE A CORPORATION,  
LIMITED LIABILITY COMPANY, OR  
PARTNERSHIP):**

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

**DATED:** \_\_\_\_\_

**FRANCHISE OWNER**

**(IF YOU ARE AN INDIVIDUAL AND  
NOT A LEGAL ENTITY):**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**DATED:** \_\_\_\_\_

~~NOTE TO MARYLAND RESIDENTS OR FRANCHISEES WITH A STUDIO LOCATED IN MARYLAND: This Representations and Acknowledgment Statement is not intended to and shall not waive any liability Franchisor may have under the Maryland Franchise Registration and Disclosure Law.~~

**~~EXHIBIT C~~**

**~~AREA DEVELOPMENT AGREEMENT~~**

**FITNESS TOGETHER FRANCHISE, LLC**

**AREA DEVELOPMENT AGREEMENT  
(MULTI-UNIT DEVELOPMENT)**

---

DEVELOPER

---

DATE OF AGREEMENT

---

DEVELOPMENT AREA

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**FITNESS TOGETHER FRANCHISE, LLC**  
**AREA DEVELOPMENT AGREEMENT**

THIS AREA DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into by and between **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company with its principal business address at 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112 (“we,” “us,” or “our”), and \_\_\_\_\_, \_\_\_\_\_, whose principal business address is \_\_\_\_\_ (“you,” or “your”), as of the date signed by us and set forth below our signature on this Agreement (the “**Effective Date**”).

1. **PREAMBLES AND GRANT OF RIGHTS.**

A. **PREAMBLES.**

(1) We grant, to persons or entities who we determine meet our qualifications, franchises (each a “**Franchise**”) for the development and operation of personal fitness training studios (each a “**Studio**”) using the ~~trademark~~ *Fitness Together*<sup>®</sup> service mark and other trademarks we authorize from time to time (the “**Marks**”) and the system and system standards under which Studios are developed and operated (the “**System**”). Each Franchise is granted solely pursuant to a written franchise agreement and related documents and agreements signed by us and a franchisee (each a “**Franchise Agreement**”).

(2) We also grant, to persons or entities who we determine meet certain additional qualifications and who are willing to commit, the right to acquire multiple Franchises for the development and operation of Studios within a defined area (the “**Development Area**”) pursuant to an agreed upon schedule (the “**Development Schedule**”).

(3) You and, if you are an Entity (defined below), your owners have requested that we grant you such rights, and we are willing to do so in reliance on all of the information, representations, warranties and acknowledgements you and, if applicable, your owners have provided to us in support of your request, and subject to the terms and conditions set forth in this Agreement.

B. **GRANT OF RIGHTS; TERM.**

We grant you the right, and you undertake the obligation, either yourself or through your approved Affiliates (defined below), to acquire Franchises to develop, own and operate Studios (the “**Development Rights**”). In exercising the Development Rights, you agree, at a minimum, to strictly comply with the Development Schedule reflected on **Exhibit A**. The Development Rights may only be exercised for Studios to be developed and operated within the Development Area described on **Exhibit A**. The Development Rights may be exercised from the Effective Date and, unless sooner terminated as provided herein, ~~continuing through~~ continue until the earlier of (1) the date on which the last Studio ~~which that~~ is required to be opened in order to satisfy the Development Schedule opens for regular business, or (2) the last day of the last Development Period (defined below) (the “**Term**”).

The Development Rights are limited to the rights to acquire Franchises in accordance with and as described in this Agreement. Rights to develop and operate Studios or to use the Marks are granted only pursuant to individual Franchise Agreements, and you agree that the Development Rights do not include any such rights. You also acknowledge that we grant rights only pursuant to the expressed

provisions of written agreements and not in any other manner, including orally or by implication, innuendo, extension or extrapolation.

An “**Affiliate**” is an Entity (defined below) in which you or your owners (i) own more than 51% of the issued and outstanding ownership interest and voting rights or (ii) have the right and power to control and determine the Entity’s management and policies.

C. **GRANT OF RIGHTS TO OTHERS; RIGHTS WE RESERVE.**

Except as described in this Section 1.C, and provided you and your Affiliates are in full compliance with this Agreement and all Franchise Agreements and other agreements with us (or any of our affiliates), we will not, during the Term, either own Studios located in the Development Area or grant Franchises (or authorize the grant of Franchises) to any other person or entity to own Studios to be located in the Development Area. We are not otherwise restricted in any manner from engaging in any business activity whatsoever that is not expressly prohibited by this Agreement, including owning, operating and authorizing others to own and operate Studios outside the Development Area in our discretion. We may also do any of the following anywhere in the world, even within the Development Area:

(1) own and operate or authorize others to own and operate fitness studios under trademarks that are different from the Marks even if such studios offer products and services that are identical or similar to, and/or competitive with, products and services offered by Studios;

(2) use the Marks or any other trademarks or commercial symbols to own and operate businesses (other than Studios located in the Development Area as described above) and distribution channels (including the internet or retail stores), regardless of the nature or location of the customers with whom such other businesses and distribution channels do business, even if such businesses sell products and/or services that are identical or similar to, and/or competitive with, those that Studios customarily sell;

(3) establish and operate, and allow others to establish and operate, businesses using the Marks or any other trademarks or commercial symbols at Captive Market Locations. “Captive Market Locations” are airports or other transportation terminals, sports facilities, parks and recreation areas, medical campuses, college and university campuses, corporate campuses, a department within an existing retail store, hotels, or other similar types of locations that have a restricted trade area located within the geographic boundaries of the Development Area;

~~(3)~~(4) acquire the assets or ownership interests of one or more businesses, including Competitive Businesses (defined below), and franchise, license or create similar arrangements with respect to such businesses once acquired;

~~(4)~~(5) be acquired or become controlled (regardless of the form of transaction) by any other business, including a Competitive Business; and

~~(5)~~(6) operate or grant any third party the right to operate any Studios that we or our designees acquire as a result of the exercise of a right of first refusal or purchase right that we have under this Agreement or any Franchise Agreement.

**D. BEST EFFORTS/BUSINESS ENTITY.**

You must at all times faithfully, honestly and diligently perform your obligations and fully exploit the Development Rights during the Term and throughout the entire Development Area. You may not subcontract, subfranchise, or delegate any of your obligations under this Agreement to any third parties. If you are a corporation, limited liability company, partnership, or another form of business entity (collectively, an “Entity”), you agree and represent that:

(1) **Exhibit A** lists all of your owners and their interests as of the Effective Date;

(2) such persons as we designate, which may include the spouses of your owners, will execute an agreement, in the form set forth in **Exhibit B** (the “Guaranty”), under which such persons undertake personally to be bound, jointly and severally, by all provisions of this Agreement and any ancillary agreements between you and us. ~~However, a spouse who signs the Guaranty solely as a spouse and not as an owner will merely be acknowledging and consenting to the execution of the guaranty by his or her spouse and agreeing to bind the assets of the marital estate as described therein and for no other purpose (including to bind the spouse’s own separate property);~~ and

(3) the business that this Agreement contemplates will be the only business you operate (although your owners may have other, non-competitive business interests).

**E. FINANCING; MAXIMUM BORROWING LIMITS; MINIMUM LIQUIDITY.**

We have granted the Development Rights to you based, in part, on your representations to us, and our assessment of, your levels of liquidity as of the Effective Date. You will ensure that, throughout the Term, you will maintain sufficient liquidity and working capital reserves to meet your obligations under this Agreement. We reserve the right to establish and modify specific liquidity requirements from time to time, and you agree to comply with the liquidity requirements that we reasonably impose. At our request, you will provide us with evidence of your liquidity and working capital availability.

We may from time to time designate the maximum amount of debt that Studios may service, and you will ensure that you (and any Affiliate who has signed a Franchise Agreement) comply with such limits. You must also secure our approval of any debt for which the assets of the business are used as collateral, as described in the “transfer” provisions of the applicable Franchise Agreement.

**2. EXERCISE OF DEVELOPMENT RIGHTS.**

**A. EXECUTION OF FRANCHISE AGREEMENTS.**

Simultaneously with signing this Agreement, you or an approved Affiliate must sign and deliver to us a Franchise Agreement (~~as amended by the form of Amendment attached hereto as Exhibit C~~ to which will reflect that no Initial Franchise Fee shall be due) and related documents representing the first Franchise you are obligated to acquire under this Agreement. You or your approved Affiliate must thereafter open and operate a Studio according to the terms of that Franchise Agreement. Thereafter, once we have approved a site, and prior to signing a lease or otherwise securing possession of the site, you or an approved Affiliate must sign our then-current form of Franchise Agreement and related documents, the terms of which may differ substantially from the terms contained in the Franchise Agreement in effect on the Effective Date. The Franchise Agreement will govern the development and operation of the Studio at the approved site identified therein.

**B. PROPOSED SITES FOR STUDIOS.**

You must give us all information and materials we request to assess each Studio site you propose as well as your and your proposed Affiliate's financial and operational ability to fund the development and ~~to operate~~operation of each proposed Studio. We have the absolute right to disapprove any site or any Affiliate (~~a~~1) that does not meet our criteria or (~~b~~2) if you or your Affiliates are not then in compliance with any existing Franchise Agreements executed pursuant to this Agreement or operating your or their Studios in compliance with the System Standards (as defined in such Franchise Agreements). We will use our reasonable efforts to review and approve or disapprove any sites you propose within thirty (30) days after we receive all requested information and materials. Once we approve a proposed site, you or your approved Affiliate must sign a separate Franchise Agreement as described in Section 2.A. If you or your approved Affiliate fails to do so within fifteen (15) days after we provide you with an execution copy of the Franchise Agreement, we may withdraw our approval. In addition, we reserve the right to propose sites to you within the Development Area for the development of Studios contemplated by this Agreement.

**C. COMPLIANCE WITH DEVELOPMENT SCHEDULE.**

Each period described in the Development Schedule is a "**Development Period.**" You or your approved Affiliates must satisfy the obligations described on the Development Schedule (reflected on **Exhibit A**) during and as of the end of each Development Period. The Development Schedule is not our representation, express or implied, that the Development Area can support, or that there are or will be sufficient sites for, the number of Studios specified in the Development Schedule or during any particular Development Period. We are relying on your representation that you have conducted your own independent investigation and have determined that you can satisfy the development obligations under each Development Period of the Development Schedule.

We will count a Studio toward the Development Schedule only if it is actually operating in the regular course within the Development Area and substantially complying with the terms of its Franchise Agreement as of the end of the Development Period. However, a Studio which is, with our approval or because of fire or other casualty, permanently closed during the last ninety (90) days of a Development Period, after having been open and operating, will be counted toward the development obligations for the Development Period in which it closed, but not thereafter.

**D. FAILURE TO COMPLY WITH DEVELOPMENT SCHEDULE.**

If you fail to comply with the Development Schedule as of the end of any Development Period, in addition to terminating this Agreement under Section 7 and asserting any other rights we have under this Agreement as a result of such failure, we may (but need not) elect to revoke our agreement under Section 1.C not to grant similar development or franchise rights to others within the Development Area, reduce the size of the Development Area, and re-configure the Development Area, in each case, as we determine.

E. **RECORDS AND REPORTING.**

Upon our request or as otherwise noted, you agree to provide us with the following records and reports:

(1) Within sixty (60) days after the Effective Date, you ~~must~~may be required to prepare and give us, a business plan covering your projected revenues, costs and operations under this Agreement. This business plan will include your detailed projections of development costs and detailed revenue projections for your Studios. ~~Within~~No more often than once per calendar year and within sixty (60) days after the start of each calendar year during the Term, you ~~must~~may be required to update the business plan ~~each year~~ to cover both actual results for the previous year and projections for the then current year. You acknowledge and agree that, while we may review and provide comments on the business plan and any updates you submit to us, regardless of whether we approve, disapprove, require revisions or provide other comments with respect to the business plan or any updated business plan, we take no responsibility for and make no guarantees or representations, expressed or implied, with respect to your ability to meet the business plan or to achieve the results set forth therein. ~~Once~~If we request and approve your business plan or any updates to it, you must comply with it in all material respects. You bear the entire responsibility for achievement of the business plan you develop.

(2) ~~Within~~No more often than once per month, within seven (7) days after the end of each month during the Term, you ~~must~~may be required to send us a report of your business activities during that month, including information about your efforts to find sites for Studios in the Development Area and the status of development and projecting openings for each Studio under development in the Development Area.

(3) Within twenty-eight (28) days after the end of each calendar quarter, you must provide us with consolidated balance sheet and profit and loss statements for you and your Affiliates covering that quarter and the year-to-date and an updated balance sheet and related financial statements for each person signing the Guaranty.

(4) Within sixty (60) days after the end of each calendar year, you must provide us with an annual profit and loss and source and use of funds statements and a balance sheet, consolidated for you and your Affiliates covering the previous year. We reserve the right to require that you have these financial statements and the financial statements of any prior fiscal years audited by an independent accounting firm designated by us in writing.

Each of the foregoing shall be in the form and format that we reasonably specify, shall be delivered to us in the manner we specify, and shall be certified as correct by you (or one of your owners).

3. **FEES.**

On your execution of this Agreement, you must pay us a nonrefundable development fee in an amount equal to [\$           ] (the “**Development Fee**”). The Development Fee is fully earned by us when you and we sign this Agreement and is nonrefundable.

4. **CONFIDENTIAL INFORMATION; INNOVATIONS.**

A. **CONFIDENTIAL INFORMATION.**

All information furnished to you by us, whether orally or in writing, including the Franchise Agreements, this Agreement, the System, plans, specifications, financial or business data or projections, all documents, data, information, materials, reports, proposals, procedures, financial information, compensation information, proposed advertising, advertising and marketing plans, operations manuals, formulas, samples, improvements, models, drawings, programs, compilations, devices, methods, designs, techniques and specifications, inventions, know-how, processes, business plans, marketing techniques, information generated by, or used or developed in, your Studio's operation, including information relating to clients (such as client names, addresses, telephone numbers, e-mail addresses, buying habits, preferences, demographic information, and similar information), purchasing techniques, supplier lists, supplier information, advertising strategies, operations, our trade secrets, or any other forms of business information, whether or not marked as confidential (collectively, the "**Confidential Information**"): (i) shall be deemed proprietary and shall be held by you in strict confidence; (ii) shall not be disclosed or revealed or shared with any other person except to your employees or contractors who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than your obligations hereunder, or to individuals or entities specifically authorized by us in advance; and (iii) shall not be used except to the extent necessary to exercise the Development Rights or as permitted under Franchise Agreements, and then only in circumstances of confidence and in accordance with the obligations set forth in the Franchise Agreements. You will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as you protect your own confidential or proprietary information of a similar nature and with no less than reasonable care.

All Confidential Information will at all times remain our sole property. You agree to return to us or destroy, at our election, all Confidential Information in your possession or control and permanently erase all electronic copies of such Confidential Information promptly upon our request or upon the expiration or termination of this Agreement, whichever comes first. At our request, you will certify in writing signed by one of your officers that you have fully complied with the foregoing obligations.

B. **INNOVATIONS.**

You agree that, as between us, we or our affiliates own the System and any Confidential Information, and that your rights to use the System and Confidential Information, derive solely from this Agreement or from Franchise Agreements executed pursuant to this Agreement. All improvements, developments, derivative works, enhancements, or modifications to the System and any Confidential Information (collectively, "**Innovations**") made or created by you, your employees or your contractors, whether developed separately or in conjunction with us, shall be owned solely by us or our affiliates. You represent, warrant, and covenant that your employees and contractors are bound by written agreements assigning all rights in and to any Innovations developed or created by them to you. To the extent that you, your employees or your contractors are deemed to have any interest in such Innovations, you hereby agree to assign, and do assign, all right, title and interest in and to such Innovations to us. To that end, you shall execute, verify, and deliver such documents (including assignments) and perform such other acts (including appearances as a witness) as we may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining, and enforcing such ownership rights in and to the

Innovations, and the assignment thereof. Your obligation to assist us with respect to such ownership rights shall continue beyond the expiration or termination of this Agreement. In the event we are unable for any reason, after reasonable effort, to secure your signature on any document needed in connection with the actions specified in this Section 4.B, you hereby irrevocably designate and appoint us and our duly authorized officers and agents as your agent and attorney in fact, which appointment is coupled with an interest and is irrevocable, to act for and on your behalf to execute, verify, and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section 4.B with the same legal force and effect as if executed by you.

C. **GENERAL.**

If you breach any of the provisions of this Section 4, we will be entitled to equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or equity. The obligations under this Section 4 shall survive any expiration or termination of the Agreement.

5. **RESTRICTIVE COVENANTS DURING TERM.**

A. **COVENANTS AGAINST COMPETITION.**

We have granted you the Development Rights in consideration of and in reliance upon your agreement to deal exclusively with us. Therefore, during the Term, you agree that, other than in accordance with this Agreement, neither you, your Affiliates, nor any of your or their officers, directors, shareholders, members, partners or other owners, nor any spouse of yours or any of these individuals (collectively, “**Bound Parties**”), shall:

- (1) have any direct or indirect interest as a disclosed or beneficial owner in a Competitive Business (as defined below), wherever located or operating;
- (2) perform services as a director, officer, manager, employee, consultant, lessor, representative, agent or otherwise for a Competitive Business, wherever located or operating;
- (3) divert or attempt to divert any business or memberships related to the Studios, your business, or any other franchisee’s Studio by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of ours, any of our affiliates, or another franchisee or developer, to any Competitive Business;
- (4) interfere with the relationships we, our affiliates, or our franchisees have from time to time with vendors, suppliers or consultants;
- (5) engage in any other activity which might injure the goodwill of the Marks and/or the System; or
- (6) directly or indirectly assist an immediate family member of any of the Bound Parties in engaging in any of the activities listed in subsections (1)–(5) above.

The term “**Competitive Business**” for purposes of this Agreement, means any business (~~other than a franchise~~excluding any Studios) operated under a Franchise Agreement with us or our affiliate)

operating, or granting, franchises or licenses to others to operate any business that: (i) offers one-on-one or personal small group personal fitness training in physical fitness studios or any other physical fitness or nutrition service business, ~~and/or any business offering~~ (ii) offers or ~~selling~~ sells products or educational materials, or ~~conducting~~ conducts workshops ~~for, services,~~ that are the same as, or similar to, ~~or competitive with the System~~ products, educational materials, and workshops, offered by us or other Studios.

**B. COVENANTS FROM OTHERS.**

You agree to obtain from the Bound Parties similar agreements regarding non-competition (Section 5.A and Section 7.C) and Confidential Information (Section 4). You must provide us with copies of all such agreements on our request. We may regulate the forms of agreement that you use and be a third-party beneficiary of the agreement with independent enforcement rights. You may not assume that any such form we provide you is or will be enforceable in a particular jurisdiction. You are solely responsible for obtaining your own professional advice with respect to the adequacy of the terms and provisions of such forms, but you must secure our approval, prior to use, of any form that contains variations from the form we provide.

**6. TRANSFER.**

**A. BY US.**

This Agreement inures to the benefit of us and our successors and assigns, and we have the right to transfer or assign all or any part of our interest, rights, privileges, duties and obligations hereunder to any person or legal entity without your approval.

**B. BY YOU.**

You acknowledge that we have granted you the Development Rights in reliance upon, and in consideration of, your business skills, financial capacity and other required qualifications. Accordingly, the rights and duties created under this Agreement are personal to you. Your interest in this Agreement, any of your rights under this Agreement, the Development Rights or any interest therein, and any direct or indirect ownership interest in you (regardless of its size), any approved Affiliate, or any of your owners (if such owners are legal entities) may not be assigned, transferred, shared or divided, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner (collectively, a “**transfer**”), without our prior written consent. Any actual or intended assignment, transfer or sale made in violation of the terms of this Section 6.B shall be null and void and shall constitute a material breach of this Agreement, constituting good cause for termination of this Agreement. Additionally, you may not pledge or encumber this Agreement, your Development Rights or an ownership interest in you or your owners (to someone other than us) as security for any loan or other financing, unless ~~(1)~~ we grant our prior written consent and ~~(2)~~ (ii) the lender agrees that its claims will be subordinate to all amounts you owe at any time to us or our affiliates.

The Development Rights may not be transferred separate and apart from the entirety of this Agreement. Additionally, a proposed transfer of this Agreement may not be made separately from or independently of a transfer to the same recipient of all of the Franchise Agreements (and the Studios operated pursuant thereto) executed pursuant to this Agreement.

We will not unreasonably withhold our consent to a transfer, provided all of the following conditions are met before or concurrently with the effective date of the transfer:

(1) you have met all requirements of the Development Schedule, the proposed transferee provides information to us sufficient for us to assess the transferee's business experience and aptitude, and the transferee demonstrates sufficient financial resources to satisfy the remaining requirements of the Development Schedule;

(2) neither you nor your Affiliates have violated any provision of this Agreement or any other agreement with us or our affiliates during both the sixty (60) day period before you requested our consent to the transfer and the period between your request and the effective date of the transfer;

(3) neither the transferee nor its owners or affiliates have an ownership interest (direct or indirect) in or perform services for a Competitive Business;

(4) the transferee shall sign our then-current form of area development agreement and related documents, any and all of the provisions of which may differ materially from any and all of those contained in this Agreement; provided, that the Development Schedule of the new area development agreement will equal the remainder of the then-remaining Development Schedule of this Agreement;

(5) you pay us a transfer fee equal to \$10,000;

(6) you, your owners, and any other guarantors under this Agreement, execute a consent to transfer, which will include a general release and a non-disparagement clause, in a form satisfactory to us, releasing us and our affiliates, and our and their respective officers, directors, members, shareholders, employees and agents, in their corporate and individual capacities, from any and all claims, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;

(7) all individuals and entities who will be direct or indirect owners of the transferee must execute or have executed a guaranty in the form we prescribe;

(8) we have determined that the purchase price and payment terms between you and the transferee will not adversely affect the transferee's ability to meet the Development Schedule or operate any of the Studios developed pursuant to this Agreement;

(9) the transferee's obligations under promissory notes, agreements, or security interests are subordinate to the transferee's obligation to pay any amounts due to us, our affiliates, and third-party vendors related to the operation of the Studios and otherwise to comply with the Development Schedule and this Agreement;

(10) you and your transferring owners agree to terminate this Agreement in accordance with its terms, and comply with all applicable post-termination obligations, including by complying with the restrictive covenants found in Section 7.C of this Agreement.

You acknowledge that the proposed transferee will be evaluated by us based on the same criteria as those currently being used to assess new developers and that the proposed transferee will be provided with the disclosures required by law. We may review all information regarding the Development Rights and your area development business that you give the transferee, and we may give the transferee copies of any reports or information that you have given us or that we have made regarding your area development business. Our consent to a transfer pursuant to this Section 6.B is not a representation of the fairness of the terms of any contract between you and the transferee, a guarantee of your transferee's prospects of success, or a waiver of any claims we have against you (or your owners) or of our right to demand the transferee's full compliance with this Agreement.

**C. OUR RIGHT OF FIRST REFUSAL.**

If you (or any of your owners) at any time determine to sell or transfer for consideration this Agreement, the assets of your area development business or the Studios, or a controlling interest in you (except to or among your current owners, which is not subject to this Section), in a transaction that otherwise would be allowed under Section 6.B above, you (or your owners) agree to obtain from a responsible and fully disclosed buyer, and send us, a true and complete copy of a bona fide, executed written offer (which may include a letter of intent) relating exclusively to an interest in you or in this Agreement and your area development business and Studios. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price, and must be contingent upon our waiver of our right of first refusal as described in this Section 6.C. We may require you (or your owners) to send us copies of any materials or information sent to the proposed buyer or transferee regarding the possible transaction.

Upon our receipt of the offer and other documents, we will have 30 days in which to exercise our right of first refusal on the same terms and conditions set forth within the offer. During such period, we may also notify you that we have acted to withhold approval of the proposed transfer and will provide you with the specific reasons for such action.

**7. TERMINATION OF AGREEMENT.**

**A. EVENTS OF TERMINATION.**

Notwithstanding anything otherwise contained in this Agreement, we will have the right to terminate this Agreement at any time and without notice, upon the happening of any one or more of the following events:

- (1) you or your Affiliates fail to pay any amount due under this Agreement or any Franchise Agreement when and as it becomes due and payable, and such failure continues for a period of ten (10) days after written notice from us;
- (2) you cease or threaten to cease to carry on the business granted to you under this Agreement, or take or threaten to take any action to liquidate your assets, or if you do not pay any debts or other amounts incurred by you in operating the business hereunder when such debts or amounts are due and payable;
- (3) you fail to comply with the Development Schedule;

(4) you make or purport to make a general assignment for the benefit of creditors; or if you hereto institute any proceeding under any statute or otherwise relating to insolvency or bankruptcy, or should any proceeding under any such statute or otherwise be instituted against you; or if a custodian, receiver, manager or any other person with like powers is appointed to take charge of all or any part of the business granted hereunder or of the shares or documents of title owned by any of your shareholders or title holders; or if you commit or suffer any default under any contract of conditional sale, mortgage or other security instrument in respect of the business being operated hereunder or of the shares or documents of title owned by any of your shareholders or title holders; or if any of your goods, chattels or assets or of the business are seized or taken in execution or in attachment by a creditor, or if a writ of execution is issued against any of such goods, chattels, or assets; or if a judgment or judgments for the payment of money in amounts in excess of \$5,000, is rendered by any court of competent jurisdiction against you;

(5) you fail to furnish reports, financial statements, tax returns or any other documentation required by the provisions of this Agreement and do not correct such failure within ten (10) days following notice;

(6) if you are an Entity, (i) an order is made or a resolution passed or any proceedings taken towards your winding up or liquidation or dissolution or amalgamation; or (ii) you lose your charter by expiration, forfeiture or otherwise;

(7) you or any of your owners has made any material misrepresentation or omission in your or their application and the documents and other information provided to us to support your or their application to acquire the rights granted in this Agreement;

(8) you (or any of your owners) make or attempt to make an unauthorized transfer (as defined in Section 6.B);

(9) you (or any of your owners) are (a) convicted of or plead guilty or “no-contest” to a felony, (b) convicted of or plead guilty or “no contest” to any crime or other offense likely to adversely affect the reputation of Studios or the goodwill of the Marks, or (c) engage in any conduct which, in our opinion, adversely affects or, if you were to continue as a developer under this Agreement, is likely to adversely affect the reputation of the business you conduct pursuant to this Agreement, the reputation and goodwill of Studios generally or the goodwill associated with the Marks;

(10) we provide written notice of your (or any of your owners’) failure (a) on three (3) or more separate occasions within any twelve (12) consecutive month period to comply with this Agreement, or (b) on two (2) or more separate occasions within any six (6) consecutive month period to comply with the same obligation under this Agreement, in any case, whether or not you correct the failures after our delivery of notice to you;

(11) you or your Affiliates fail to comply with any provision of any Franchise Agreement or any other agreement with us or our affiliates and do not cure such failures within the applicable cure period, if any; or

(12) you fail to observe, perform or comply with any other of the terms or conditions of this Agreement not listed in Section 7.A(1) through (11) above, and such failure continues for a period of ten (10) days after written notice thereof has been given by us to you.

**B. EFFECTS OF TERMINATION OR EXPIRATION.**

(1) **Effects.** On the expiration or termination of this Agreement for any reason whatsoever, the following provisions apply:

(a) all of your rights under this Agreement will cease, and you are no longer entitled to exercise the Development Rights or hold yourself out to the public as being a developer of Studios;

(b) you must return all Confidential Information in your possession or control (except that you may retain and continue to use any Confidential Information that you are permitted to use under any Franchise Agreements); and

(c) without limiting any other rights or remedies to which we may be entitled, you must pay all amounts owing to us pursuant to this Agreement up to the date of termination.

**C. COVENANT NOT TO COMPETE / NON-SOLICITATION.**

(1) **Non-Competition.** Upon termination or expiration of this Agreement, or upon any transfer, you and your owners agree that, for two (2) years beginning on the effective date of termination, expiration or transfer, or the date on which all persons restricted by this Section 7.C begin to comply with this Section 7.C, whichever is later, neither you nor your Affiliates, nor any of the Bound Parties will have any direct or indirect interest as an owner (whether of record, beneficially, or otherwise), investor, partner, director, officer, employee, consultant, lessor, representative, or agent in any Competitive Business located or operating:

(a) within the Development Area; and

(b) within a three (3-) mile radius of any Studio in operation or under construction on the later of the effective date of the termination or expiration of this Agreement or the date on which all persons restricted by this Section 7.C begin to comply with this Section 7.C.

(2) **Non-Solicitation.** You further agree that, for two (2) years beginning on the effective date of termination or expiration, neither you nor any of the Bound Parties, will:

(a) interfere or attempt to interfere with our, our affiliates' or our franchisees' relationships with any vendors or consultants; or

(b) engage in any other activity which might injure the goodwill of the Marks and/or the System.

**D. SURVIVAL OF COVENANTS.**

Notwithstanding the expiration, termination or transfer of this Agreement for any reason whatsoever, all covenants and agreements to be performed or observed by you will survive any such termination, expiration or transfer.

8. **RELATIONSHIP OF THE PARTIES/INDEMNIFICATION.**

A. **INDEPENDENT CONTRACTORS.**

Each of us is an independent contractor, and neither is considered to be the agent, representative, master or servant of the other for any purpose. Neither of us has any authority to enter into any contract, to assume any obligations or to give any warranties or representations on behalf of the other. Nothing in this Agreement may be construed to create a relationship of partners, joint venturers, fiduciaries, agency or any other similar relationship between us and you.

B. **INDEMNIFICATION.**

You agree to indemnify, defend, and hold harmless us, our affiliates, and our and their respective current and former owners, managers, directors, officers, employees, agents, successors, and assignees (the “**Indemnified Parties**”) against, and to reimburse any one or more of the Indemnified Parties for, all claims, obligations, and damages directly or indirectly arising out of the operation of the business you conduct under this Agreement, or your breach of this Agreement, including those alleged to be caused by the Indemnified Party’s negligence, unless (and then only to the extent that) the claims, obligations, or damages are determined to be caused solely by the Indemnified Party’s intentional misconduct in a final, unappealable ruling issued by a court with competent jurisdiction. For purposes of this indemnification, “**claims**” include all obligations, damages (actual, consequential, or otherwise), and costs that any Indemnified Party reasonably incurs in defending any claim against it, including reasonable accountants’, arbitrators’, attorneys’, and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation or alternative dispute resolution, regardless of whether litigation or alternative dispute resolution is commenced. Each Indemnified Party may defend any claim against it at your expense and agree to settlements or take any other remedial, corrective, or other actions. This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement’s expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against you under this Section 8.B. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from you under this Section 8.B.

9. **ENFORCEMENT; ARBITRATION.**

A. **ARBITRATION**

We and you agree that all controversies, disputes, or claims between us or any of our affiliates, and our and their respective shareholders, officers, directors, agents, and employees, on the one hand, and you (and your owners, guarantors, Affiliates, and employees), on the other hand, arising out of or related to

- (a) this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates);
- (b) our relationship with you; or
- (c) the scope or validity of this Agreement or any other agreement between you (or any of your owners) and us (or any of our affiliates) or any provision of any of such agreements (including the

validity and scope of the arbitration provision under this Section 9.A, which we and you acknowledge is to be determined by an arbitrator, not a court).

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association. The arbitration proceedings will be conducted by one (1) arbitrator and, except as this Section otherwise provides, according to the then-current Commercial Arbitration Rules of the American Arbitration Association. All proceedings will be conducted at a suitable location chosen by the arbitrator in or within fifty (50) miles of our then-current principal place of business (currently, Englewood, Colorado). All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 *et seq.*). The interim and final awards of the arbitrator shall be final and binding upon each party, and judgment upon the arbitrator's awards may be entered in any court of competent jurisdiction.

The arbitrator has the right to award or include in his or her awards any relief which he or she deems proper, including, without limitation, money damages, pre- and post-award interest, interim costs and attorneys' fees, specific performance, and injunctive relief, provided that the arbitrator may not declare any of the trademarks owned by us or our affiliates generic or otherwise invalid, or award any punitive or exemplary damages against any party to the arbitration proceeding (we and you hereby waiving to the fullest extent permitted by law any such right to or claim for any punitive or exemplary damages against any party to the arbitration proceeding). Further, at the conclusion of the arbitration, the arbitrator shall award to the prevailing party its attorneys' fees and costs.

We and you agree to be bound by the provisions of any applicable contractual or statutory limitations provision, whichever expires earlier. We and you further agree that, in any arbitration proceeding, each party must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding. Any claim which is not submitted or filed as required will be forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us.

WE AND YOU AGREE THAT ARBITRATION WILL BE CONDUCTED ON AN INDIVIDUAL BASIS AND THAT AN ARBITRATION PROCEEDING BETWEEN US AND ANY OF OUR AFFILIATES, OR OUR AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, ON THE ONE HAND, AND YOU (OR YOUR OWNERS, GUARANTORS, AFFILIATES, AND EMPLOYEES), ON THE OTHER HAND, MAY NOT BE: (I) CONDUCTED ON A CLASS-WIDE BASIS, (II) COMMENCED, CONDUCTED OR CONSOLIDATED WITH ANY OTHER ARBITRATION PROCEEDING, (III) JOINED WITH ANY SEPARATE CLAIM OF AN UNAFFILIATED THIRD-PARTY, OR (IV) BROUGHT ON YOUR BEHALF BY ANY ASSOCIATION OR AGENT. Notwithstanding the foregoing, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute, controversy or claim that otherwise would be subject to arbitration under this Section, then all parties agree that this arbitration clause shall not apply to that dispute, controversy or claim and that such dispute, controversy or claim shall be resolved in a judicial proceeding in accordance with the dispute resolution provisions of this Agreement.

We and you agree that, in any arbitration arising as described in this Section, the arbitrator shall have full authority to manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute. The parties may only serve reasonable

requests for documents, which must be limited to documents upon which a party intends to rely or documents that are directly relevant and material to a significant disputed issue in the case or to the case's outcome. The document requests shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain, and shall not include broad phraseology such as "all documents directly or indirectly related to." You and we further agree that no interrogatories or requests to admit shall be propounded, unless the parties later mutually agree to their use.

With respect to any discovery of electronically stored information, you and we agree that such requests must balance the need for production of electronically stored information relevant and material to the outcome of a disputed issue against the cost of locating and producing such information. You and we agree that:

- (1) production of electronically stored information need only be from sources used in the ordinary course of business. No party shall be required to search for or produce information from back-up servers, tapes, or other media;
- (2) the production of electronically stored information shall normally be made on the basis of generally available technology in a searchable format which is usable by the party receiving the information and convenient and economical for the producing party. Absent a showing of compelling need, the parties need not produce metadata, with the exception of header fields for email correspondence;
- (3) the description of custodians from whom electronically stored information may be collected shall be narrowly tailored to include only those individuals whose electronically stored information may reasonably be expected to contain evidence that is relevant and material to the outcome of a disputed issue;
- (4) the parties shall attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters; and
- (5) where the costs and burdens of electronic discovery are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the arbitrator shall either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, which cost advance will not be awarded to the prevailing party in any final award.

In any arbitration each side may take no more than [three \(3\)](#) depositions, unless the parties mutually agree to additional depositions. Each side's depositions are to consume no more than a total of [fifteen \(15\)](#) hours, and each deposition shall be limited to [five \(5\)](#) hours, unless the parties mutually agree to additional time.

The provisions of this Section are intended to benefit and bind certain third-party non-signatories.

The provisions of this Section will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

Any provisions of this Agreement below that pertain to judicial proceedings shall be subject to the agreement to arbitrate contained in this Section.

**B. GOVERNING LAW.**

ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE UNITED STATES FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) (THE “LANHAM ACT”), OR OTHER UNITED STATES FEDERAL LAW, THIS AGREEMENT, THE DEVELOPMENT RIGHTS, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED (CURRENTLY, COLORADO) WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES, EXCEPT THAT ANY STATE LAW REGULATING THE OFFER OR SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS PARAGRAPH.

**C. CONSENT TO JURISDICTION.**

SUBJECT TO SECTION 9.A, YOU AND THE BOUND PARTIES AGREE THAT ALL ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED EXCLUSIVELY IN A STATE OR FEDERAL COURT IN THE LOCATION IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED, WHICH IS CURRENTLY ENGLEWOOD, COLORADO, AND WE AND YOU (AND EACH OWNER) IRREVOCABLY CONSENT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS.

**D. WAIVER OF PUNITIVE DAMAGES, JURY TRIAL AND CLASS ACTIONS.**

WE, YOU AND THE OTHER BOUND PARTIES EACH IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT BY ANY PARTY. EXCEPT FOR YOUR OBLIGATION TO INDEMNIFY US FOR THIRD-PARTY CLAIMS UNDER SECTION 8.B, WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS. WE AND YOU AGREE THAT ANY PROCEEDING WILL BE CONDUCTED ON AN INDIVIDUAL BASIS AND THAT ANY PROCEEDING BETWEEN US AND ANY OF OUR AFFILIATES, OR OUR AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, ON THE ONE HAND, AND YOU (OR YOUR OWNERS, GUARANTORS, AFFILIATES, AND EMPLOYEES), ON THE OTHER HAND, MAY NOT BE: (I) CONDUCTED ON A CLASS-WIDE BASIS, (II) COMMENCED, CONDUCTED OR CONSOLIDATED WITH ANY OTHER PROCEEDING, (III) JOINED WITH ANY CLAIM OF AN UNAFFILIATED THIRD PARTY, OR (IV) BROUGHT ON YOUR BEHALF BY ANY ASSOCIATION OR AGENT.

E. **INJUNCTIVE RELIEF.**

Nothing in this Agreement, including the provisions of Section 9.A, bars our right to obtain specific performance of the provisions of this Agreement and injunctive relief against any threatened or actual conduct that will cause us, the Marks, or the System loss or damage, under customary equity rules, including applicable rules for obtaining restraining orders and temporary or preliminary injunctions. You agree that we may seek such relief from any court of competent jurisdiction in addition to such further or other relief as may be available to us at law or in equity. You agree that we will not be required to post a bond to obtain injunctive relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing (all claims for damages by injunction being expressly waived hereby).

F. **LIMITATION OF CLAIMS.**

Except for claims arising from your non-payment or underpayment of amounts you owe to us pursuant to this Agreement, any and all claims arising out of or relating to this Agreement or our relationship with you will be barred unless a judicial proceeding is commenced in accordance with this Agreement within one (1) year from the date on which the party asserting such claim knew or should have known of the facts giving rise to such claims.

You and your owners agree that our and our affiliates' owners, directors, managers, officers, employees and agents shall not be personally liable nor named as a party in any action between us or our affiliates and you or your owners.

G. **ATTORNEYS' FEES AND COSTS.**

The prevailing party in any arbitration or litigation shall be entitled to recover from the other party all damages, costs and expenses, including arbitration and court costs and reasonable attorneys' fees, incurred by the prevailing party in connection with such arbitration or litigation.

10. **MISCELLANEOUS.**

A. **NOTICES.**

All notices, consents, approvals, statements, documents or other communications required or permitted to be given hereunder must be in writing, and must be delivered (~~§1~~) personally or (~~§2~~) mailed by registered mail, postage prepaid, or (~~§3~~) sent by reputable overnight courier (such as Federal Express or UPS), to the said parties at their respective addresses set forth in the opening paragraph of this Agreement to the attention of the person indicated below:

If to us:           Attention: Legal Department

If to you:         Attention: \_\_\_\_\_

or at any such other address or addresses as the party to whom such notice, consent approval, statement, documentation or other communication is to be given, may designate by notice in writing so given to the other parties hereto as provided hereinbefore. If any one of the said parties is comprised of more than one person or Entity, any notice, consent, approval, statement, document or other communication may be given by or to any one thereof, and it will have the same force and effect as if given by or to all

thereof. Any notices, consents, approvals, statements, documents or other communications, (i) if delivered personally, will be deemed to have been given on the day of delivery, (ii) if mailed will be deemed to have been given on the second business day (except Saturdays and Sundays) following such mailing, or (iii) if sent via overnight courier when received or refused.

**B. JOINT AND SEVERAL OBLIGATION.**

If either you are comprised of more than one individual or Entity, the obligations of each such individual and Entity under this Agreement will be joint and several.

**C. SEVERABILITY.**

If any term or condition of this Agreement is, to any extent, declared to be invalid or unenforceable, all other terms and conditions of this Agreement, other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term and condition of this Agreement will be separately valid and enforceable to the fullest extent permitted by law.

**D. HEADINGS; CONSTRUCTION.**

Headings preceding the text, sections and subsections hereof have been inserted solely for convenience of reference and will not be construed to affect the meaning, construction or effect of this Agreement. Whenever this Agreement allows or requires us to take actions or make decisions, we may do so in our sole and unfettered discretion, even if you believe our action or decision is unreasonable, unless the Agreement expressly and specifically requires that we act reasonably or refrain from acting unreasonably in connection with the particular action or decision. The term “including” means “including, without limitation” unless otherwise noted. The term “control” means the right and power to direct or cause the direction of an entity’s management and policies.

**E. WAIVER.**

The waiver by either you or us of a breach of any term or condition contained in this Agreement will not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained unless such waiver is expressly set forth in writing. A party’s failure to exercise any right to demand exact compliance and any custom or practice at variance with the terms and conditions of this Agreement will not constitute a waiver of the right to demand exact compliance with the terms and conditions hereof. Our subsequent acceptance of any amount payable hereunder, will not be deemed to be a waiver of any preceding breach of any term or condition of this Agreement, other than the failure to pay the particular amount so accepted, regardless of our knowledge of such preceding breach at the time of acceptance of such amount.

**F. FURTHER ASSURANCES.**

You and we agree to execute and deliver such further and other agreements, assurances, undertakings, acknowledgements or documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise our vote and influence and do and perform and cause to be done and performed any further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

**G. ENTIRE AGREEMENT.**

This Agreement and all schedules attached hereto constitute the entire agreement of the parties hereto and all prior negotiations, commitments, representations, warranties, agreements and undertakings made prior hereto are hereby merged. Other than the representations in the franchise disclosure document you received from us, there are no other inducements, representations, warranties, agreements, undertakings, or promises, (oral or otherwise) among you and us relating to the subject matter of this Agreement. No subsequent alteration, amendment, change or addition to this Agreement or any schedules will be binding upon the parties hereto unless reduced to writing and signed by us and you or our and your respective heirs, executors, administrators, successors or assigns. Nothing in this or in any related agreement, however, is intended to disclaim the representations we made in the franchise disclosure document that we furnished to you.

**H. BINDING AGREEMENT.**

This Agreement will inure to the benefit of and be binding upon us and our successors and assigns and will be binding upon you and your heirs, executors, administrators, successors and authorized assigns.

**I. COUNTERPARTS.**

This Agreement may be executed in multiple copies, each of which will be deemed an original. Signatures transmitted via facsimile or scanned and emailed shall have the same force and effect as originals.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement to be effective as of the Effective Date.

**FITNESS TOGETHER FRANCHISE,  
LLC**

**DEVELOPER:**

\_\_\_\_\_  
[Name]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\*Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

\*(This is the Effective Date)

**EXHIBIT A  
TO AREA DEVELOPMENT AGREEMENT**

**DEVELOPMENT AREA; DEVELOPMENT SCHEDULE AND OWNERSHIP**

1. The **Development Area** is comprised of: \_\_\_\_\_, as depicted on the map attached hereto. If the Development Area is identified by counties or other political subdivisions, political boundaries will be considered fixed as of the date of this Agreement and will not change, notwithstanding a political reorganization or change to the boundaries or regions.

2. The **Development Schedule** is as follows:

<u>Development Period</u>	<u>Number of New Studios to be Opened During Development Period</u>	<u>Cumulative Number of Studios to be Operating by End of Development Period</u>
Effective Date to _____	_____	_____
_____ to _____	_____	_____
_____ to _____	_____	_____
_____ to _____	_____	_____

3. You were incorporated or formed on \_\_\_\_\_, \_\_\_\_\_ under the laws of the State of \_\_\_\_\_. The following lists the full name of each person who is one of your owners and fully describes the nature of each owner's interest.

Owner's Name	Type and Percentage of Interest
_____	_____ %
_____	_____ %
_____	_____ %

**FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company

**DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
**[Name]**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## MAP OF DEVELOPMENT AREA

**EXHIBIT B  
TO AREA DEVELOPMENT AGREEMENT**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

**THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS** is given on \_\_\_\_\_, by the persons indicated below who have executed this Agreement.

In consideration of, and as an inducement to, the execution of that certain Area Development Agreement (the “**Agreement**”) on this date by **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company (“**we,**” “**us,**” or “**our**”), each of the undersigned personally and unconditionally (a) guarantees to us and our successors and assigns, for the term of the Agreement (including extensions) and afterward as provided in the Agreement, that \_\_\_\_\_ (“**Developer**”) will punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement (including any amendments or modifications of the Agreement) and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement (including any amendments or modifications of the Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including the non-competition, confidentiality, and transfer requirements.

Each of the undersigned consents and agrees that: (1) his or her direct and immediate liability under this Guaranty will be joint and several, both with Developer and among other guarantors; (2) he or she will render any payment or performance required under the Agreement upon demand if Developer fails or refuses punctually to do so; (3) this liability will not be contingent or conditioned upon our pursuit of any remedies against Developer or any other person; (4) this liability will not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which we may from time to time grant to Developer or to any other person, including the acceptance of any partial payment or performance or the compromise or release of any claims (including the release of other guarantors), none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable during the term of the Agreement (including extensions), for so long as any performance is or might be owed under the Agreement by Developer or its owners, and for so long as we have any cause of action against Developer or its owners; (5) this Guaranty will continue in full force and effect for (and as to) any extension or modification of the Agreement and despite the transfer of any interest in the Agreement or Developer, and each of the undersigned waives notice of any and all renewals, extensions, modifications, amendments, or transfers; and (6) upon our request, he or she must submit to us suitable credit and financial information to allow us to make a reasonable decision as to the undersigned’s creditworthiness and financial position including, without limitation, a personal net worth statement and such other information which would reasonably be considered relevant to us in determining whether or not the undersigned has the ability to satisfy his or her obligations under this Guaranty.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Developer arising as a result of the undersigned’s execution of and performance under this Guaranty; and (ii) acceptance and notice

of acceptance by us of his or her undertakings under this Guaranty, notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices to which he or she may be entitled.

Each of the undersigned that is a business entity, retirement or investment account, or trust acknowledges and agrees that if Developer (or any of its affiliates) is delinquent in payment of any amounts guaranteed hereunder, that no dividends or distributions may be made by such undersigned (or on such undersigned's account) to its owners, accountholders or beneficiaries or otherwise, for so long as such delinquency exists, subject to applicable law.

Each of the undersigned represents and warrants that, if no signature appears below for such undersigned's spouse, such undersigned is either not married or, if married, is a resident of a state which does not require the consent of both spouses to encumber the assets of a marital estate.

Each of the undersigned acknowledges and represents that he or she has had an opportunity to review the Agreement and agrees that the provisions of Section 9 (Enforcement; Arbitration) have been reviewed by the undersigned and are incorporated, by reference, into and shall govern this Guaranty and Assumption of Obligations and any disputes between the undersigned and us. Nonetheless, each of the undersigned agrees that we may also enforce this Guaranty and Assumption of Obligations and awards in the courts of the state or states in which he or she is domiciled.

*[Signature page follows]*

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was executed.

**GUARANTOR(S):**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

The undersigned, as the spouse of the Guarantor indicated below, acknowledges and consents to the guaranty given herein by his/her spouse. Such consent also serves to bind the assets of the marital estate to Guarantor's performance of this Guaranty.

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Guarantor's Spouse

\_\_\_\_\_  
Signature of Guarantor's Spouse

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Guarantor's Spouse

\_\_\_\_\_  
Signature of Guarantor's Spouse

\_\_\_\_\_

\_\_\_\_\_

Name of Guarantor
_____
Name of Guarantor's Spouse
_____
Signature of Guarantor's Spouse

Name of Guarantor
_____
Name of Guarantor's Spouse
_____
Signature of Guarantor's Spouse

**EXHIBIT C  
TO AREA DEVELOPMENT AGREEMENT**

**FORM OF AMENDMENT TO FRANCHISE AGREEMENT**

Ex. C

## ~~AMENDMENT NO. 1 TO FRANCHISE AGREEMENT~~

~~THIS AMENDMENT NO. 1 TO FRANCHISE AGREEMENT (the “Amendment”) is made as of the Effective Date by and between FITNESS TOGETHER FRANCHISE, LLC (“we”) and [INSERT ENTITY] (“you”). The Effective Date is the date on which we sign this Amendment as shown beneath our signature on the signature page of this Amendment.~~

### ~~RECITALS~~

~~A. You and we are parties to that certain franchise agreement, dated as of the Effective Date (the “Franchise Agreement”), which governs your ownership and operation of a Studio to be located at \_\_\_\_\_ (the “Franchised Business”).~~

~~B. The Franchise Agreement was signed pursuant that certain Area Development Agreement between you or your Affiliate and us on [Effective Date of Area Development Agreement] (as amended, the “Development Agreement”). You and we desire to enter into this Amendment to recognize such fact and to revise certain provisions of the Franchise Agreement as required under the Development Agreement.~~

### ~~AGREEMENT~~

~~FOR AND IN CONSIDERATION of the foregoing Recitals, the covenants set forth herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, you and we agree as follows:~~

- ~~1. Section 4.1 of the Franchise Agreement (Initial Franchise Fee) is deleted in its entirety.~~
- ~~2. The Franchise Agreement shall be amended only in the particulars set forth above. All other provisions of the Franchise Agreement shall continue in full force and effect as set forth therein.~~
- ~~3. The terms of this Amendment form an integral part, and hereby are incorporated into and made a part, of the Franchise Agreement. In the event of a conflict between the terms contained in the Franchise Agreement and this Amendment, the terms and conditions of this Amendment shall govern, control, and supersede any inconsistent or conflicting terms of the Franchise Agreement.~~
- ~~4. This Amendment may be signed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile is hereby authorized and shall have the same force and effect as an original. All capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the Franchise Agreement.~~

———— ~~IN WITNESS WHEREOF~~, you and we have signed this Amendment on the dates shown below and made effective as of the Effective Date.

~~FITNESS TOGETHER FRANCHISE,  
LLC~~

~~{INSERT ENTITY}~~

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date\*: \_\_\_\_\_

———— (\*This is the Effective Date)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT ~~D~~**  
**~~TO AREA DEVELOPMENT AGREEMENT~~**  
**REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT**

Ex. ~~D~~C

**REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT**

**(AREA DEVELOPMENT AGREEMENT)**

The purpose of this Statement is to demonstrate to Fitness Together Franchise, LLC (“Franchisor”) that the person(s) signing below (“I,” “me” or “my”), whether acting individually or on behalf of any legal entity established to acquire the Development Rights, (a) fully understands that the purchase of area development rights is a significant long-term commitment, complete with its associated risks, and (b) is not relying on any statements, representations, promises or assurances that are not specifically set forth in Franchisor’s Franchise Disclosure Document and Exhibits (collectively, the “FDD”) in deciding to purchase the franchise for the Development Rights (the “Franchise”).

In that regard, I represent to Franchisor and acknowledge that:

<p>I understand that buying a Franchise is not a guarantee of success. Purchasing or establishing any business is risky, and the success or failure of the Franchise is subject to many variables such as my skills and abilities (and those of my partners, officers, employees), the time my associates and I devote to the business, competition, interest rates, the economy, inflation, operation costs, location, lease terms, the market place generally and other economic and business factors. I am aware of and am willing to undertake these business risks. I understand that the success or failure of my business will depend primarily upon my efforts and not those of Franchisor.</p>	<p style="text-align: center;"><b>INITIAL:</b></p>
<p>I received a copy of the FDD, including the Area Development Agreement, at least 14 calendar days (10 business days in Michigan) before I executed the Area Development Agreement. I understand that all of my rights and responsibilities and those of Franchisor in connection with the Franchise are set forth in these documents and only in these documents. I acknowledge that I have had the opportunity to personally and carefully review these documents and have, in fact, done so. I have been advised to have professionals (such as lawyers and accountants) review the documents for me and to have them help me understand these documents. I have also been advised to consult with other franchisees regarding the risks associated with the purchase of the Franchise.</p>	<p style="text-align: center;"><b>INITIAL:</b></p>
<p>Neither the Franchisor nor any of its officers, employees or agents (including any franchise broker) has made a statement, promise or assurance to me concerning any matter related to the Franchise (including those regarding advertising, marketing, training, support service or assistance provided by Franchisor) that is contrary to, or different from, the information contained in the FDD <u>or as indicated below (write “None” if none provided):</u></p> <p>_____</p> <p>_____</p> <p>_____.</p>	<p style="text-align: center;"><b>INITIAL:</b></p>
<p>My decision to purchase the Franchise has not been influenced by any oral representations, assurances, warranties, guarantees or promises whatsoever made by the Franchisor or any of its officers, employees or agents (including any franchise broker), including as to the likelihood of success of the Franchise.</p>	<p style="text-align: center;"><b>INITIAL:</b></p>

<p>I have made my own independent determination as to whether I have the capital necessary to fund the business and my living expenses, particularly during the start-up phase.</p>	<p><b>INITIAL:</b></p>
<p>I have not received any information from the Franchisor or any of its officers, employees or agents (including any franchise broker) concerning actual, average, projected or forecasted sales, revenues, income, profits or earnings of the Franchise (including any statement, promise or assurance concerning the likelihood of my success) except as contained in the FDD or as indicated below (<b>write “None” if none provided</b>): _____ _____.</p>	<p><b>INITIAL:</b></p>

**Prohibited Parties Clause.** I acknowledge that Franchisor, its employees and its agents are subject to U.S. laws that prohibit or restrict (a) transactions with certain parties, and (b) the conduct of transactions involving certain foreign parties. These laws include, without limitation, U.S. Executive Order 13224, the U.S. Foreign Corrupt Practices Act, the Bank Secrecy Act, the International Money Laundering Abatement and Anti-terrorism Financing Act, the Export Administration Act, the Arms Export Control Act, the U.S. Patriot Act, and the International Economic Emergency Powers Act, and the regulations issued pursuant to these and other U.S. laws. As part of the express consideration for the purchase of the Franchise, I represent that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been listed on:

1. the U.S. Treasury Department’s List of Specially Designated Nationals;
2. the U.S. Commerce Department’s Denied Persons List, Unverified List, Entity List, or General Orders;
3. the U.S. State Department’s Debarred List or Nonproliferation Sanctions; or
4. the Annex to U.S. Executive Order 13224.

I warrant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been: (i) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or (ii) is owned or controlled by terrorists or sponsors of terrorism. I warrant that I am now, and have been, in compliance with U.S. anti-money laundering and counter-terrorism financing laws and regulations, and that any funds provided by me to Franchisor were legally obtained in compliance with these laws.

I further covenant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, will, during the term of the Area Development Agreement, become a person or entity described above or otherwise become a target of any anti-terrorism law.

[Signature Page Follows]

Sign here if you are taking the Franchise as an  
**INDIVIDUAL(S)**  
(Note: use these blocks if you are an individual  
or a partnership but the partnership is not a  
separate legal entity)

Sign here if you are taking the Franchise as a  
**CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP**

\_\_\_\_\_  
**Signature**

Print Name: \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name of Legal Entity

By: \_\_\_\_\_  
**Signature**

Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

NOTE TO MARYLAND RESIDENTS OR DEVELOPERS WITH A DEVELOPMENT AREA  
LOCATED IN MARYLAND: This Representations and Acknowledgement Statement is not intended to  
and shall not waive any liability Franchisor may have under the Maryland Franchise Registration and  
Disclosure Law.

**EXHIBIT D1**

**LIST OF FRANCHISEES AS OF 12/31/2018**

2019

Franchisee	Studio Address	Suite #	Studio City	Studio State	Studio Zip	Primary Contact	Studio Phone
EMazing Solutions LLC	1799 Ogletree Rd	# 400	Auburn	AL	36830	Eli Mazer	(334) 501-2222
Kyle Radomski Inc.	34255 PCH	# 107-108	Dana Point	CA	92629	Kyle Radomski	(949) 488-0005
<a href="#">Livingfit</a> <a href="#">Stern</a> <a href="#">Fitness Solutions</a> , Inc.	16389 Bernardo Center Dr		San Diego	CA	92128	<del>Charles Watson</del> <a href="#">#Gregory</a> <a href="#">Stern</a>	(858) 451-6051
Fit at 50, Inc.	4019 Goldfinch St		San Diego	CA	92103	Blake Beckcom	(619) 794-0014
Stern Fitness Solutions, Inc.	2750 Dewey Rd	# 101	San Diego	CA	92106	Gregory Stern	(619) 756-7500
Kelly Radomski, Inc.	1450 5th St	# 120	Santa Monica	CA	90401	Kelly Blackwin	(310) 576-1508
Metamorphose Inc.	5700 W 25th Ave	# 200A	Edgewater	CO	80214	David Diaz	(720) 855-6600
Rice Fitness, Inc.	19027 E Plaza Dr		Parker	CO	80134	Terry Rice	(303) 805-3912
Pratt Wellness LLC	300 Country Club Rd		Avon	CT	06001	William Pratt	(860) 673-3993
Kaman Fitness LLC	156 New Britain Ave		Rocky Hill	CT	06067	Michael Kaman	(860) 372-4885
Fitness Destino LLC	3222 N St NW		Washington	DC	20007	Stacy Adams	(202) 625-8484
	2917 W Bay Dr		Belleair Bluffs	FL	33770	Jerry Christie	(727) 586-7680
Fitness Reps, LLP	335 14th Ave S		Naples	FL	34102	Annette Suridis	(239) 263-9348
Fast Twitch of Naples, Inc.	7935 Airport Pulling Rd	# 109	Naples	FL	34109	Rob Finne	(239) 597-0549
Collar Fitness Inc	927 Mall Ring Rd		Sebring	FL	33870	Matthew Collar	(863) 382-2257
<del>Fortune Lake Group</del> , <a href="#">Tailored Fitness</a> LLC	<del>5829 SW 73rd St</del> <a href="#">5575 New Northside Drive</a>	# <del>2150</del>	<del>South Miami</del> <a href="#">Atlanta</a>	<del>FL</del> <a href="#">GA</a>	<del>33143</del> <a href="#">30399</a>	<del>Yolanda Padron</del> <a href="#">Chad Hayhurst</a>	<del>(305) 665-3694</del> <a href="#">(678) 329-9560</a>
Yeager Fitness Together, Inc.	5482 Chamblee - Dunwoody Rd	# 29A	Dunwoody	GA	30338	Russell Yeager	(770) 351-9111
Yeager Fitness Together, Inc.	11705 Jones Bridge Rd	# C103-C104	Johns Creek	GA	30005	Russell Yeager	(678) 867-0101
East Cobb Fitness Group, LLC	1000 Johnson Ferry Rd	Bldg 400	Marietta	GA	30068	Katie Warechowski	(770) 321-1347
BC Fitness, LLC	1175 E Parkcenter Blvd	# 105	Boise	ID	83706	Brian Redtfeldt	(208) 336-8348
<a href="#">AKA Fitness LLC</a>	<a href="#">1580 East State Street</a>	# <a href="#">101</a>	<a href="#">Eagle</a>	<a href="#">ID</a>	<a href="#">83616</a>	<a href="#">Kelley Anderson</a>	<a href="#">(208) 912-1348</a>
LF Personal Training, Inc.	225 E Deerpath	# 126	Lake Forest	IL	60045	Craig Garkie	(847) 283-6060
FT Peoria LLC	4500 N Prospect Road	#102	Peoria Heights	IL	61616	Paula Ivie	(309) 306-9224
S and K Performance	546B Lincoln Ave		Winnetka	IL	60093	Christopher (Shaun) Phillips	(847) 441-6399
FT Indy 2, LLC	8395 E 116 <sup>th</sup> Street	# 133	Fishers	IN	46038	Paula Ivie	(317) 588-1501
FT Indy 1, LLC	14645 N Gray Road		Westfield	-IN	46062	Paula Ivie	(317) 688-9201

Franchisee	Studio Address	Suite #	Studio City	Studio State	Studio Zip	Primary Contact	Studio Phone
Schmidt Fitness Inc.	13370 Metcalf Ave		Overland Park	KS	66213	Jennifer Schmidt	(913) 451-2220
<del>Wellfit Personal Training, Inc.</del>	<del>11 On the Mall</del>		<del>Prairie Village</del>	<del>KS</del>	<del>66208</del>	<del>Derek Welles</del>	<del>(913)-236-8383</del>
Pioneer Valley Personal Training, Inc.	534 Main St		Amherst	MA	01002	Jessica Phaneuf	(413) 461-3032
Endorfit LLC	166 N Main St	# 3A	Andover	MA	01810	Amy Salant	(978) 623-8181
PMK Fitness, LLC	37 Broadway		Arlington	MA	02474	Paul Kostopoulos	(781) 316-8500
	200 Butterfield Dr	# 1	Ashland	MA	01721	Robert Savin	(508) 438-0050
PJ Fitness Corp.	30 Church St		Belmont	MA	02478	Peter Castaldini	(617) 484-9048
Maxfield Entities Inc.	950 Cummings Ctr	# 98X	Beverly	MA	01915	Derek Maxfield	(978) 922-3636
Fixer LLC	321 Columbus Ave	# 2F	Boston	MA	02116	David Flanagan	(617) 262-0021
Everest Fitness Inc.	36 Newbury St	#3	Boston	MA	02116	Nathan Partridge	(617) 247-3900
J & L Fitness LLC	145 Hanover St		Boston	MA	02108	Jonathan Krueger	(617) 778-2426
Pralix Company	220 Winter St		Bridgewater	MA	02324	William (Robert) Humble	(508) 697-6660
Serbula Fitness Inc.	1404 Beacon St		Brookline	MA	02446	Radovan Serbula	(617) 232-2297
BFit4Life, Inc.	212 Cambridge St		Burlington	MA	01803	Brendan Stapleton	(781) 273-0093
<del>DPCC</del> Fitness, LLC	143 Hampshire St		Cambridge	MA	02139	<del>Daniel Pareel</del> Crystal Costello	(617) 547-4244
DLB Fitness Studios, Inc.	790 Chief Justice Cushing Hwy		Cohasset	MA	02025	Darcy Bishop	(781) 383-8004
Oakes Fitness, LLC	97A Thoreau St		Concord	MA	01742	A. Michael Oakes Jr	(978) 318-9050
EPT Fitness II Inc.	13 Main St		Franklin	MA	02038	Michael Espinosa	(508) 520-6888
KBF Holdings, Inc.	84 North St		Hingham	MA	02043	Kenneth Fischer	(781) 749-2511
K&J Fitness Enterprises, Inc.	433 Marrett Rd		Lexington	MA	02421	Kerri Powers	(781) 862-1175
B.L. Wellness, LLC	145 Lincoln Rd	# 101A	Lincoln	MA	01773	Brian Lowe	(781) 259-8806
DMW Fitness Inc.	10A Post Office Sq		Lynnfield	MA	01940	Dina Whalen	(781) 780-7591
Fitness Together Mansfield, Inc.	80 Copeland Dr		Mansfield	MA	02048	Matthew Gagliano	(508) 339-0733
DCG Wellness Inc.	238 Main St		Medfield	MA	02052	Daniel Goulet	(508) 242-9900
TeamABTrainer Incorporated	365 Salem St	Rte 60	Medford	MA	02155	Ashley Trainor	(781) 395-3600
BFit4You, Inc	445 Franklin St		Melrose	MA	02176	Brendan Stapleton	(781) 665-8282

Franchisee	Studio Address	Suite #	Studio City	Studio State	Studio Zip	Primary Contact	Studio Phone
A & A Fitness, LLC	Six S Ave	Antons Plz	Natick	MA	01760	Adam Schwarz	(508) 655-5544
Complete Wellness Incorporated	3 Graf Rd	# 6	Newburyport	MA	01950	Sean Stellmach	(978) 961-0335
Gainz, LLC	2088 Commonwealth Ave		Newton	MA	02466	Niccolo Seretto	(617) 630-1101
Seretto Strength, Inc.	796 Beacon St		Newton Centre	MA	02459	Niccolo Seretto	(617) 641-9588
KLS Fitness, Inc.	309 Walnut St		Newtonville	MA	02460	Niccolo Seretto	(617) 965-0412
<del>EPTNA</del> Fitness Inc. LLC	429 S Washington St		North Attleboro	MA	02760	<del>Teris Espinosa</del> Michael Stevens	(508) 699-2999
Northampton Personal Training, Inc.	22 Strong Ave		Northampton	MA	01060	Jessica Phaneuf	(413) 582-0727
B. Cloutier Fitness, Inc.	411 W Main St		Northborough	MA	01532	Luisa Cloutier	(508) 393-1660
Lifestyle Fitness Corp.	454 Washington St		Norwell	MA	02061	Steven Lichtman	(781) 659-0034
TJL Group LLC	102 Main St	# A	Reading	MA	01867	Thomas Lavoie	(781) 944-3232
	21 G Turnpike Rd		Southborough	MA	01772	Robert Savin	(508) 438-0050
Rosenfeld Personal Training Inc.	423 Boston Post Rd		Sudbury	MA	01776	Joshua Rosenfeld	(978) 443-7080
Everest Wellness, Inc.	10 S Main St		Topsfield	MA	01983	Nathan Partridge	(978) 887-1007
Migs Fitness LLC	1347 Main St		Waltham	MA	02451	Mark Migliorini	(781) 790-1965
Rosenfeld Fitness Training, Inc.	44 Main St	Cochituate Commons	Wayland	MA	01778	Joshua Rosenfeld	(508) 653-3848
Fit Pros of Wellesley, Inc.	245 Washington St	# 206	Wellesley Hills	MA	02481	Chad Asnes	(781) 235-4800
Lifestyle Fitness Corp.	57 E Main St	# 120	Westborough	MA	01581	Steven Lichtman	(508) 366-0099
OC Fitness LLC	334 Littleton Rd		Westford	MA	01886	A. Michael Oakes Jr	(978) 392-5800
JMH Wellness Strategies, Inc.	605R Main St		Winchester	MA	01890	John Howland	(781) 721-9996
SFlippo Fitness, LLC	111 Chinquapin Rd	# 201	Annapolis	MD	21401	Sean Flippo	(410) 295-7880
Pikesville FT LLC	1862A Reistertown Rd		Baltimore	MD	21208	Mark Dees	(410) 580-1777
MGC Ventures, LLC	6708 Wisconsin Ave	# 301	Bethesda	MD	20815	Charles Coe	(301) 656-3904
JPS Fitness, LLC	3570 St Johns Ln	# 8	Ellicott City	MD	21042	Joan Schnorf	(410) 750-2228
Walker Dynamic Fitness, LLC	12189 Darnestown Rd		Gaithersburg	MD	20878	Lance Walker	(301) 355-8042

Franchisee	Studio Address	Suite #	Studio City	Studio State	Studio Zip	Primary Contact	Studio Phone
Timonium Fitness Together LLC	1756 York Rd		Lutherville	MD	21093	Mark Dees	(410) 252-6144
<a href="#">Touch of Wellness, Inc.</a>	<a href="#">8806 Belair Road</a>		<a href="#">Nottingham</a>	<a href="#">MD</a>	<a href="#">21236</a>	<a href="#">Rhonda Fowikes</a>	<a href="#">(443) 442-6115</a>
Sharp Wellness, LLC	912 Thayer Ave	#102	Silver Spring	MD	20910	Clark Sharp	(240) 641-5126
Hassberg, Inc.	1144 E Paris Ave		Grand Rapids	MI	49546	Steve Vanderberg	(616) 957-4738
Hassberg, Inc.	77 Monroe Ctr		Grand Rapids	MI	49503	Steve Vanderberg	(616) 451-4292
Hassberg, Inc.	3155 W Shore Dr	# C	Holland	MI	49424	Steve Vanderberg	(616) 399-6770
Platinum Personal Training Studios II LLC	24276 Novi Rd		Novi	MI	48375	Mehboob Sadikot	(248) 348-9230
<del>Hassberg, Inc.</del> <a href="#">Kolarsky Fitness, LLC</a>	4901 Okemos Rd		Okemos	MI	48864	<del>Steve Vanderberg</del> <a href="#">Tyler Kolarsky</a>	(517) 347-9020
Unverzagt & Associates, LLC	5008 Vernon Ave		Edina	MN	55436	John Unverzagt	(952) 927-0300
Unverzagt & Associates, LLC	11250 86th Ave N		Maple Grove	MN	55369	John Unverzagt	(763) 494-0061
<a href="#">JuneFish, Inc.</a>	<a href="#">14705 Excelsior Blvd</a>		<a href="#">Minnetonka</a>	<a href="#">MN</a>	<a href="#">55345</a>	<a href="#">Margaret Fisher</a>	<a href="#">(952) 209-2015</a>
Carlson Fitness LLC	13321 Manchester Rd		Des Peres	MO	63131	Joshua Carlson	(314) 909-9565
JMW Enterprises, L.L.C.	905 NE Woods Chapel Rd		Lee's Summit	MO	64064	Julia Wilson	(816) 347-8833
Fitness Together-Cary, L.L.C.	1057 Darrington Dr		Cary	NC	27513	Sean Zmijewski	(919) 481-9277
	605 Meadowmont Village Cir		Chapel Hill	NC	27517	Jeremy Bailey	(919) 932-7303
Tiger Ventures, Inc.	16151 Lancaster Hwy		Charlotte	NC	28277	Chavanne Scott	(704) 341-8802
Cerulean Fitness L.L.C.	1600 E Woodlawn Rd	# 255	Charlotte	NC	28209	Laurence Presti	(704) 525-5759
<del>All Thing New Training, LLC</del>	<del>1318 Central Ave</del>	<del># E2</del>	<del>Charlotte</del>	<del>NC</del>	<del>28205</del>	<del>Sarah Perry</del>	<del>(704) 333-2999</del>
South End SP Traning LLC	1923 South Blvd	# A	Charlotte	NC	28203	Sarah Perry	(704) 375-3001
Steele Creek Health and Fitness Inc.	13545 Steele Croft Pkwy	# 110	Charlotte	NC	28278	Lennard Koppelmann	(704) 504-0911
Freedom Healthcare, Inc.	305-C Pisgah Church Rd		Greensboro	NC	27455	David Young	(336) 545-3065

Franchisee	Studio Address	Suite #	Studio City	Studio State	Studio Zip	Primary Contact	Studio Phone
Forinash Thinking Company	428 N Trade St	# 102	Matthews	NC	28105	Aaron Forinash	(704) 847-3859
	229 Medical Park Rd	# 100	Mooresville	NC	28117	Bryan Wisdom	(704) 658-1522
<a href="#">PhytessHoward Strength and Wellness LLC</a>	8163c Kensington Dr	Cureton Town Center	Waxhaw	NC	28173	<a href="#">Lenny Turf</a> <a href="#">Chris Howard</a>	(704) 243-1130
Flexible Innovations, L.L.C.	17660 Wright St	# 8	Omaha	NE	68130	Kerry McLaughlin	(402) 932-5346
Wellness Complete LLC	767 Islington St	# 1B	Portsmouth	NH	03801	Sean Stellmach	(603) 334-6333
J.B. Fitness LLC	44 S Finley Ave		Basking Ridge	NJ	07920	William Beyer IV	(908) 204-9909
	158 Speedwell Ave		Morris Plains	NJ	07950	Peter O'Hagan	(973) 998-7971
S and L Fitness, LLC	386 Franklin Ave	# 102	Wyckoff	NJ	07481	Stephen Kopshaw	(201) 848-9800
RDM Fitness LLC	721 W Jericho Tpke		Huntington	NY	11743	Robert Mittleman	(631) 659-3730
<del>Fitness Success, LLC</del>	<del>601 New Loudon Rd</del>	<del># 2</del>	<del>Latham</del>	<del>NY</del>	<del>12110</del>	<del>Jennifer Clermont</del>	<del>(518) 389-2320</del>
PPS Fitness LLC	650 Dover Center Road		Bay Village	OH	44140	Sean Sullivan	(440) 671-3200
4 Absolutes Fitness LLC	8251 Chippewa Rd		Brecksville	OH	44141	Sean Sullivan	(440) 550-4862
EM Fitness, L.L.C.	6579 Ironwood Blvd		Canfield	OH	44406	Erin Mellinger	(330) 702-1311
Sartorius, Inc.	13 W Orange St		Chagrin Falls	OH	44022	Michael Hall	(877) 348-6446
Because We Concord, LLC	7651 Crile Road		Concord	OH	44077	Sean Sullivan	(216) 278-7766
FT 5, LLC	2890 Sand Run Pkwy	B	Fairlawn	OH	44333	Erin Mellinger	330.940.1470
FT Three L.L.C.	8720 E Market St		Howland	OH	44484	Erin Mellinger	(330) 702-1311
Gracilis, Inc.	89 1st St	# 201	Hudson	OH	44236	Michael Hall	(877) 348-6446
FT Medina, L.L.C.	3725 Medina Rd	# 106	Medina	OH	44256	Erin Mellinger	(330) 702-1311
FT Poland, L.L.C.	6541 Clingan Rd		Poland	OH	44514	Erin Mellinger	(330) 702-1311
MorWil Power, LLC	12141 S Elm	# 109	Jenks	OK	74037	Debra Hayes	(918) 298-0880
M2 Training and Wellness, LLC	9708 S Riverside Pkwy	# D	Tulsa	OK	74137	Michael Watkins	(918) 392-0540
T.L. Fitness, Inc.	7417 SW Beaverton Hillsdale Hwy	# 500	Portland	OR	97225	Anthony Magden	(503) 928-8008
F T Barrington, Inc.	334A County Rd		Barrington	RI	02806	Allison Faria	(401) 289-2330
Fitness Professionals LLC	788 Main St		East Greenwich	RI	02818	Robin Coe	(401) 886-4646
Northern Rhode Island Fitness, LLC	618 George Washington Hwy	# B4	Lincoln	RI	02865	Matthew Gagliano	(401) 333-3363
RI Fitness LLC	145 Elmgrove Ave		Providence	RI	02906	Michael Stevens	(401) 369-7660

Franchisee	Studio Address	Suite #	Studio City	Studio State	Studio Zip	Primary Contact	Studio Phone
Anthony Family Holdings, Inc.	4926 Thoroughbred Ln		Brentwood	TN	37027	Randall Anthony	(615) 377-9550
Andrew Henderson Fitness, LLC	11521 Kingston Pike		Farragut	TN	37934	Andrew Henderson	(865) 671-2022
Andrew Henderson Fitness, LLC	9430 S Northshore Dr	# 102A	Knoxville	TN	37922	Andrew Henderson	(865) 357-8663
Henderson & Sims Fitness LLC	6513 Kingston Pike		Knoxville	TN	37919	Andrew Henderson	(865) 212-2322
Andrew Henderson Fitness, LLC	10752 Hardin Valley Rd		Knoxville	TN	37932	Andrew Henderson	(865) 249-7630
Priority Fitness, L.P.	5809 Preston Rd	# 584	Plano	TX	75093	Jacob Delcambre	(972) 403-7800
<a href="#">North Texas FT Training, LLC</a>	<a href="#">208 W Campbell Road</a>		<a href="#">Richardson</a>	<a href="#">TX</a>	<a href="#">75080</a>	<a href="#">Kevin Cain</a>	<a href="#">(469) 862-3111</a>
Jones-One-On-One Fitness, Inc.	2258 E Fort Union Blvd		Cottonwood Heights	UT	84121	Jacob Jones	(801) 733-7200
Mauranello Fitness LLC	300 N Washington St	# 106	Alexandria	VA	22314	John Alexander	(703) 683-0777
Mason Mays Enterprises, LLC	3914 Centreville Rd	# 125	Chantilly	VA	20151	John Mays	(571) 323-2223
IAO Wellness, Inc.	5597 Guinea Rd		Fairfax	VA	22032	Meredith Minix	(703) 250-5333
Because We Tysons LLC	8300 Boone Blvd	# 160	Vienna	VA	22182	Stephen Kopshaw	(703) 289-9909
H Tree LLC	10627 NE 68th St		Kirkland	WA	98033	Janine Harrison	(425) 242-1782
H Tree LLC	3011 78th Ave SE	# 140	Mercer Island	WA	98040	Janine Harrison	(206) 275-1313
H Tree LLC	4202 E Madison St		Seattle	WA	98112	Janine Harrison	(206) 324-3010
Inside Out Personal Training Inc.	4546 California Ave SW	# 203	Seattle	WA	98116	Bonnie Katz Sailors	(206) 938-7828
KJ Fitness LLC	18000 W Bluemound Rd		Brookfield	WI	53045	Kevin Baker	(262) 289-9860
Moran Fitness, LLC	524 Milwaukee St	# 101	Delafield	WI	53018	Kevin Moran	(262) 337-9080
F.T.B. LLC	10910 N Port Washington Rd		Mequon	WI	53092	Holly Tamm	(262) 241-3530
KJ Fitness LLC	411 E Menomonee St		Milwaukee	WI	53202	Kevin Baker	(414) 210-4315
KJ Fitness LLC	2525 N Mayfair Rd		Wauwatosa	WI	53226	Kevin Baker	(414) 763-6136
Tasa Fit, LLC	615 E Silver Spring Dr		Whitefish Bay	WI	53217	Holly Tamm	(414) 962-8889

**EXHIBIT ~~D2~~D3**

**FRANCHISEES WHO LEFT SYSTEM DURING LAST FISCAL YEAR**

**LIST OF FRANCHISES SOLD BUT NOT YET OPENED AS OF 12/31/2019**

Studio Territory	Studio State	Franchisee	Primary Contact	Primary Contact Phone		
Scottsdale	AZ	<del>Fit Together</del> <del>DTC</del> , <del>Fitness Panther</del> LLC	<del>Denver</del> <del>Jeffrey</del> <del>Donovan</del>	<del>CO</del> (614) 432-2025		
<del>Scottsdale (2)*</del>	<del>AZ</del>	<del>TBD</del>	<del>Jeffrey Donovan</del>	<del>(614) 432-2025</del>		
<del>Scottsdale (3)*</del>	<del>AZ</del>	<del>TBD</del>	<del>Jeffrey Donovan</del>	<del>(614) 432-2025</del>		
Glastonbury	CT	<del>Michael</del> <del>Kaman</del> <del>Jalbrycht</del> LLC	<del>(203)-623-</del> <del>9466</del> <del>James</del> <del>Albrycht</del>	<del>Agreement Terminated;</del> <del>never opened*</del> <del>(860) 918-</del> <del>1885</del>		
<del>Fortune Lake</del> <del>Group, LLC</del> <del>TBD</del>	FL	<del>Yolanda</del> <del>Padron</del> <del>Individual</del>	<del>(954)-663-</del> <del>3730</del> <del>Giuliano Di</del> <del>Francesco</del>	<del>Terminated</del> <del>(860) 916-</del> <del>7515</del>		
<del>5 Star Fitness</del> <del>Inc.</del> <del>TBD (2)*</del>	<del>Monroe</del> FL	<del>LA</del> <del>Individual</del>	<del>Ricardo</del> <del>Boyer</del> <del>Giuliano Di</del> <del>Francesco</del>	<del>(318)-537-2469</del> <del>(860) 916-</del> <del>7515</del>		
<del>FT Mansfield</del> <del>Corporation</del> <del>TBD</del> <del>(3)*</del>	<del>Mansfield</del> FL	<del>MA</del> <del>Individual</del>	<del>Robert</del> <del>Humble</del> <del>Giuliano Di</del> <del>Francesco</del>	<del>(508)-728-0175</del> <del>(860) 916-</del> <del>7515</del>		
<del>Afitrainer, LLC</del>		<del>Newtonville</del>	<del>MA</del>	<del>Ashely Trainor</del>	<del>(781)-249-2983</del>	<del>Transfere</del> <del>d</del>
<del>EPT Fitness Inc.</del>		<del>Rehoboth</del>	<del>MA</del>	<del>Teris Espinosa</del>	<del>(774)-565-0076</del>	<del>Transfere</del> <del>d</del>
<del>MGC Ventures, LLC</del>		<del>Gaithersburg</del>	<del>MD</del>	<del>Rick Coe</del>	<del>(301)-219-0094</del>	<del>Transfere</del> <del>d</del>
<del>Fitness Together Cary, L.L.C.</del>		<del>Cary</del>	<del>NC</del>	<del>David Young</del>	<del>(336)-574-1506</del>	<del>Transfere</del> <del>d</del>
<del>N/A</del>		<del>Steel Creek</del>	<del>NC</del>	<del>Joe Reed</del>	<del>(704)-301-7784</del>	<del>Transfere</del> <del>d</del>
<del>Kelly High Performance Training</del> <del>LLC</del>		<del>Media</del>	<del>PA</del>	<del>Bruce Kelly</del>	<del>(610)-644-0959</del>	<del>Non-</del> <del>Renewal</del>
<del>Hopkinton</del>	<del>MA</del>	<del>Fitness Partners, Inc.</del>	<del>_Matt Gagliano</del>	<del>(401) 529-8244</del>		
<del>Mayfield</del> <del>Heights</del>	<del>OH</del>	<del>Costa Fitness, Brachialis</del> LLC	<del>Mount Pleasant</del> <del>Michael Hall</del>	<del>SC</del> <del>(216) 973-4683</del>		
<del>HotBox Fitness, LLC</del>		<del>Chesapeake</del>	<del>VA</del>	<del>John Hernandez</del>	<del>(757)-613-0496</del>	<del>Terminate</del> <del>d</del>
<del>Time to Thrive,</del> <del>Inc.</del> <del>Westwood</del>	<del>Falls</del> <del>Church</del> NJ	<del>VA</del> <del>S Begonias Corp</del>	<del>Robert</del> <del>Graveline</del> <del>Rorro</del>	<del>(703)-582-7954</del> <del>(201) 233-</del> <del>1839</del>		
<del>T.E.A.M. Fitness,</del> <del>Inc.</del> <del>Belleview</del>	<del>Norfolk</del> WA	<del>VA</del> <del>Individuals</del>	<del>Mark</del> <del>Carrier</del> <del>Andrew &amp;</del> <del>Adilene</del> <del>Scarborough</del>	<del>(757-502-3970)</del> <del>(509) 470-</del> <del>0348</del>		
<del>Inspiration</del> <del>Wellness</del> <del>Ventures,</del> <del>L.C.</del> <del>Belleview</del> <del>(2)*</del>	<del>Vienna</del> WA	<del>VA</del> <del>TBD</del>	<del>Karen Azoff</del> <del>Andrew</del> <del>&amp; Adilene</del> <del>Scarborough</del>	<del>(703)-405-5438</del> <del>(509) 470-</del> <del>0348</del>		

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

### Exhibit D2

Wisocfit LLC Belleview (3)*	Brookfield WA	WI TBD	Alex Mueller Andrew & Adilene Scarborough	(262) 689-8382 (509) 470-0348		
Wisocfit LLC		Milwaukee	WI	Alex Mueller	(262) 689-8382	Transferred
Wisocfit LLC		Wauwatosa	WI	Alex Mueller	(262) 689-8382	Transferred

~~\*/~~ — Indicates franchisee voluntarily terminated franchise. \*included as part of development agreement requirement

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

**Exhibit D2**

**EXHIBIT D3**

**LIST OF FRANCHISES SOLD BUT NOT YET OPENED AS OF 12/31/~~2018~~**

2019

Studio Territory	Studio State	Franchisee	Primary Contact	Primary Contact Phone
<a href="#">Scottsdale</a>	<a href="#">AZ</a>	<a href="#">Fitness Panther LLC</a>	<a href="#">Jeffrey Donovan</a>	<a href="#">(614) 432-2025</a>
<a href="#">Scottsdale (2)*</a>	<a href="#">AZ</a>	<a href="#">TBD</a>	<a href="#">Jeffrey Donovan</a>	<a href="#">(614) 432-2025</a>
<a href="#">Scottsdale (3)*</a>	<a href="#">AZ</a>	<a href="#">TBD</a>	<a href="#">Jeffrey Donovan</a>	<a href="#">(614) 432-2025</a>
Glastonbury	CT	Jalbrycht LLC	James Albrycht	(860) 918-1885
<a href="#">Sandy Springs</a> <a href="#">TBD</a>	<a href="#">GA</a> <a href="#">FL</a>	<a href="#">Tailored Fitness LLC</a> <a href="#">Individual</a>	<a href="#">Chad Hayhurst</a> <a href="#">Giuliano Di Francesco</a>	<del>(678) 429-1863</del> <a href="#">(860) 916-7515</a>
<a href="#">Eagle</a> <a href="#">TBD (2)*</a>	<a href="#">ID</a> <a href="#">FL</a>	<a href="#">AKA Fitness LLC</a> <a href="#">Individual</a>	<a href="#">Kelley Anderson</a> <a href="#">Giuliano Di Francesco</a>	<del>(208) 585-6657</del> <a href="#">(860) 916-7515</a>
<a href="#">TBD (3)*</a>	<a href="#">FL</a>	<a href="#">Individual</a>	<a href="#">Giuliano Di Francesco</a>	<a href="#">(860) 916-7515</a>
Hopkinton	MA	Fitness Partners, Inc	Matt Gagliano	(401) 529-8244
<a href="#">Perry Hall</a>	<a href="#">MD</a>	<a href="#">Touch of Wellness, Inc.</a>	<a href="#">Rhonda Fowlkes</a>	<del>(443) 801-9964</del>
<a href="#">Minnetonka</a>	<a href="#">MN</a>	<a href="#">Junefish, Inc</a>	<a href="#">Margaret Fisher</a>	<del>(618) 975-8983</del>
Mayfield Heights	OH	Brachialis LLC	Michael Hall	(216) 973-4683
<a href="#">Richardson</a> <a href="#">Westwood</a>	<a href="#">TX</a> <a href="#">NJ</a>	<a href="#">North Texas FT Training, LLC</a> <a href="#">S Begonias Corp</a>	<a href="#">Kevin Cain</a> <a href="#">Robert Rorro</a>	<del>(469) 449-8319</del> <a href="#">(201) 233-1839</a>
<a href="#">Falls Church</a> <a href="#">Bellevue</a>	<a href="#">VA</a> <a href="#">WA</a>	<a href="#">Crazy Diamond, LLC</a> <a href="#">Individuals</a>	<a href="#">Nicholas Sawaya</a> <a href="#">Andrew &amp; Adilene Scarborough</a>	<del>(703) 203-0171</del> <a href="#">(509) 470-0348</a>
<a href="#">Bellevue (2)*</a>	<a href="#">WA</a>	<a href="#">TBD</a>	<a href="#">Andrew &amp; Adilene Scarborough</a>	<a href="#">(509) 470-0348</a>
<a href="#">Bellevue (3)*</a>	<a href="#">WA</a>	<a href="#">TBD</a>	<a href="#">Andrew &amp; Adilene Scarborough</a>	<a href="#">(509) 470-0348</a>

*[\\*included as part of development agreement requirement](#)*



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Fitness Together Franchise, LLC

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**Consolidated Financial Statements**

**December 31, 2019**

# Fitness Together Franchise, LLC

## Contents

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## Independent Auditor's Report

To the Board of Directors and Member  
Fitness Together Franchise, LLC

We have audited the accompanying consolidated financial statements of Fitness Together Franchise, LLC and its subsidiary (the "Company"), which comprise the consolidated balance sheets as of December 31, 2019 and 2018 and the related consolidated statements of operations, changes in member's equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

### ***Management's Responsibility for the Consolidated Financial Statements***

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fitness Together Franchise, LLC and its subsidiary as of December 31, 2019 and 2018 and the results of their operations and their cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### ***Emphasis of Matter***

As described in Note 3 to the consolidated financial statements, the Company adopted Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers*, using the full retrospective adoption method. Our opinion is not modified with respect to this matter.

To the Board of Directors and Member  
Fitness Together Franchise, LLC

**Other Matter**

*Report on Prior Year Consolidated Financial Statements*

The consolidated financial statements of Fitness Together Franchise, LLC and its subsidiary as of and for the year ended December 31, 2017 were audited by EKS&H LLLP, whose report dated March 12, 2018 expressed an unqualified opinion on those statements.

*Plante & Moran, PLLC*

March 13, 2020, except for the subsequent events disclosure included in Note 11,  
as to which the date is March 25, 2020

## Fitness Together Franchise, LLC

### Consolidated Balance Sheets December 31, 2019, 2018, and 2017

	2019	2018	2017
		(As Adjusted)	(As Adjusted)
<b>Assets</b>			
<b>Current Assets</b>			
Cash	\$ 1,121,482	\$ 1,087,196	\$ 1,122,715
Accounts receivable - Net	355,295	339,705	270,794
Notes receivable	1,000	1,000	28,620
Due from affiliates	-	-	789,885
Deferred franchise costs, current portion	32,464	18,575	7,657
Prepaid and other	26,309	10,500	19,000
Total current assets	1,536,550	1,456,976	2,238,671
<b>Property and Equipment - Net</b>	392,045	16,669	19,671
<b>Goodwill</b>	4,480,427	4,510,427	3,914,618
<b>Intangible Assets - Net</b>	1,746,201	2,049,981	830,674
<b>Other Noncurrent Assets</b>			
Due from affiliates	3,617,131	3,338,594	-
Notes receivable, less current portion	584	1,584	2,584
Deferred franchise costs, less current portion	251,560	147,476	60,236
Total assets	<u>\$ 12,024,498</u>	<u>\$ 11,521,707</u>	<u>\$ 7,066,454</u>
<b>Liabilities and Member's Equity</b>			
<b>Current Liabilities</b>			
Accounts payable	\$ 12,225	\$ 17,985	\$ 26,144
Accrued expenses	64,282	35,445	207,814
Accrued marketing expenses	104,531	14,236	-
Current portion of long-term debt	36,983	35,634	-
Due to affiliates	-	1,112,036	-
Deferred revenues - Company-owned studio	51,979	-	-
Deferred revenues - Franchise related, current portion	103,539	66,772	27,285
Contingent liability	10,000	40,000	-
Total current liabilities	383,539	1,322,108	261,243
<b>Long-term Debt - Net</b>	3,525,467	3,398,845	-
<b>Line of Credit</b>	278,269	-	-
<b>Other Noncurrent Liabilities</b>			
Deferred revenues - Franchise related, less current portion	788,688	547,772	215,442
Deferred rent	80,478	7,143	-
Total liabilities	5,056,441	5,275,868	476,685
<b>Member's Equity</b>	6,968,057	6,245,839	6,589,769
Total liabilities and member's equity	<u>\$ 12,024,498</u>	<u>\$ 11,521,707</u>	<u>\$ 7,066,454</u>

## Fitness Together Franchise, LLC

### Consolidated Statements of Operations Years Ended December 31, 2019, 2018, and 2017

	2019	2018	2017
		(As Adjusted)	(As Adjusted)
<b>Revenues</b>			
Royalties	\$ 2,791,255	\$ 2,803,545	\$ 2,853,901
Franchise fees	133,617	101,578	23,422
Marketing fund revenues	1,243,030	1,008,487	659,340
Technology and other revenues	483,228	497,224	488,962
Company-owned studio revenues	101,195	-	-
Total revenues	4,752,325	4,410,834	4,025,625
<b>Expenses</b>			
Franchise-related costs	477,078	509,097	1,233,446
Payroll	818,905	461,364	284,961
Advertising and promotion	163,749	204,345	166,656
Marketing fund expenses	1,243,030	1,008,487	659,340
General and administrative	699,516	565,088	613,751
Rent and occupancy	51,817	-	-
Depreciation and amortization	340,220	420,465	111,628
Management fees	1,712,032	1,489,000	948,000
Total expenses	5,506,347	4,657,846	4,017,782
<b>Operating (Loss) Income</b>	(754,022)	(247,012)	7,843
<b>Nonoperating Expense (Income)</b>			
Interest expense	323,760	96,918	-
Interest income	-	-	(2,186)
Total nonoperating expense (income)	323,760	96,918	(2,186)
<b>Consolidated Net (Loss) Income</b>	<b>\$ (1,077,782)</b>	<b>\$ (343,930)</b>	<b>\$ 10,029</b>

## Fitness Together Franchise, LLC

### Consolidated Statements of Changes in Member's Equity Years Ended December 31, 2019, 2018, and 2017

<b>Balance</b> - December 31, 2016	\$ 6,701,722
Cumulative effect of change in accounting principle (Note 3)	(121,982)
Net income	<u>10,029</u>
<b>Balance</b> - December 31, 2017 (as adjusted)	6,589,769
Net loss	<u>(343,930)</u>
<b>Balance</b> - December 31, 2018 (as adjusted)	6,245,839
Net loss	(1,077,782)
Contributions	<u>1,800,000</u>
<b>Balance</b> - December 31, 2019	<u><u>\$ 6,968,057</u></u>

# Fitness Together Franchise, LLC

## Consolidated Statements of Cash Flows Years Ended December 31, 2019, 2018, and 2017

	2019	2018	2017
		(As Adjusted)	(As Adjusted)
<b>Cash Flows from Operating Activities</b>			
Net (loss) income	\$ (1,077,782)	\$ (343,930)	\$ 10,029
Adjustments to reconcile net (loss) income to net cash from operating activities:			
Depreciation and amortization	340,220	420,465	111,628
Interest expense	305,781	89,488	-
Bad debt expense (recovery)	11,187	(4,167)	10,000
Deferred rent	9,777	7,143	-
Relief of contingent liability	-	(25,000)	-
Amortization of debt issuance costs	17,979	6,397	-
Changes in operating assets and liabilities that (used) provided cash:			
Accounts receivable	(26,777)	(64,744)	(43,703)
Deferred franchise costs	(117,973)	(98,158)	(18,446)
Prepaid and other	(15,809)	8,500	(9,981)
Accounts payable	(5,760)	(8,159)	13,310
Accrued expenses	28,837	(172,369)	15,768
Accrued marketing fund expenses	90,295	14,236	-
Deferred revenues	329,662	371,817	61,378
Net cash (used in) provided by operating activities	(110,363)	201,519	149,983
<b>Cash Flows from Investing Activities</b>			
Purchase of property and equipment	(348,258)	(8,033)	(18,900)
Payments received on notes receivable	1,000	4,074	17,416
Repurchase of area territories	-	(2,135,000)	-
Net cash used in investing activities	(347,258)	(2,138,959)	(1,484)
<b>Cash Flows from Financing Activities</b>			
Amounts (advanced to) received from affiliates	(1,308,093)	1,901,921	(232,968)
Contributions of member equity	1,800,000	-	-
Net cash provided by (used in) financing activities	491,907	1,901,921	(232,968)
<b>Net Increase (Decrease) in Cash</b>	34,286	(35,519)	(84,469)
<b>Cash - Beginning of year</b>	1,087,196	1,122,715	1,207,184
<b>Cash - End of year</b>	<u>\$ 1,121,482</u>	<u>\$ 1,087,196</u>	<u>\$ 1,122,715</u>

### Supplemental Disclosure of Cash Flow Information

During 2018, the Company repurchased five area director franchise agreements. A portion of the consideration transferred for these agreements included waived fees on future franchise agreements and transfers of current franchise agreements valued at \$65,000, which was recorded to goodwill and contingent liabilities during 2018, as well as a \$24,546 reduction in notes receivable (see Notes 4 and 6).

### Supplemental Disclosure of Noncash Activity

During 2018, certain waived franchise fees and transfers of franchise agreements valued at \$25,000 were utilized or expired.

During 2019, \$63,558 of leasehold improvements was reimbursed by the landlord related to the opening of a company-owned studio, which resulted in a corresponding increase in deferred rent.

During 2019, the Company assumed \$388,261 of additional debt, net of debt issuance costs, through a joint and several liability arrangement with its parent and affiliates (see Note 7). Interest accrued during the year of \$305,781 was included as a reduction in due from affiliates.

During 2018, the Company assumed \$3,563,382 of debt, net of \$126,392 of debt issuance costs, through a joint and several liability arrangement with its parent and affiliates (see Note 7). Interest accrued during the year of \$89,488 was included as a reduction in due from affiliates.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 1 - Nature of Business

Fitness Together Franchise, LLC ("Fitness Together") is engaged in the franchising of fitness studios featuring one-on-one and small group personalized training in the United States. Fitness Together was incorporated on January 25, 1996 under the name Fitness for Life Franchise Corporation. On March 7, 2005, the Company changed its name to Fitness Together Franchise Corporation. On October 9, 2015, the Company converted from a corporation to a limited liability company.

Fitness Together Corporate Ventures, LLC ("FTCV") is a wholly owned subsidiary of Fitness Together. FTCV was incorporated on August 20, 2018 in the state of Delaware for the purpose of operating the company-owned fitness studios. During 2019, FTCV opened one company-owned studio. Fitness Together and FTCV together are known as the Company.

The Company franchises the right to franchisees to open one-on-one and small group personalized training studios. The studio franchisee pays an initial franchise fee for the right to open a studio and pays royalties equal to a percentage of revenues received, per the franchise agreement. The Company also previously entered into area director franchise agreements with area directors for the right to develop a territory that was limited in area or number. The area director paid an initial area director franchise fee of varying amounts based upon the number of existing studios and studios to be developed in the territory. The area director was entitled to receive up to half of the initial franchise fee for studios developed in his or her area and half of the royalties received for the term of the franchise. The studio franchise agreement provides a term of 10 years and is renewable after the initial term for an additional fee. The area director franchise agreement provided a term of 10 years and was renewable after the initial term.

As of December 31, 2019 and 2018, Fitness Together does not have any area directors.

The Company opened a company-owned studio in 2019. This company-owned studio was built for innovation and testing of programs benefitting the Fitness Together brand.

The Company is a wholly owned subsidiary of WBZ Investment LLC (the "Parent"), which also owns WBZ Holdings, Inc. ("Holdings"); WellBiz Brands, Inc. ("WellBiz"); Elements Therapeutic Massage, LLC ("Elements"); Amazing Lash Franchise, LLC ("Amazing Lash"); Wellness and Vitality Exchange, LLC ("WAVE"); and FTHC Operating Company ("Gift Cards"). The Parent provides funds for operational needs of the Company. The operating results of the Company could vary significantly if it operated independently of the Parent, Holdings, Elements, Amazing Lash, WAVE, and Gift Cards. Accordingly, this affiliation and other related party disclosures must be taken into consideration in reviewing the accompanying financial statements.

The following table summarizes the number of studios in operation and the number of studios sold but not yet operational:

	2019	2018	2017
Studios in operation at beginning of year	142	144	153
Studios opened during the year	6	5	1
Studios closed during the year	(5)	(7)	(10)
Studios in operation at end of year	143	142	144
Studios sold but not yet operational	13	9	1
Company-owned studios in operation	1	0	0

### Note 2 - Significant Accounting Policies

#### *Principles of Consolidation*

The accompanying financial statements include the accounts of the Fitness Together and its wholly owned subsidiary, FTCV. All material intercompany accounts and transactions have been eliminated in consolidation.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 2 - Significant Accounting Policies (Continued)

#### ***Revenue Recognition***

The Company's revenues mainly consist of royalties, franchise fees, marketing fund revenues, technology fees, and company-owned studio revenues. The Company franchises the right to franchisees to open fitness studios. The initial term of the franchise agreements is typically 10 years, with an option to renew for a fee or transfer the franchise agreement to a new or existing franchisee, at which point a transfer fee is typically paid.

The Company has performance obligations to provide franchisees with the franchise rights to open and operate fitness studios, as well as to provide software and technology services and brand marketing and advertising support, for which fees are charged. The Company has concluded that these items represent a single performance obligation. Therefore, initial franchise fees for each franchise agreement and the fixed technology fees are allocated to each individual franchisee and recognized over the term of the respective franchise agreement from the date the agreement is executed. Renewal fees are recognized over the renewal term for the respective franchise from the start of the renewal period. Transfer fees are recognized over the remaining term of the franchise agreement beginning at the time of transfer. Income for royalties and brand marketing fees are recognized over the term of the respective franchise agreement as the underlying sales occur.

When a franchise agreement is terminated voluntarily by the franchisee or due to the default of the franchisee, the Company recognizes the remaining initial franchise fee as revenues earned, as no further performance obligations needs to be satisfied, and the initial franchise fee is not refundable per franchise agreement.

The company-owned studio generates revenues from the sale of fitness training sessions or packages and other related services and products. Each service and product sold to customers is considered a distinct performance obligation. Revenues from fitness sessions and other related services and products are recognized at a point in time over the contract term as services and products are provided or when sessions or packages expire.

#### ***Payment Terms***

Initial franchise, renewal, and transfer fees are due and typically paid when a franchise agreement is executed and are nonrefundable. Royalties, brand marketing, and advertising fees are paid on a monthly basis, based upon a percentage of franchisee gross sales. Technology fees are paid on a monthly basis based upon a fixed amount defined within the franchise agreement. Franchise fees are collected prior to the satisfaction of the Company's performance obligation, resulting in the Company recognizing deferred revenues contract liabilities. See Note 4 for information about financing provided to franchisees.

Revenue from the sale of fitness training sessions and other related services and products are paid for at the time of sale at the company-owned studio.

Amounts that are expected to be recognized as revenues within one year are classified as current deferred revenues in the consolidated balance sheets. Deferred revenues at January 1, 2017 were \$181,349.

#### ***Allocating the Transaction Price***

The transaction price is the amount of consideration to which the Company expects to be entitled in exchange for providing franchisees the franchise rights to open and operate studios and customers with fitness training sessions and other related services and products. To determine the transaction price, the Company considers its customary business practices and the terms of the underlying agreement. For the purpose of determining transaction prices, the Company assumes performance obligations will be satisfied as promised in accordance with franchise agreements and that agreements will not be canceled or modified.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 2 - Significant Accounting Policies (Continued)

The Company's franchise agreements with franchisees have transaction prices that contain a fixed and variable component. Variable consideration includes revenues related to royalties and brand marketing and advertising fees, as the transaction price is based on the franchisees sales. The variable consideration is recognized based on the actual amounts incurred each month.

#### ***Costs to Obtain a Franchise Agreement***

The Company typically incurs commission expenses paid to employees and broker fees and referral expenses paid to third parties to obtain franchise agreements with franchisees. These expenses are related to franchise fee revenues, which is recognized over time. As a result, the expenses are capitalized as deferred franchise costs and are expensed over the term of the respective franchise agreement. During the years ended December 31, 2019, 2018, and 2017, the amounts expensed related to costs to obtain a franchise agreement were \$33,517, \$27,044, and \$6,749, respectively.

#### ***Managed Marketing Revenues***

During 2017, the Company began collecting managed marketing fees for brand and digital lead marketing. Managed marketing fund revenues are a fixed monthly fee recognized on a straight-line basis over the franchise duration. The total managed marketing revenues earned for the years ended December 31, 2019, 2018, and 2017 were \$603,994, \$499,020, and \$659,340, respectively, and are included in marketing fund revenues on the accompanying consolidated statements of operations. The Company records the related marketing expenses as incurred under marketing fund expenses on the accompanying consolidated statements of operations. When the revenues of the managed marketing fund exceed the related expenses, marketing expenses are accrued up to the amount of revenues. As of December 31, 2019, 2018, and 2017, \$0, \$14,236, and \$0, respectively, was recorded as accrued marketing expenses on the consolidated balance sheets.

#### ***Marketing and Production Fund Revenues***

During 2018, the Company began collecting marketing and production fund fees. Marketing fund monies are used to broadly promote the brand and include, but are not limited to, the creation of marketing and promotional material, development and maintenance of websites for the franchise system, and market research. Marketing and production fund fees are collected on a monthly basis, based upon a percentage of franchisee gross sales. The Company recognizes this sales-based marketing fund contribution from franchisees when the underlying franchisee sales occur. The total marketing fund revenues earned for the years ended December 31, 2019 and 2018 were \$639,036 and \$509,467, respectively, and are included in marketing fund revenues on the accompanying consolidated statements of operations. The Company records the related marketing expenses as incurred under marketing fund expenses on the accompanying consolidated statements of operations. When revenues of the marketing and production fund exceed the related expenses, marketing expenses are accrued up to the amount of revenues. As of December 31, 2019 and 2018, \$104,531 and \$0, respectively, was recorded as accrued marketing expenses on the consolidated balance sheets.

#### ***Company-owned Studio Revenues***

Company-owned studio revenues consist primarily of fees charged to customers for fitness training sessions or packages provided at Fitness Together's company-owned studio. Studio revenues are recognized as training services are provided. Amounts received by the Company prior to services being provided are included in deferred revenues - company-owned studio on the accompanying consolidated balance sheets.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 2 - Significant Accounting Policies (Continued)

#### ***Use of Estimates***

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### ***Concentration of Credit Risk***

The Company grants credit in the normal course of business to franchisees related to the collection of royalties and other operating revenues. In select cases, credit is issued for initial franchise fees and area director franchise fees. The Company periodically performs credit analyses and monitors the financial condition of its franchisees to reduce credit risk.

#### ***Accounts Receivable and Allowance for Doubtful Accounts***

Accounts receivable primarily consist of royalties, marketing and production fund, and managed marketing fund receivables from franchisees. The Company considers a reserve for doubtful accounts based on the creditworthiness of franchisees. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on specific identification and historical performance that is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ materially in the near term from the amounts estimated in determining the allowance. The Company had an allowance for doubtful accounts of \$11,664, \$9,327, and \$16,204 as of December 31, 2019, 2018, and 2017, respectively.

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

Property and equipment are recorded at cost. Depreciation and amortization are provided using the straight-line method over their estimated useful lives, which range from 2 to 10 years.

#### ***Intangible Assets***

Intangible assets consist primarily of franchise agreements, a trade name, noncompete agreements, and reacquired rights.

#### **Franchise Agreements**

Acquired franchise agreements are recorded based upon the fair value of these assets at the date of the change in control. The agreements are being amortized over their estimated useful lives, which is approximately six years.

#### **Trade Name**

The Company has determined that its trade name has an indefinite life; accordingly, this asset is not being amortized but is subject to impairment.

#### **Noncompete Agreements**

The noncompete agreements are being amortized over their estimated useful lives, which is approximately four years.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 2 - Significant Accounting Policies (Continued)

#### Reacquired Rights

During 2018, the Company entered into agreements to repurchase selected territories held by area directors under master franchise agreements. The reacquired master franchise rights are recorded as an intangible asset, measured at the fair value of the remaining contractual term of the rights at the date of acquisition. Any excess consideration paid over the value of the reacquired right is recorded as goodwill, all of which is expected to be deductible for tax purposes. The reacquired franchise right is amortized over the remaining life of the contract. If the terms of the contract that give rise to a reacquired right are favorable or unfavorable relative to similar market transactions, a settlement gain or loss is recognized. The Company has determined that the terms of the contracts are consistent with similar market transactions; accordingly, no settlement gain or loss was recorded for the year ended December 31, 2018.

#### **Goodwill**

The recorded amounts of goodwill from prior business combinations are based on management's best estimates of the fair values of assets acquired and liabilities assumed at the date of acquisition. Goodwill is not amortized, but rather is assessed at least on an annual basis for impairment. The annual impairment test can be performed using an assessment of qualitative factors in determining if it is more than likely than not that goodwill is impaired. If the assessment indicates that it is more likely than not that goodwill is impaired, then the Company performs the next step of impairment testing by comparing the fair value of the Company to the carrying value. The Company performed a qualitative assessment for 2019 annual impairment evaluation and determined that goodwill was not impaired. No impairment charge was recognized during the years ended December 31, 2018, and 2017.

#### **Impairment or Disposal of Long-lived Assets**

The Company reviews the recoverability of long-lived assets when events or changes in circumstances occur that indicate the carrying value of the asset may not be recoverable. Recoverability of assets is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset. Upon review of the Company's long-lived assets, no impairments were recorded for the years ended December 31, 2019, 2018, or 2017.

#### **Debt Issuance Costs**

Debt issuance costs were incurred by the Company in connection with the assumption of the joint and several liability debt. These costs are recorded as a reduction in the recorded balance of the outstanding debt. The costs are amortized over the term of the related debt and reported as a component of interest expense.

#### **Deferred Rent Obligation**

The Company entered into an operating lease agreement for a company-owned studio on November 1, 2018. The Company records monthly rent expense equal to the payments due over the lease term, divided by the number of months of the lease term. Deferred rent arises from periods of free and reduced rent, as well as other lease incentives. The difference between rent expense recorded and the amount paid is credited or charged to deferred rent obligation, which is reflected as a separate line item in the accompanying consolidated balance sheets.

#### **Contingent Liabilities**

Contingent liabilities consist of waived future franchise fees or transfer fees of existing franchises. These liabilities are relieved upon expiration of the waived term or exercise of the waived fee. These liabilities expire at various times through 2020.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 2 - Significant Accounting Policies (Continued)

#### *Income Taxes*

The Company is treated as a partnership for federal income tax purposes. Consequently, federal income taxes are not payable or provided for by the Company. The member is taxed individually on its pro rata ownership share of the Company's earnings. The Company's net income or loss is allocated to the member in accordance with the Company's operating agreement.

#### *Advertising Expense*

Advertising expense is charged to income during the year in which it is incurred. Advertising expense for the years ended December 31, 2019, 2018, and 2017 was \$163,749, \$204,345, and \$166,656, respectively. Company-owned studio advertising expense is included in the above and was \$53,127 for the year ended December 31, 2019.

#### *Upcoming Accounting Pronouncement*

The Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-02, *Leases*, which will supersede the current lease requirements in Accounting Standards Codification ("ASC") 840. The ASU requires lessees to recognize a right-to-use asset and related lease liability for all leases, with a limited exception for short-term leases. Leases will be classified as either finance or operating, with the classification affecting the pattern of expense recognition in the statement of operations. Currently, leases are classified as either capital or operating, with only capital leases recognized on the balance sheet. The reporting of lease-related expenses in the statements of operations and cash flows will be generally consistent with the current guidance. The new lease guidance will be effective for the Company's year ending December 31, 2021 and will be applied using a modified retrospective transition method to either the beginning of the earliest period presented or the beginning of the year of adoption. The new lease standard is not expected to have a significant effect on the Company's financial statements as a result of the Company's operating leases, as disclosed in Note 9, that will be reported on the consolidated balance sheets at adoption. Upon adoption, the Company will recognize a lease liability and corresponding right-to-use asset based on the present value of the minimum lease payments. The effects on the results of operations are not expected to be significant, as the Company has a minimal number of leases and the recognition and measurement of expenses and cash flows for leases will be substantially the same under the new standard.

### Note 3 - Adoption of New Accounting Pronouncement

As of January 1, 2019, the Company adopted the Financial Accounting Standards Board Accounting Standards Update No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*. The ASU is based on the principle that revenues are recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The ASU also requires additional disclosure about the nature, amount, timing, and uncertainty of revenues and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to obtain or fulfill a contract. The Company adopted the new standard using the full retrospective method to all contracts effective January 1, 2017. Full retrospective adoption requires entities to apply the standard retrospectively to all periods presented in the financial statements, requiring the cumulative effect of the retrospective application as an adjustment to the opening balance of retained earnings to the earliest period presented.

The adoption of this amendment changed the timing of recognition of initial franchise fees, including renewal and transfer fees. Previously, these fees were generally recognized upfront upon either opening of the respective franchise, termination of the respective franchise agreement, when a renewal agreement became effective, or upon transfer of a franchise agreement. The new guidance generally requires these fees to be recognized over the term of the related franchise agreement.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 3 - Adoption of New Accounting Pronouncement (Continued)

The adoption of this amendment also changed the timing of recognition of commissions, broker fees and referral expenses. Commissions, broker fees and referral expenses are considered a cost to obtain a contract. Previously, these costs were recognized when the related studio was opened. The new guidance generally requires these costs to be recognized over the term of the related franchise agreement.

The adoption of this amendment also changed the timing of recognition of marketing fund revenues and expenses, primarily for the managed marketing fund and marketing and production fund. The Company previously only recorded revenues up to the amount of marketing fund collections spent during the year. When marketing funds were over- or underspent at year end, the Company previously recorded prepaid or accrued marketing fund expenses, respectively, on the consolidated balance sheets. The new guidance generally requires these fees to be recognized either over the term of the related franchise agreement or as the underlying sales that they relate to occur. Marketing fund expenses are recognized during the year when incurred. Under the new guidance, when revenues of the marketing funds exceed the related expenses, the Company accrues marketing expenses up to marketing revenues recorded.

The following financial statement line items for fiscal years 2019, 2018, and 2017 were affected by the change in accounting principle:

#### Consolidated Statements of Operations

	2019			2018			2017		
	As Computed Under Old Method	As Reported Under New Method	Effect of Change	As Computed Under Old Method	As Reported Under New Method	Effect of Change	As Computed Under Old Method	As Reported Under New Method	Effect of Change
Franchise fees	\$ 333,720	\$ 133,617	\$ (200,103)	\$ 221,975	\$ 101,578	\$ (120,397)	\$ 79,800	\$ 23,422	\$ (56,378)
Marketing fund revenues	1,152,602	1,243,030	90,428	1,005,640	1,008,487	2,847	669,060	659,340	(9,720)
Advertising and marketing fund expenses	1,316,485	1,406,779	90,294	1,198,596	1,212,832	14,236	825,996	825,996	-
Franchise-related costs	538,855	477,078	(61,777)	517,961	509,097	(8,864)	1,252,892	1,233,446	(19,446)
Net (loss) income	(939,590)	(1,077,782)	(138,192)	(221,008)	(343,930)	(122,922)	56,681	10,029	(46,652)

#### Consolidated Balance Sheets

	2019			2018			2017		
	As Computed Under Old Method	As Reported Under New Method	Effect of Change	As Computed Under Old Method	As Reported Under New Method	Effect of Change	As Computed Under Old Method	As Reported Under New Method	Effect of Change
Deferred franchise costs, current portion	\$ 54,668	\$ 32,464	\$ (22,204)	\$ 50,349	\$ 18,575	\$ (31,774)	\$ 3,980	\$ 7,657	\$ 3,677
Prepaid and other	35,895	26,309	(9,586)	21,889	10,500	(11,389)	28,720	19,000	(9,720)
Deferred franchise costs, less current portion	94,802	251,560	156,758	52,925	147,476	94,551	-	60,236	60,236
Deferred revenues - Franchise related, current portion	124,600	103,539	(21,061)	141,236	66,772	(74,464)	19,900	27,285	7,385
Accrued expenses and marketing	157,424	168,813	11,389	45,445	49,681	4,236	207,814	207,814	-
Deferred revenues - Franchise related, less current portion	224,300	788,688	564,388	134,600	547,772	413,172	-	215,442	215,442
Member's equity	7,397,805	6,968,057	(429,748)	6,537,395	6,245,839	(291,556)	6,758,403	6,589,769	(168,634)

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 4 - Notes Receivable

Notes receivable at December 31, 2019, 2018, and 2017 are summarized as follows:

	2019	2018	2017
Notes receivable for amounts due from franchisees and initial area director franchise fees financed by the Company, with interest rates ranging from 0 to 10 percent, due upon various specified terms in the agreements	\$ 1,584	\$ 2,584	\$ 31,204
Less current portion	1,000	1,000	28,620
Long-term portion	<u>\$ 584</u>	<u>\$ 1,584</u>	<u>\$ 2,584</u>

During 2018, as part of an area director repurchase agreement, a note receivable with a balance of \$24,546 was netted against the total repurchase consideration (see Note 6).

Upon entering into these note agreements, the Company defers the related revenues until payments from the sale of studios within the respective territories are received. The Company collateralizes the notes with the related franchise agreement. The Company has not recorded a discount for the notes receivable issued with 0 percent interest, as the amount is not material. The Company reserves an allowance for doubtful collections. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on historical performance of the notes, which is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ in the near term from the amounts estimated in determining the allowance. As of December 31, 2019, 2018, and 2017, management determined that no allowance was necessary.

### Note 5 - Property and Equipment

Property and equipment at December 31, 2019, 2018, and 2017 are summarized as follows:

	2019	2018	2017
Machinery and equipment	\$ 43,635	\$ 8,033	\$ -
Software	73,267	66,017	66,017
Leasehold improvements	373,303	-	-
Less accumulated depreciation and amortization	98,160	57,381	46,346
Net property and equipment	<u>\$ 392,045</u>	<u>\$ 16,669</u>	<u>\$ 19,671</u>

The Company purchases property and equipment and incurs costs for leasehold improvements for its company-owned studio. Depreciation and amortization expense on property and equipment for the years ended December 31, 2019, 2018, and 2017 was \$36,440, \$11,035, and \$9,417, respectively.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 6 - Intangible Assets

Intangible assets of the Company at December 31, 2019, 2018, and 2017 are summarized as follows:

	2019		2018		2017	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Franchise agreements	\$ 558,000	\$ (422,375)	\$ 558,000	\$ (329,375)	\$ 558,000	\$ (236,375)
Tradename	496,000	-	496,000	-	496,000	-
Noncompete agreements	36,460	(36,460)	36,460	(32,622)	36,460	(23,411)
Reacquired rights	1,628,737	(514,161)	1,628,737	(307,219)	-	-
Total intangible assets	<u>\$ 2,719,197</u>	<u>\$ (972,996)</u>	<u>\$ 2,719,197</u>	<u>\$ (669,216)</u>	<u>\$ 1,090,460</u>	<u>\$ (259,786)</u>

Amortization expense in the amount of \$303,780, \$409,430, and \$102,211 was recognized on the franchise agreements, reacquired rights, and noncompete agreements during the years ended December 31, 2019, 2018, and 2017, respectively.

Estimated amortization expense for the years ending December 31 is as follows:

Years Ending	Amount
2020	\$ 279,343
2021	228,968
2022	186,343
2023	186,343
2024	184,985
Thereafter	184,219
Total	<u>\$ 1,250,201</u>

### Territory Repurchases

Periodically, the Company repurchases territories held by area directors under master franchise agreements. The master franchise agreements entitled the area directors to a portion of certain revenues generated in the territories, which will now be retained wholly by the Company. The valuation technique utilized in the acquisition considered the trailing 12 months' royalties from the territories as a basis for the anticipated royalty stream over the remaining life of the contract.

The Maryland/District of Columbia territory repurchase agreement was consummated on January 1, 2018 for \$500,000 in exchange for a lump-sum cash payment. The fair value of the remaining contractual term of the agreement is \$144,191, which was recognized as a reacquired right and amortized over the remaining contractual life. The remainder of the purchase price of \$355,809 was recorded as goodwill at the date of acquisition.

The Delaware, Kentucky, Massachusetts, New Hampshire, North Carolina, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia territory repurchase agreement was consummated on January 1, 2018 for \$1,374,546 in exchange for a lump-sum cash payment of \$1,350,000 and a reduction in notes receivable of \$24,546. The fair value of the remaining contractual term of the agreement is \$1,374,546, which was recognized as a reacquired right and amortized over the remaining contractual life.

The New Jersey, Pennsylvania, and New York territory repurchase agreement was consummated on March 1, 2018 for \$110,000, paid for by a lump-sum cash payment plus additional considerations around future franchise, transfer, and renewal fees. The fair value of the remaining contractual term of the agreement is \$110,000, which was recognized as a reacquired right and amortized over the remaining contractual life. The additional noncash considerations for future franchise, transfer, and renewal fees were valued at \$15,000 and recognized as goodwill and contingent consideration liabilities.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 6 - Intangible Assets (Continued)

The Rhode Island territory repurchase agreement was consummated on March 1, 2018 for \$115,000, paid for by a lump-sum cash payment plus additional considerations around future franchise and transfer fees. The full cash consideration of \$115,000 was recognized as goodwill, as the master franchise agreement had previously expired without renewal. The additional noncash consideration for future franchise and transfer fees was valued at \$30,000 and recognized as goodwill and contingent consideration liabilities.

The Connecticut territory repurchase agreement was consummated on March 1, 2018 for \$60,000, paid for by a lump-sum cash payment plus additional considerations around future franchise fees. The full cash consideration of \$60,000 was recognized as goodwill, as the master franchise agreement had previously expired without renewal. The additional noncash considerations for future franchise fees were valued at \$20,000 and recognized as goodwill and contingent consideration liabilities.

### Note 7 - Long-term Debt

#### *Joint and Several Liability Debt Agreement*

On September 12, 2018, the Parent along with certain of its subsidiaries, including the Company, entered into a credit agreement (the "Credit Agreement") to obtain a \$50,000,000 term loan to purchase substantially all of the assets and assume certain liabilities of ALS Cosmetics Supply, LLC ("ALSC") and Amazing Lash Studio Franchise, LLC ("ALSF"). The term loan bears interest at 5.50 percent plus the London Interbank Offered Rate ("LIBOR") (7.29 and 7.93 percent at December 31, 2019 and 2018, respectively). The debt requires quarterly principal payments of \$125,000, with interest starting on December 31, 2018 and a balloon payment due at maturity on September 12, 2024, and is collateralized by substantially all of the assets of the Company. The Company is liable for the entire amount of the debt on a joint and several basis. As of December 31, 2019, the total outstanding balance of the debt was \$49,375,000, and the Company recognized a liability and corresponding amounts due from affiliates for its agreed-upon portion of \$3,562,450, net of debt issuance costs of \$89,624. As of December 31, 2018, the total outstanding balance of the debt was \$49,875,000, and the Company recognized a liability and corresponding amounts due from affiliates for its agreed-upon portion of \$3,434,479, net of debt issuance costs of \$119,995.

As part of the Credit Agreement entered in 2018, as described above, the Parent along with certain of its subsidiaries, including the Company, also obtained a revolving line of credit and a delayed draw term loan. The revolving line of credit has a credit limit of \$5,000,000, bears interest at LIBOR plus 5.5 percent (7.29 percent and 7.93 percent at December 31, 2019 and 2018, respectively), and matures on September 12, 2024. The outstanding balance on this line of credit is \$4,000,000 as of December 31, 2019 in addition to amounts issued under a letter of credit of \$1,000,000, which reduced the amount available under the revolving line but is not recorded as debt. The Company recognized a liability and corresponding amounts due from affiliates for its agreed-upon portion of \$278,269. The outstanding balance on this line of credit was \$1,960,000 as of December 31, 2018, and the Company recognized a liability and corresponding amounts due from affiliates for its agreed-upon portion of \$0.

The delayed draw term loan has a credit limit of \$20,000,000, bears interest at LIBOR plus 5.5 percent (7.29 percent and 7.93 percent at December 31, 2019 and 2018, respectively), and matures on September 12, 2024. During 2019, the Parent along with certain of its subsidiaries, excluding the Company, drew on the loan. As of December 31, 2019, the balance of the term loan was \$13,541,645, and the Company did not recognize a liability for the draw. The delayed draw loan did not have an outstanding balance as of December 31, 2018.

Interest expense in the amount of \$323,760 and \$96,918, including amortization of debt issuance costs of \$17,979 and \$6,397, was recognized during the years ended December 31, 2019 and December 31, 2018, respectively, and accrued for through amounts due from affiliates on the consolidated balance sheets.

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 7 - Long-term Debt (Continued)

In the event the Company is required to make payments on the debt in excess of the agreed-upon amount, the Company could seek to recover those amounts from the Parent; however, the Company does not hold specific recourse or collateral rights in connection with the agreement.

Under the agreement, the Parent is subject to various financial covenants, including a required leverage ratio.

### Note 8 - Member's Equity

The Company is a limited liability company; therefore, the member is not liable for the debts, obligations, or other liabilities of the Company, whether arising in contract, tort, or otherwise, unless the member has signed a specific guarantee. The member may, but shall not be required to, make additional capital contributions to the Company. The Company may make distributions of cash or other assets of the Company to the member at such times and in such amounts as the member shall determine.

### Note 9 - Commitments and Contingencies

#### *Operating Leases*

The Company entered into a noncancelable lease agreement for a company-owned studio on November 1, 2018. Rent expense paid for by the Company, including common area maintenance and pro rata share of certain expenses, during the years ended December 31, 2019 and 2018 was \$44,650 and \$7,143, respectively. Future minimum lease payments under these leases are approximately as follows:

<u>Years Ending</u>	<u>Amount</u>
2020	\$ 42,332
2021	43,134
2022	43,937
2023	44,739
2024	45,542
Thereafter	<u>202,431</u>
Total	<u>\$ 422,115</u>

#### *Litigation*

In the normal course of business, the Company may be named as a party to various lawsuits. In the opinion of management, the resolution of these lawsuits will not have a material adverse effect on the Company's financial position or results of operations.

### Note 10 - Related Party Transactions

The Company is a wholly owned subsidiary of the Parent, which also owns Elements, Amazing Lash, WAVE, Gift Cards, and WellBiz. Based upon the cash needs of each company and the separately calculated tax liabilities, cash may transfer among the companies. The amounts transferred are recorded as an intercompany asset or liability depending on the amounts owed to or from related entities.

The related party balances as of December 31, 2019, 2018, and 2017 consist of the following:

	<u>2019</u>	<u>2018</u>	<u>2017</u>
Due from Parent	\$ 3,617,131	\$ 3,408,594	\$ 570,000
Due (to) from WellBiz	-	(1,560,944)	211,907
Due from Elements	-	378,908	7,978
Total	<u>\$ 3,617,131</u>	<u>\$ 2,226,558</u>	<u>\$ 789,885</u>

# Fitness Together Franchise, LLC

## Notes to Consolidated Financial Statements

### Note 10 - Related Party Transactions (Continued)

#### *Management Fees*

The Company maintains a servicing agreement with WellBiz, whereby WellBiz will provide certain executive, legal, administrative, and marketing services on behalf of the Company to receive management fees, including a profit margin, from the Company. The allocation methodology is based on estimated time and effort spent on the Company and the Company's financial contributions to the Parent in relation to the rest of the affiliated companies with the Parent. The resulting costs to the Company are reported as management fees on the accompanying statements of operations. For the years ended December 31, 2019, 2018, and 2017, the Company incurred management fees of \$1,712,032, \$1,489,000, and \$948,000, respectively.

### Note 11 - Subsequent Events

The Company has evaluated all subsequent events through March 25, 2020, which is the date the financial statements were available to be issued.

On March 11, 2020, the World Health Organization declared the outbreak of a respiratory disease caused by a new coronavirus a pandemic. First identified in late 2019 and now known as COVID-19, the outbreak has impacted thousands of individuals worldwide. In response, many countries have implemented measures to combat the outbreak that have impacted global business operations. As of the date of issuance of the financial statements, most of the Company's studios have shut down temporarily, some required and others voluntarily. Franchise and company-owned studio revenue related to nonmember services has declined as a result of the closures. The Company does not anticipate the studio closures to become permanent and expects operations to return to normal within approximately 30 to 60 days; however, the Company continues to monitor the situation. No impairments were recorded as of the consolidated balance sheet date; however, due to significant uncertainty surrounding the situation, management's judgment regarding this could change in the future. In addition, while the Company's results of operations, cash flows, and financial condition could be negatively impacted, the extent of the impact cannot be reasonably estimated at this time.

EXHIBIT F  
LIST OF STATE AGENTS/AGENTS FOR SERVICE OF PROCESS

| exhibit

**EXHIBIT F**

**STATE AGENCIES/AGENTS FOR SERVICE OF PROCESS**

Listed here are the names, addresses and telephone numbers of the state agencies having responsibility for the franchising disclosure/registration laws. We may not yet be registered to sell franchises in any or all of these states. There may be states in addition to those listed below in which we have appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

**CALIFORNIA**

Department of Business Oversight:

1-(866)-275-2677

—————***Los Angeles***

Suite 750

320 West 4<sup>th</sup> Street

Los Angeles, California 90013

(213)-576-7505

—————***Sacramento***

1515 K Street, Suite 200

Sacramento, California 95814-4052

(916)-445-7205

—————***San Diego***

1350 Front Street

San Diego, California 92101

(619)-525-4044

—————***San Francisco***

One Sansome Street, Suite 600

San Francisco, California 94104

FT Studio (Unit)

September 2019 Amended FDD | Ex. F — 2019 List of State Agents

[FT Studio \(Unit\)](#)

[Ex. E – 03/2015 List of State Agents](#)

[1076.001.008\114345](#)

~~(415) 972-8559~~

**HAWAII**

~~(agent for service of process)~~

~~Commissioner of Securities of the  
Department of Commerce and Consumer  
Affairs~~

~~Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722~~

~~(for other matters)~~

~~Business Registration Division  
Securities Compliance Branch  
Department of Commerce  
and Consumer Affairs  
P.O. Box 40  
Honolulu, Hawaii 96810  
(808) 586-2722~~

ILLINOIS

~~Franchise Bureau~~

~~Office of the Attorney General~~

~~500 South Second Street~~

~~Springfield, Illinois 62706~~

~~(217) 782-4465~~

INDIANA

~~(state administrator)~~

~~Indiana Secretary of State~~

~~Securities Division, E-111~~

~~302 West Washington Street~~

~~Indianapolis, Indiana 46204~~

~~(317) 232-6681~~

~~(agent for service of process)~~

~~Indiana Secretary of State~~

~~201 State House~~

~~200 West Washington Street~~

~~Indianapolis, Indiana 46204~~

~~(317) 232-6531~~

**MARYLAND**

~~(state administrator)~~

~~Office of the Attorney General~~

~~Securities Division~~

~~200 St. Paul Place~~

~~Baltimore, Maryland 21202-2021~~

~~(410) 576-6360~~

~~(agent for service of process)~~

~~Maryland Securities Commissioner~~

~~at the Office of the Attorney General~~

~~Securities Division~~

~~200 St. Paul Place~~

~~Baltimore, Maryland 21202-2021~~

~~(410) 576-6360~~

**MICHIGAN**

~~(state administrator)~~

~~Michigan Attorney General's Office~~

~~Consumer Protection Division~~

~~Attn: Franchise Section~~

~~G. Mennen Williams Building, 1<sup>st</sup> Floor~~

~~525 West Ottawa Street~~

~~Lansing, Michigan 48933~~

~~(517) 373-7117~~

~~(agent for service of process)~~

~~Michigan Department of Commerce,  
Corporations and Securities Bureau  
P.O. Box 30054  
6546 Mercantile Way  
Lansing, Michigan 48909~~

**MINNESOTA**

~~Commissioner of Commerce  
Minnesota Department of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101  
(651) 296-6328~~

**NEW YORK**

~~(state administrator)~~

~~NYS Department of Law  
Franchise Section  
28 Liberty Street, 21st Floor  
New York, NY 10005  
(212) 416-8236 Phone  
(212) 416-6042 Fax~~

~~(agent for service of process)~~

~~Attention: New York Secretary of State~~

~~New York Department of State  
One Commerce Plaza,  
99 Washington Avenue, 6th Floor  
Albany, NY 12231-0001  
(518) 473-2492~~

### **NORTH DAKOTA**

~~North Dakota Securities Department  
600 East Boulevard Avenue  
State Capitol—Fifth Floor  
Bismarck, North Dakota 58505  
(701) 328-4712~~

### **OREGON**

~~Department of Insurance and Finance  
Corporate Securities Section  
Labor and Industries Building  
Salem, Oregon 97310  
(503) 378-4387~~

### **RHODE ISLAND**

~~Division of Securities  
1511 Pontiac Avenue  
Cranston, Rhode Island 02920  
(401) 462-9582~~

**SOUTH DAKOTA**

~~Department of Labor and Regulation~~

~~Division of Securities~~

~~124 S. Euclid, Suite 104~~

~~Pierre, South Dakota 57501~~

~~(605) 773-4823~~

**VIRGINIA**

~~(state administrator)~~

~~State Corporation Commission~~

~~Division of Securities~~

~~and Retail Franchising~~

~~1300 East Main Street, Ninth Floor~~

~~Richmond, Virginia 23219~~

~~(804) 371-9051~~

~~(agent for service of process)~~

~~Clerk, State Corporation Commission~~

~~1300 East Main Street~~

~~Richmond, Virginia 23219~~

~~(804) 371-9672~~

WASHINGTON

~~(state administrator)~~

~~Department of Financial Institutions~~

~~Securities Division~~

~~P.O. Box 9033~~

~~Olympia, Washington 98507-9033~~

~~(360) 902-8760~~

~~(agent for service of process)~~

~~Director~~

~~Department of Financial Institutions~~

~~Securities Division~~

~~150 Israel Road, S.W.~~

~~Tumwater, Washington 98501~~

WISCONSIN

~~Securities and Franchise Registration~~

~~Wisconsin Securities Commission~~

~~345 West Washington Avenue, 4th Floor~~

~~Madison, Wisconsin 53703~~

~~(608) 266-3431~~

<u>STATE</u>	<u>STATE ADMINISTRATOR</u>	<u>AGENT FOR SERVICE OF PROCESS</u>
<u>CALIFORNIA</u>	<u>California Dept. of Business Oversight</u> <u>One Sansome Street, Suite 600</u> <u>San Francisco, CA 94104</u> <u>(415) 972-8559</u> <u>(866) 275-2677</u>	<u>California Commissioner of Business Oversight</u> <u>320 West 4<sup>th</sup> Street, Suite 750</u> <u>Los Angeles, CA 90013-2344</u> <u>(866) 275-2677</u>
<u>FLORIDA</u>	<u>Dept. of Agriculture &amp; Consumer Services</u> <u>Division of Consumer Services</u> <u>Mayo Building, Second Floor</u> <u>Tallahassee, FL 32399-0900</u> <u>(850) 245-6000</u>	<u>Same</u>
<u>HAWAII</u>	<u>Dept. of Commerce &amp; Consumer Affairs</u> <u>Business Registration Division</u> <u>Commissioner of Securities</u> <u>335 Merchant Street, Room 203</u> <u>Honolulu, HI 96813</u> <u>(808) 586-2722</u>	<u>Commissioner of Securities of the State of Hawaii</u> <u>Dept. of Commerce &amp; Consumer Affairs</u> <u>Securities Compliance Branch</u> <u>335 Merchant Street, Room 203</u> <u>Honolulu, HI 96813</u>
<u>ILLINOIS</u>	<u>Franchise Division</u> <u>Office of the Attorney General</u> <u>500 South Second Street</u> <u>Springfield, IL 62706</u> <u>(217) 782-4465</u>	<u>Illinois Attorney General</u> <u>Same Address</u>
<u>INDIANA</u>	<u>Securities Commissioner</u> <u>Indiana Securities Division</u> <u>302 West Washington Street, Room E 111</u> <u>Indianapolis, IN 46204</u> <u>(317) 232-6681</u>	<u>Indiana Secretary of State</u> <u>201 State House</u> <u>200 West Washington Street</u> <u>Indianapolis, IN 46204</u> <u>(317) 232-6531</u>
<u>KENTUCKY</u>	<u>Kentucky Attorney General's Office</u> <u>Consumer Protection Division</u> <u>1024 Capitol Center Drive</u> <u>Frankfort, KY 40602</u> <u>(502) 696-5389</u>	<u>Same</u>
<u>MARYLAND</u>	<u>Office of the Attorney General</u> <u>Securities Division</u> <u>200 St. Paul Place</u> <u>Baltimore, MD 21202</u> <u>(410) 576-6360</u>	<u>Maryland Securities Commissioner</u> <u>Same Address</u>
<u>MICHIGAN</u>	<u>Michigan Dept. of Attorney General</u> <u>Consumer Protection Division</u> <u>Attn: Franchise Section</u> <u>525 W. Ottawa street</u> <u>G. Mennen Williams Bldg., 1<sup>st</sup> Floor</u> <u>Lansing, MI 48913</u> <u>(517) 373-7117</u>	<u>Michigan Dept. of Commerce</u> <u>Corporations &amp; Securities Bureau</u> <u>P.O. Box 3054</u> <u>6546 Mercantile Way</u> <u>Lansing, MI 48909</u>

<u>STATE</u>	<u>STATE ADMINISTRATOR</u>	<u>AGENT FOR SERVICE OF PROCESS</u>
<u>MINNESOTA</u>	<u>Minnesota Dept. of Commerce</u> <u>85 7<sup>th</sup> Place East, Suite 500</u> <u>St. Paul, MN 55101</u> <u>(651) 296-6328</u>	<u>Minnesota Commissioner of Commerce</u> <u>Same Address</u>
<u>NEBRASKA</u>	<u>Dept. of Banking &amp; Finance</u> <u>Bureau of Securities/Financial Institutions</u> <u>Division</u> <u>1526 K Street, Suite 300</u> <u>Lincoln, NE 68505-2732</u> <u>P.O. Box 95006</u> <u>Lincoln, NE 68509-5006</u> <u>(402) 471-2171</u>	<u>Same</u>
<u>NEW YORK</u>	<u>New York State Dept. of Law</u> <u>Investor Protection Bureau</u> <u>28 Liberty Street, 21<sup>st</sup> Floor</u> <u>New York, NY 10005</u> <u>Phone: (212) 416-8236</u> <u>Fax: (212) 416-6042</u>	<u>New York Secretary of State</u> <u>New York Dept. of State</u> <u>One Commerce Plaza</u> <u>99 Washington Avenue, 6<sup>th</sup> Floor</u> <u>Albany, NY 12231-0001</u> <u>(518) 473-2492</u>
<u>NORTH DAKOTA</u>	<u>North Dakota Securities Dept.</u> <u>600 East Boulevard Avenue</u> <u>State Capitol, 5<sup>th</sup> Floor</u> <u>Bismarck, ND 58505-0510</u> <u>Phone: (701) 328-4712</u>	<u>North Dakota Securities Commissioner</u> <u>Same Address</u>
<u>RHODE ISLAND</u>	<u>Rhode Island Dept. of Business Regulation</u> <u>Securities Division</u> <u>John O. Pastore Center – Bldg. 69-1</u> <u>1511 Pontiac Avenue</u> <u>Cranston, RI 02920</u> <u>(401) 222-3048</u>	<u>Director, Rhode Island Dept. of</u> <u>Business Regulation</u> <u>Same Address</u>
<u>SOUTH DAKOTA</u>	<u>South Dakota Dept. of Labor &amp; Regulation</u> <u>Division of Securities</u> <u>124 S. Euclid Avenue, Suite 104</u> <u>Pierre, SD 57501</u> <u>(605) 773-4823</u>	<u>Director of the South Dakota Division</u> <u>of Securities</u> <u>Same Address</u>
<u>TEXAS</u>	<u>Secretary of State</u> <u>Statutory Documents Section</u> <u>P.O. Box 12887</u> <u>Austin, TX 78711-2887</u> <u>(512) 475-1769</u>	<u>Same</u>
<u>UTAH</u>	<u>Utah Dept. of Commerce</u> <u>Consumer Protection Division</u> <u>160 East 300 South (P.O. Box 45804)</u> <u>Salt Lake City, UT 84145-0804</u> <u>Phone: (801) 530-6601</u> <u>Fax: (801) 530-6001</u>	<u>Same</u>

<u>STATE</u>	<u>STATE ADMINISTRATOR</u>	<u>AGENT FOR SERVICE OF PROCESS</u>
<u>VIRGINIA</u>	<u>State Corporation Commission</u> <u>Div. of Securities &amp; Retail Franchising</u> <u>1300 E. Main Street, 9<sup>th</sup> Floor</u> <u>Richmond, VA 23219</u> <u>(804) 371-9051</u>	<u>Clerk, State Corporation Commission</u> <u>1300 E. Main Street</u> <u>Richmond, VA 23219</u> <u>(804) 371-9672</u>
<u>WASHINGTON</u>	<u>Dept. of Financial Institutions</u> <u>Securities Division</u> <u>P.O. Box 9033</u> <u>Olympia, WA 98507-9033</u> <u>(360) 902-8760</u>	<u>Director, Dept. of Financial Institutions</u> <u>Securities Division</u> <u>150 Israel Rd S.W.</u> <u>Tumwater, WA 98501</u>
<u>WISCONSIN</u>	<u>Securities &amp; Franchise Registration</u> <u>Wisconsin Securities Commission</u> <u>345 W. Washington Avenue, 4<sup>th</sup> Floor</u> <u>Madison, WI 53703</u> <u>(608) 266-3431</u>	<u>Wisconsin Commissioner of Securities</u> <u>Same Address</u>

**EXHIBIT G**

**AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER**

## AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER

### Location:

(Studio Number: \_\_\_\_\_)

THIS AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER (“**Consent**”) is made by and among FITNESS TOGETHER FRANCHISE, LLC, a Delaware limited liability company (“**Franchisor**”); \_\_\_\_\_ (“**Seller**”); \_\_\_\_\_ (“**Seller Guarantor**”); and \_\_\_\_\_ (“**Buyer**”), effective as of the Effective Date (defined below). All terms capitalized in this Consent and not otherwise defined herein shall have the meanings ascribed to them in the Seller Franchise Agreement (defined below) or the Buyer Franchise Agreement (defined below), as the case may be.

### Recitals

A. Seller is the franchisee under that certain franchise agreement dated \_\_\_\_\_, as it may have been amended by subsequent addendum or addenda (the “**Seller Franchise Agreement**”), governing the ownership and operation of the Fitness Together® Studio located at \_\_\_\_\_ (the “**Studio**”).

B. Seller Guarantor personally guaranteed all of the obligations under the Seller Franchise Agreement.

C. Seller has notified Franchisor that it and Buyer have entered into a purchase and sale agreement dated \_\_\_\_\_ (the “**Purchase Agreement**”), pursuant to which Seller has agreed to sell, and Buyer has agreed to purchase, all of the rights, obligations and assets relating to the Studio (the “**Interests**”).

D. Buyer has also agreed to (1) assume the lease obligations for the Studio ~~premises~~, and (2) enter into Franchisor’s current form of franchise agreement (the “**Buyer Franchise Agreement**”) (the transfer of Interests under the Purchase Agreement, the assumption by Buyer of the Studio’s lease obligations and the execution of the Buyer Franchise Agreement, collectively referred to as the “**Transfer**”).

E. Franchisor has agreed not to exercise its right of first refusal as set forth in the Seller Franchise Agreement and has agreed to approve the Transfer of the Studio in accordance with the terms, and subject to the conditions, set forth in this Consent.

### Agreement

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein and other valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Effective Date.** The “**Effective Date**” will be the date on which Franchisor signs this Consent acknowledging its consent to the proposed Transfer, which date shall be consistent with the effective date of the Buyer Franchise Agreement.

2. **Purchase Agreement.** Seller and Buyer represent and warrant that the form of Purchase Agreement provided to Franchisor is the final version of the Purchase Agreement and is the version which has been, or will be, executed by them to effectuate the Transfer. The Purchase Agreement will not be amended, and the terms set forth in the Purchase Agreement will not be changed, except with the prior written consent of Franchisor.

3. **Conditional Consent; Release of Guaranty.** As of the Closing Date, the Seller Franchise Agreement will terminate and operation of the Studio will thereafter be governed by the Buyer Franchise Agreement. Upon termination of the Seller Franchise Agreement, neither Seller nor Seller Guarantor shall have any further rights or obligations thereunder, except that neither Seller nor Seller Guarantor shall be released from (i) any obligations to pay money owed to Franchisor under the Seller Franchise Agreement or the guaranty prior to the Closing Date or such other date as may be set forth herein; or (ii) the provisions of the Seller Franchise Agreement that, either expressly or by their nature, survive termination of the Seller Franchise Agreement (including, without limitation, provisions related to confidential information, post-termination restrictive covenants, indemnification, notice, governing law, jurisdiction and venue, and dispute resolution). Notwithstanding anything in this Consent to the contrary, the consent and release set forth herein are expressly contingent upon compliance with the following terms and conditions on or before the date of the closing of the Transfer (“**Closing Date**”):

- a. **Franchise Agreement.** The Seller Franchise Agreement will terminate as of the Closing Date in accordance with the terms set forth in Section 7 below, and the operation of the Studio will thereafter be governed by the Buyer Franchise Agreement.
- b. **Payment of Amounts Due.** Seller will pay all amounts due and owing from Seller (or an affiliate of Seller) to Franchisor through the Closing Date.
- c. **Transfer Fee.** Upon execution of this Consent by Seller and Buyer, a transfer fee in the amount of \$19,950 [ ] (“**Transfer Fee**”) shall be paid to Franchisor via cashier’s check or wire transfer. Except as described in Section 5 below, Seller and Buyer acknowledge and agree that Franchisor has earned the Transfer Fee upon receipt thereof and that the Transfer Fee is not refundable.
- d. **Fee Deposit.** Upon execution of this Consent by Seller and Buyer, Seller agrees to deposit \$3,500 (“**Fee Deposit**”) with Franchisor via cashier’s check or wire transfer. Franchisor will refund the Fee Deposit to Seller, less any amounts which may be due pursuant to Section 3.b, within thirty (30) days following the later of the Closing Date or the date upon which Seller and Buyer comply with all terms and conditions set forth in this Consent.
- e. **Training.** Buyer (or, if Buyer is an entity, one of Buyer’s co-owners) and, if not the same person as Buyer (or the designated co-owner), Buyer’s ~~manager~~ Designated Manager (as defined in the Buyer Franchise Agreement) (or the individual having responsibility for the day-to day operations of the Studio) shall satisfactorily complete ~~Initial~~ the Training Program (as defined and described in the Buyer Franchise Agreement) prior to the Closing Date.
- f. **Right to Possession.** Buyer will provide satisfactory evidence to Franchisor that Buyer has the right to possession of the ~~premises for~~ the Studio by way of lease assignment and/or assumption or otherwise (with all required landlord consents), as more fully described in Section 6 below.

- g. Site Selection Assistance. Buyer acknowledges and agrees that Franchisor has complied with and satisfied its obligations under the Buyer Franchise Agreement to provide site selection and development assistance.
  - h. Purchase Agreement. The Purchase Agreement will not be amended and the terms of the purchase transaction will not be changed except with the prior written consent of Franchisor.
  - i. Studio Possession. Prior to the Closing Date and changing possession and/or ownership of the Studio, Seller and Buyer shall obtain the written consent and authorization of Franchisor.
  - j. Seller Financing. Regardless of any provision of the Purchase Agreement (or any other agreement) to the contrary, if Seller provides financing to Buyer for any portion of the purchase price for the Studio and such financing is secured by any assets of the Studio, Seller acknowledges and agrees that Seller does not and will not have any interests or rights, revisionary or otherwise, to operate the Studio after the Closing Date pursuant to the Seller Franchise Agreement or Buyer Franchise Agreement.
  - k. Studio Upgrades/Renovations. Within sixty (60) days following the Closing Date, Buyer will complete the upgrades and renovations of the Studio, at Buyer's expense, as required to improve the condition and appearance of the Studio consistent with Franchisor's current System Standards and other Franchise System requirements.
4. **Waiver of Right of First Refusal**. Franchisor hereby waives its right of first refusal to purchase the Interests, as set forth in the Seller Franchise Agreement.
5. **Contingency**. This Consent and the Buyer Franchise Agreement may be terminated if:
- a. The Transfer between Seller and Buyer is cancelled, or otherwise not approved by Franchisor;
  - b. Seller and/or Buyer fail to meet any of the conditions and/or requirements set forth in this Consent, the Seller Franchise Agreement, and/or the Buyer Franchise Agreement; or
  - c. Seller and Buyer fail to change possession and/or ownership of the Studio within ninety (90) days following receipt of Franchisor's written consent and authorization (as described in Section 3.i above).

In the event of such termination, Seller and Buyer will execute a termination and release agreement (in a form acceptable to Franchisor) pursuant to which Franchisor will refund the Transfer Fee, without interest; provided, however, if Buyer and/or Buyer's designated representative(s) have attended any portion of ~~Initial~~the Training Program, Franchisor will only be obligated to refund fifty percent (50%) of the Transfer Fee.

6. **Assignment/Assumption of Premises Lease**. Seller and Buyer acknowledge that one of the requirements of Franchisor's consent is that the Studio ~~premises~~ lease be assigned to and/or otherwise assumed by the Buyer and that the lease for the Studio ~~premises~~ may require consent of and/or notice to the landlord with respect to such assignment and/or assumption. Provided (i) Buyer takes an assignment of the existing lease for the Studio; (ii) the terms of such lease are not amended; and (iii) the lease for the Studio

includes the terms of Franchisor's required lease addendum, Franchisor waives the requirement for lease review and approval set forth in the Buyer Franchise Agreement. If (i) the lease terms are amended; (ii) the lease for the Studio does not include the terms of Franchisor's required lease addendum; or (iii) Buyer enters into a new lease for the Studio, all lease review and approval requirement set forth in the Buyer Franchise Agreement shall remain applicable. Buyer acknowledges and agrees that Franchisor's approval of the Studio location and waiver of the lease review requirement or approval of the lease terms do not constitute a recommendation, endorsement, or guarantee by Franchisor of the suitability of the Studio location or the lease, and Buyer acknowledges that it has taken all steps necessary to ascertain whether the Studio location and lease are acceptable to Buyer.

7. **Termination of Seller Franchise Agreement and Guaranties.** Franchisor and Seller acknowledge and agree that, as of the Closing Date and upon the Transfer and compliance with the conditions set forth in Section 3 above, the Seller Franchise Agreement and associated guaranties will automatically terminate and neither Seller nor Seller Guarantor shall have any further rights or obligations thereunder except that neither Seller nor Seller Guarantor shall be released from:

- a. any obligations to pay money to Franchisor owed under the Seller Franchise Agreement, the guaranty, or otherwise prior to the Closing Date; or
- b. the provisions of the Seller Franchise Agreement that, either expressly or by their nature, survive termination of the Seller Franchise Agreement (including, without limitation, the provisions related to confidential information, post-termination restrictive covenants, indemnification, notice, governing law, jurisdiction and venue, and dispute resolution).

8. **Release of Franchisor.** Seller, Seller Guarantor, and Buyer, and each of them, on behalf of themselves and each of their respective current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, spouses, parent companies, predecessors, affiliates, subsidiaries, successors and assigns, hereby fully and forever unconditionally release and discharge Franchisor and its current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, franchisees, area directors, parent companies, predecessors, affiliates, subsidiaries, successors, and assigns (the "**Franchisor Parties**"), from any and all claims, demands, obligations, actions, liabilities and damages of every kind or nature whatsoever, in law or in equity, whether known or unknown, or which may hereafter be discovered, accrued, or sustained in connection with, as a result of, or in any way arising from, any relationship or transaction with Franchisor or the Franchisor Parties, however characterized or described, including but not limited to, any claims arising from Seller's operation of the Studio, the Seller Franchise Agreement, the Buyer Franchise Agreement, the Purchase Agreement, or the transactions described in this Consent, or under any applicable state or federal franchise or other law, including the Federal Trade Commission Act, and all applicable Rules of the Federal Trade Commission promulgated pursuant to the Federal Trade Commission Act.

*(If the Studio is located in California or if Seller, Seller Guarantor, or Buyer (as applicable) is a resident of California, the following shall apply):*

**Section 1542 Acknowledgment.** Seller, Seller Guarantor, and Buyer recognize that he, she, or it may have some claim, demand, obligation, action, liability, defense, or damage against Franchisor or the Franchisor Parties of which Seller, Seller Guarantor, and Buyer are totally unaware and unsuspecting, which he, she, or it is giving up by executing this Consent. Nonetheless, it is the intention of Seller, Seller Guarantor, and Buyer in executing this Consent that this instrument, (i) be and is a general release which shall be effective as a bar to each and every claim, demand,

obligation, action, liability, defense, or damage released by Seller, Seller Guarantor, and Buyer, and (ii) will deprive Seller, Seller Guarantor, and Buyer of each and every such claim, demand, obligation, action, liability, defense, or damage and prevent him, her, or it from asserting it against Franchisor or the Franchisor Parties. In furtherance of this intention, Seller, Seller Guarantor, and Buyer expressly waive any rights or benefits conferred by the provisions of Section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Seller, Seller Guarantor, and Buyer acknowledge and represent that he, she, or it has consulted with legal counsel before executing this Consent and that Seller, Seller Guarantor, and Buyer understand its meaning, including the effect of Section 1542 of the California Civil Code, and expressly consent that this Consent shall be given full force and effect according to each and all of its express terms and provisions, including, without limitation, those relating to the release of unknown and unsuspected claims, demands, obligations, actions, liabilities, defenses or damages.

*(If the Studio is located in Maryland or if Seller, Seller Guarantor, or Buyer (as applicable) is a resident of Maryland, the following shall apply):*

Any release provided for hereunder shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

9. **Non-Disparagement.** In consideration of the accommodations provided to Seller, Seller Guarantor, and Buyer, and the concessions made by Franchisor and its affiliates under this Consent, Seller, Seller Guarantor, and Buyer agree not to, and to use their best efforts to cause their respective current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, spouses, parent companies, predecessors, affiliates, subsidiaries, successors and assigns not to, disparage, impugn or otherwise speak or write negatively, directly or indirectly, of Franchisor or the Franchisor Parties, the Fitness Together® brand, the Fitness Together franchise system, or any other service-marked or trademarked concept of Franchisor or the Franchisor Parties, or take any other action which would subject the Fitness Together brand to ridicule, scandal, reproach, scorn, or indignity or which would negatively impact the goodwill of Franchisor, the Franchisor Parties, or the Fitness Together brand.

10. **Acknowledgment.** Buyer and Seller acknowledge that although Franchisor or its affiliates, employees, officers, directors, successors, assigns, and other representatives may have been involved in Buyer’s purchase of the Interests from Seller, Buyer and Seller have assumed sole and full responsibility for making the final decision to purchase and sell the Interests and each has consulted, or has had the opportunity to consult but, of its own accord, elected not to consult, with its own legal and financial advisors. Buyer further understands that as part of analyzing the purchase of the Interests from Seller, it is Buyer’s responsibility to meet with or otherwise gather necessary information from the appropriate parties which may or may not affect Buyer’s purchase of the Interests from Seller.

11. **Additional Documents.** Buyer and Seller agree to execute such additional documents as may be necessary to complete the Transfer as contemplated by the Purchase Agreement, the Seller Franchise Agreement and the Buyer Franchise Agreement.

12. **Miscellaneous Provisions.**

- a. Confidentiality. Except as reasonably necessary to perform Seller's, Seller Guarantor's, or Buyer's obligations or exercise or enforce Seller's, Seller Guarantor's, or Buyer's rights under this Consent, neither Seller, Seller Guarantor, nor Buyer shall provide or disclose to any third party, or use, unless authorized in writing to do so by Franchisor or properly directed or ordered to do so by public authority or court of competent jurisdiction, any information or matter that constitutes or concerns the terms and conditions of this Consent or that regards any dealings or negotiations with Seller, Seller Guarantor, or Buyer related to this Consent.
- b. Governing Law. This Consent will be construed and enforced in accordance with, and governed by, the laws of the state set forth in the Buyer Franchise Agreement.
- c. Amendment. This Consent may not be modified or amended or any term hereof waived or discharged except in a writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced.
- d. Headings. The headings of this Consent are for convenience and reference only and will not limit or otherwise affect the meaning hereof.
- e. Controlling Provisions. In the event of any conflict between the terms of this Consent and the terms of the Seller Franchise Agreement or the Buyer Franchise Agreement, the terms of this Consent shall control.
- f. Counterpart Signatures. This Consent may be executed in any number of counterparts and sent via facsimile or other electronic transmission, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be made effective as of the Effective Date.

**FRANCHISOR:  
FITNESS TOGETHER FRANCHISE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date\*: \_\_\_\_\_

*\* This is the Effective Date*

**SELLER:  
[SELLER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Forwarding Address: \_\_\_\_\_  
Forwarding Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**SELLER GUARANTOR:  
[SELLER GUARANTOR]**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**BUYER:  
[BUYER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT H**

**FORM OF RENEWAL ADDENDUM**

## RENEWAL ADDENDUM TO FRANCHISE AGREEMENT

**THIS RENEWAL ADDENDUM** (“Addendum”) is dated as of the Effective Date (as defined below) and is attached to and made a part of that certain Franchise Agreement dated as of the same date ~~herewith~~ hereof (the “New Agreement”), by and between **FITNESS TOGETHER FRANCHISE, LLC**, a Delaware limited liability company (“we” “us” or “our”), and \_\_\_\_\_ (“you” or “your”). We and you shall collectively be referred to as the “Parties.” All capitalized terms set forth in this Addendum and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

### Recitals

A. By way of information and background, you have been operating the Fitness Together Elements Massage<sup>®</sup> studio located at \_\_\_\_\_ (the “Studio”), pursuant to a franchise agreement entered into by the Parties dated \_\_\_\_\_, as it may have been subsequently amended (the “Original Agreement”).

B. The initial term of the Original Agreement is scheduled to expire on \_\_\_\_\_ (the “Expiration Date”).

C. The Original Agreement provides that, as of the Expiration Date, you have the option to ~~renew your~~ acquire a successor franchise ~~rights to operate the Studio~~ for ~~[additional terms of five (5) years each /~~ one additional term of ten (10) years], subject to certain terms and conditions set forth therein.

D. You have notified us that you wish to exercise your option to ~~renew your~~ acquire a successor franchise ~~rights~~ for an additional term of ~~[five (5) /~~ ten (10)] years (“Renewal”) and, in connection therewith, the Parties have agreed to make certain modifications with respect to the terms of the New Agreement, all as set forth in this Addendum.

### Agreement

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and other valuable consideration, receipt and sufficiency of which are acknowledged, the Parties agree as follows:

#### Amendment of New Agreement.

~~1. Section 2.2.A.: Site Selection.~~ We have previously approved the Studio Location Premises as required pursuant to Section 2.2.A. The Studio Location is: \_\_\_\_\_.

~~2. Section 3.1: Initial Term.~~ Section 3.1 is deleted in its entirety and replaced with the following:

~~3.1. “The term of this Agreement is~~ Premises ~~for a period of [five (5) / ten (10)] years from the Effective Date, unless sooner terminated pursuant to the terms of this Agreement.”~~ your Studio is located at: \_\_\_\_\_.

~~4.1. [If applicable] Section 3.2: Renewal.~~ Section 3.2 is deleted in its entirety Section 2.B.:

~~5.1. Section 4.1: Initial Franchise Fees.~~ Section 4.1 is deleted in its entirety.

~~6. Section 4.7: Technology Fee. We acknowledge that you have previously paid the software set-up fee described in Section 4.7.~~

~~7. Section 5.6: On-Going Support and Assistance. You acknowledge and agree that we have complied with our obligation under the New Agreement to provide you opening support as set forth in Section 5.6(a).~~

~~8.2. Section 7.2: Lease Approval. We have previously approved the lease for the Studio premises~~Premises ~~as required pursuant to Section 7.2.B. and therefore waive the requirement for lease review and approval; provided, however, if the lease terms are amended or you enter into a new lease for the Studio premises~~Premises ~~during the term of the New Agreement, all lease review and approval requirements set forth in the New Agreement shall remain applicable.~~

~~9.3. Section 7.3(a): Build-Out.2.D.: Development and Construction of Your Studio. The Parties acknowledge that the build-out~~development, construction, and decoration ~~of the Studio~~Premises~~, as described in Section 7.3(a).2.D., has previously been completed.~~

~~10.4. Section 7.3(b): Commencement of Operations.2.H.: Studio Opening. The Parties acknowledge that the Studio has commenced operations~~opened for business ~~as required pursuant to Section 7.3(b).2.H.~~

~~11.5. Section 8.2: Grand Opening Spend~~3.A.: Initial Franchise Fee. Section 8.23.A. is deleted in its entirety.

~~6. Section 3.C.: Software Set-Up Fee. We acknowledge that you have previously paid the software set-up fee described in Section 3.C.~~

~~7. Section 4.B.: Opening Assistance. You acknowledge and agree that we have complied with our obligation under the New Agreement to provide you opening support as set forth in Section 4.B.~~

~~8. Section 9.A.: Grand Opening Spend Fee. Section 9.A. is deleted in its entirety.~~

~~12.9. Renewal~~Section 13.A.: Successor Franchise Fee. Concurrently with signing the New Agreement and this Addendum, you agree to pay us a renewalsuccessor franchise fee of \$~~\_\_\_\_\_~~10,000, in the form of a lump sum payment, by wire transfer, or any other method specified by us. The renewalsuccessor franchise fee is fully earned by us when paid by you and is not refundable under any circumstance.

~~13.10. Studio Upgrades/Renovations~~Improvements. Within sixty (60) days following the Effective Date, you will complete the upgrades and renovations of the Studioremodel and/or expand your Studio, add or replace improvements and Operating Assets (as defined in the New Agreement), and otherwise modify your Studio, at your expense, as required to improve the condition and appearance of your Studio consistentcomply ~~with our current System Standards and other Franchise System requirements.~~

~~14.11. Original/New Agreements. As of the Effective Date, the Original Agreement will be deemed expired, and the operation of the Studio will thereafter be governed by the New Agreement.~~

~~15.12. Release of Franchisor. You, on behalf of yourself and your respective current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives,~~

attorneys, spouses, parent companies, predecessors, affiliates, subsidiaries, successors and assigns, hereby fully and forever unconditionally release and discharge us –and our current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, franchisees, area directors, parent companies, predecessors, affiliates, subsidiaries, successors, and assigns (the “Released Parties”), from any and all claims, demands, obligations, actions, liabilities and damages of every kind or nature whatsoever, in law or in equity, whether known or unknown to you, which you may have against the Released Parties as of the date of this Addendum, or which may thereafter be discovered, accrued, or sustained in connection with, as a result of, or in any way arising from, any relations or transactions with the Released Parties, however characterized or described.

*(If the Studio is located in California or if you are a resident of California, the following shall apply):*

Section 1542 Acknowledgment. It is your intention in executing this Addendum that this instrument be and is a general release which shall be effective as a bar to each and every claim, demand or cause of action released by you, and you recognize that you may have some claim, demand or cause of action against us or the Released Parties of which you are totally unaware and unsuspecting, which you are giving up by executing this Addendum. It is your intention in executing this instrument that it will deprive you of such claim, demand or cause of action and prevent you from asserting it against us or the Released Parties. In furtherance of this intention, you expressly waive any rights or benefits conferred by the provisions of Section 1542 of the California Civil Code, which provides as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

You acknowledge and represent that you have consulted with legal counsel before executing this Addendum and that you understand its meaning, including the effect of Section 1542 of the California Civil Code, and expressly consent that this Addendum shall be given full force and effect according to each and all of its express terms and provisions, including, without limitation, those relating to the release of unknown and unsuspected claims, demands and causes of action.

*(If the Studio is located in Maryland or if you are a resident of Maryland, the following shall apply):*

Any release provided for hereunder shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

16.13. Non-Disparagement. You agree not to, and to use your best efforts to cause your respective current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, spouses, parent companies, predecessors, affiliates, subsidiaries, successors and assigns not to, disparage, impugn or otherwise speak or write negatively, directly or indirectly, of us or the Released Parties, the Fitness Together® brand, the Fitness Together system, or any other service-marked or trademarked concept of us or the Released Parties, or take any other action which would subject the Fitness Together brand to ridicule, scandal, reproach, scorn, or indignity or which would negatively impact the goodwill of us, the Released Parties, or the Fitness Together brand.

17.14. Miscellaneous Provisions.

- (a) Governing Law. This Addendum will be construed and enforced in accordance with, and governed by, the laws of the state set forth in the New Agreement.
- (b) Amendment. This Addendum may not be modified or amended or any term hereof waived or discharged except in a writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced.
- (c) Headings. The headings of this Addendum are for convenience and reference only and will not limit or otherwise affect the meaning hereof.
- (d) Controlling Provisions. This Addendum modifies the New Agreement. In the event of any conflict between a provision of the New Agreement and this Addendum, the provisions of this Addendum shall control. Except as amended by this Addendum, the New Agreement is unmodified and in full force and effect in accordance with its terms.
- (e) Counterpart Signatures. This Addendum may be executed in any number of counterparts and sent via facsimile or other electronic transmission, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

[\[Signature Page Follows\]](#)

IN WITNESS WHEREOF, the ~~Parties~~parties have executed and delivered this Addendum ~~on the date first set forth above,~~ to be effective as of the ~~date signed by us set forth in the signature section below~~Effective Date.

**FRANCHISOR:**  
**FITNESS TOGETHER FRANCHISE, LLC,**  
a Delaware limited liability company

**FRANCHISEE:**

Sign:  
Name:  
Title:

**DATED\*:**  
(\*This is the Effective Date of this Agreement)

**FRANCHISE OWNER**

**(IF YOU ARE A CORPORATION, LIMITED LIABILITY COMPANY, OR PARTNERSHIP):**

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

**DATED:** \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*Date: \_\_\_\_\_

*\*This is the Effective Date of this Addendum*

**FRANCHISE OWNER**

**(IF YOU ARE AN INDIVIDUAL AND NOT A LEGAL ENTITY):**

\_\_\_\_\_  
Signature: \_\_\_\_\_

\_\_\_\_\_  
Print Name

**DATED:** \_\_\_\_\_

Name: \_\_\_\_\_

~~Title:~~ \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J**

**TABLE OF CONTENTS TO OPERATIONS MANUAL**

**FITNESS TOGETHER FRANCHISE, LLC**

**OPERATIONS MANUAL TABLE OF CONTENTS**

<b><u>Description</u></b>	<b><u>Page Numbers</u></b>	<b><u>Total Pages in Section</u></b>
Table of Contents	—1-6	6
Chapter -1 – Introduction	—7-16	10
Chapter -2 – Start-Up	-17-87	71
Chapter -3 – Client Relations	-88-101	14
Chapter -4 – Studio Operations	102-109	8
Chapter -5 – Managing Your Business	110-124	15
Chapter -6 – Sales Process	125-160	36
Chapter -7 – Accounting and Bookkeeping Overview	161-185	25
Chapter -8 – Human Resources	186-240	55
Chapter -9 – Marketing	241-264	24
Chapter 10 – Safety and Security	265-284	20
<b>Total Number of Pages</b>	<b>284</b>	

**EXHIBIT KJ**

**STATE EFFECTIVE DATES AND RECEIPTS**

### State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration:

California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

<u>State</u>	<u>Effective Date</u>
<u>California</u>	<u>Exempt</u>
<u>Hawaii</u>	<u>Pending</u>
<u>Illinois</u>	<u>Exempt</u>
<u>Indiana</u>	<u>Exempt</u>
<u>Maryland</u>	<u>Pending</u>
<u>Michigan</u>	<u>Pending</u>
<u>Minnesota</u>	<u>Pending</u>
<u>New York</u>	<u>Exempt</u>
<u>North Dakota</u>	<u>Pending</u>
<u>Rhode Island</u>	<u>Pending</u>
<u>South Dakota</u>	<u>Pending</u>
<u>Virginia</u>	<u>Pending</u>
<u>Washington</u>	<u>Pending</u>
<u>Wisconsin</u>	<u>Pending</u>

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**RECEIPT  
(OUR COPY)**

This ~~disclosure document~~[Disclosure Document](#) summarizes certain provisions of the franchise agreement and other information in plain language. Read this ~~disclosure document~~[Disclosure Document](#) and all agreements carefully.

If Fitness Together Franchise, LLC, offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable [state](#) law. Under Iowa law, we must give you this Disclosure Document at the earlier of our 1<sup>st</sup> personal meeting or 14 calendar days before you sign an agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale. Under Michigan law, we must give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Fitness Together Franchise, LLC, does not deliver this ~~disclosure document~~[Disclosure Document](#) on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit F.

The franchisor is Fitness Together Franchise, LLC, 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112, (303) 663-0880. The franchise seller for this offering is:

<input type="checkbox"/> _____ Fitness Together Franchise, LLC 9780 South Meridian Boulevard Suite 400 Englewood, CO 80112 (303) 663-0880	<input type="checkbox"/> _____ Fitness Together Franchise, LLC 9780 South Meridian Boulevard Suite 400 Englewood, CO 80112 (303) 663-0880	<input type="checkbox"/> Name of Franchised Seller: _____ Principal Business Address: _____ _____
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Issuance Date: March ~~13, 2019, as amended June 28, 2019 and September 10, 2019~~[30, 2020](#).

See Exhibit F for our registered agents authorized to receive service of process.

I have received a ~~disclosure document issued on March 13, 2019, as amended June 28, 2019 and September 10, 2019~~[Disclosure Document dated March 30, 2020](#) that included the following Exhibits:

- |                              |  |                             |   |
|------------------------------|--|-----------------------------|---|
| <del>Exhibit A -</del>       | <del>State Addenda</del>                           | <del>Exhibit F -</del>      | <del>State Agencies for Service of Process</del>              |
| <del>Exhibit B -</del>       | <del>Franchise Agreement</del>                     | <del>Exhibit G -</del>      | <del>Agreement and Conditional Consent to Transfer</del>      |
| <del>Exhibit C -</del>       | <del>Area Development Agreement</del>              | <del>Exhibit H -</del>      | <del>Form of Renewal Addendum</del>                           |
| <del>Exhibit D1 -</del>      | <del>List of Franchisees</del>                     | <del>Exhibit I -</del>      | <del>Form of General Release</del>                            |
| <del>Exhibit D2 -</del>      | <del>Franchisees Who Left the System</del>         | <del>Exhibit J -</del>      | <del>Table of Contents of Operations Manual</del>             |
| <del>Exhibit D3 -</del>      | <del>Franchises Sold But Not Yet Opened</del>      | <del>Exhibit K -</del>      | <del>Receipts</del>   |
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| <a href="#">Exhibit E -</a>  | <a href="#">Financial Statements</a>               |                             |   |

PROSPECTIVE FRANCHISEE:

If a business entity:

If an individual:

\_\_\_\_\_  
Name of Business Entity

\_\_\_\_\_  
(Print Name): \_\_\_\_\_

[Fitness Together Franchise, LLC](#)  
[March 2020 FDD](#)  
[Ex. J - State Effective Dates & Receipts](#)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

(Print Name): \_\_\_\_\_

Dated: \_\_\_\_\_

(Do not leave blank)

Dated: \_\_\_\_\_

(Do not leave blank)

Please sign this copy of the receipt, print the date on which you received this ~~disclosure document~~ [Disclosure Document](#), and return it, by mail to Fitness Together Franchise, LLC, 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112, or by faxing it to (720) 545-2151.

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If a business entity:

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Fitness Together Franchise, LLC  
March 2020 FDD  
Ex. J – State Effective Dates & Receipts

\_\_\_\_\_  
Name of Business Entity

Signature: - \_\_\_\_\_

Title: \_\_\_\_\_

(Print Name): \_\_\_\_\_

Dated: \_\_\_\_\_

(Do not leave blank)

\_\_\_\_\_  
(Print Name): \_\_\_\_\_

Dated: \_\_\_\_\_

(Do not leave blank)

~~PLEASE SIGN THIS COPY OF THE RECEIPT, PRINT THE DATE ON WHICH YOU RECEIVED THIS DISCLOSURE DOCUMENT AND KEEP IT FOR YOUR RECORDS.~~ Please sign this copy of the receipt, print the date on which you received this Disclosure Document, and return it, by mail to Fitness Together Franchise, LLC, 9780 South Meridian Boulevard, Suite 400, Englewood, Colorado 80112, or by faxing it to (720) 545-2151.