

**JENNY CRAIG FRANCHISE OFFERING CIRCULAR
EXHIBIT D**

FRANCHISE AGREEMENT



JENNY CRAIG
FRANCHISE AGREEMENT

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
	Recitals	
1	GRANT	2
2	TERM AND RENEWAL	5
3	FRANCHISOR'S DUTIES	6
4	FEES	8
5	FRANCHISEE'S DUTIES	10
6	PROPRIETARY MARKS	18
7	CONFIDENTIAL OPERATING MANUALS	21
8	CONFIDENTIAL INFORMATION	21
9	ACCOUNTING AND RECORDS	22
10	ADVERTISING	24
11	INSURANCE	29
12	TRANSFER OF INTEREST	31
13	DEFAULT AND TERMINATION	36
14	OBLIGATIONS UPON TERMINATION OR EXPIRATION	38
15	COVENANTS	41
16	TAXES, PERMITS, AND INDEBTEDNESS	43
17	INDEPENDENT CONTRACTOR AND INDEMNIFICATION	43
18	FORCE MAJEURE	44
19	APPROVALS AND WAIVERS	44
20	NOTICES	45
21	ENTIRE AGREEMENT AND AMENDMENT	45
22	SEVERABILITY AND CONSTRUCTION	45
23	APPLICABLE LAW AND DISPUTE RESOLUTION	46
24	ACKNOWLEDGMENTS	47

Exhibits:

FA-1	Approved Location and Territory
FA-2	Site Selection and Territory Addendum
FA-3	Personal Guarantee, Indemnification and Acknowledgement
FA-4	List of Principals
FA-5	EFT Authorization Form
FA-6	ADA Certification
FA-7	Food Products Purchase Agreement
FA-8	Lease Rider
FA-9	Non-Disclosure and Non-Competition Agreement
FA-10	Assignment of Telephone Numbers and Listings
FA-11	Software License Agreement
FA-12	Renewal Rider

**JENNY CRAIG
FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (the “**Agreement**”) is made and entered into on this _____ day of _____, 200____ (the “**Effective Date**”), by and between:

- Jenny Craig Franchising, LLC, a Delaware limited liability company, whose principal place of business is 5770 Fleet Street, Carlsbad, California 92008 (“**Franchisor**”); and
- _____ a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ (“**Franchisee**”).

BACKGROUND:

A. Franchisor owns a format and system (the “**System**”) relating to the establishment and operation of weight management centres that provide products and services to customers to help them manage their body weight, under the “Jenny Craig” name and marks (the “**Weight Loss and Weight Management Centres**”);

B. The distinguishing characteristics of the System include, without limitation, individual consultations; recommended exercise programs; “Jenny Craig”-branded food and food supplement products, which are proprietary (“**Branded Products**”), and other related food and beverage products that Franchisor may designate from time to time; vitamins and mineral supplements; procedures for operations; procedures for management and inventory control; training and assistance; and advertising and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time;

C. Franchisor identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the mark “Jenny Craig”, and such other trade names, service marks, and trademarks as are now designated (and may hereinafter be designated by Franchisor in writing) for use in connection with the System (the “**Proprietary Marks**”);

D. Franchisor continues to develop, use, and control the use of such Proprietary Marks in order to identify for the public the source of services and products marketed thereunder and under the System, and to represent the System’s high standards of quality, appearance, and service;

E. Franchisee desires to enter into the business of operating a Weight Loss and Weight Management Centre under the System, wishes to utilize the Proprietary Marks and wishes to obtain a franchise from Franchisor for that purpose, as well as to receive the training and other assistance provided by Franchisor in connection therewith; and

F. Franchisee understands and acknowledges the importance of Franchisor's high standards of quality, cleanliness, appearance, and service and the necessity of operating the business franchised hereunder in conformity with Franchisor's standards and specifications.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other party set forth herein, hereby agree as follows:

1. **GRANT**

1.1 Upon the terms and conditions set forth in this Agreement, Franchisor hereby grants to Franchisee the right and franchise, and Franchisee accepts and undertakes the obligation, to: (a) operate one (1) Weight Loss and Weight Management Centre under the System (the "**Centre**"); (b) to use, only in connection with the Centre, the Proprietary Marks and the System, as they may be changed, improved, or further developed from time to time by Franchisor; and (c) and to do so only at the location (the "**Approved Location**") set forth in Exhibit FA-1. If, at the time of execution of this Agreement, a location for the Centre has not been obtained by Franchisee and approved by Franchisor, Franchisee shall lease, sublease, or acquire a site for the Centre, subject to Franchisor's approval in accordance with the site selection and territory addendum attached hereto as Exhibit FA-2 (the "**Site Selection Addendum**"). Franchisee shall not relocate the Centre without Franchisor's prior written consent. Franchisor shall have the right to grant or withhold approval of the Approved Location under this Section 1.1 and the Site Selection Addendum, and if approval is granted, such approval shall not be deemed to be a guarantee, representation, or assurance by Franchisor that Franchisee's Centre at the Approved Location shall be profitable or successful.

1.2 During the term of this Agreement, Franchisor shall not establish, nor license any other person to establish, another Weight Loss and Weight Management Centre at any location within the geographic area (the "**Territory**") defined in Exhibit FA-1, except as otherwise provided in this Agreement. If, at the time of execution of this Agreement, a location for the Centre has not been obtained by Franchisee and approved by Franchisor, the Territory shall be the geographic area defined in Site Selection Addendum. Franchisor retains all other rights, and may, among other things, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein:

1.2.1 to establish, and license others to establish, Weight Loss and Weight Management Centres at any location outside the Territory notwithstanding their proximity to the Territory or the Approved Location or their actual or threatened impact on sales at Franchisee's Centre;

1.2.2 to establish, operate or acquire, or to license others to establish and operate, centres or stores under other systems or other proprietary marks, which centres or stores may offer or sell products or services that are the same as, similar to, or different from the products and services offered from the Centre, and which centres or stores may be located within or outside the Territory, notwithstanding such stores' proximity to the Approved Location or their actual or threatened impact on sales at Franchisee's Centre;

1.2.3 to sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any products or services, at or from a location or to any purchaser (including, but not limited, to sales made at retail locations, supermarkets, gourmet shops, mail order, and on the Internet), so long as such sales are not conducted from a Weight Loss and Weight Management Centre operated from a location inside the Territory; and

1.2.4 to sell and distribute, directly or indirectly, any products or services at or from the premises of a business which has been designated by Franchisor as a corporate, institutional or similar facility that primarily serves customers employed by or otherwise affiliated with such facility (a "**Corporate Account**"), which Corporate Account may be located within or outside the Territory, and notwithstanding such Corporate Account's proximity to the Approved Location or its actual or threatened impact on sales at Franchisee's Centre; provided, however, that if Franchisor desires to offer products or services at or from a Corporate Account located within the Territory, and provided Franchisee is in compliance with the terms and conditions of this Agreement, and any other agreement between Franchisor and Franchisee, Franchisor shall provide Franchisee with written notice of Franchisor's intent to offer such products and services at or from the Corporate Account located within the Territory, and Franchisor shall offer to Franchisee the opportunity to provide such products and services in lieu of Franchisor. Franchisee shall respond to Franchisor's offer to provide such products and services within ten (10) days, and if Franchisee does not respond within such ten-day period, or if Franchisee rejects the offer to provide products and services at or from the Corporate Account located within the Territory, or if Franchisee is not in compliance with this Agreement or any other agreement between Franchisor and Franchisee, then Franchisor may immediately begin providing such products or services at or from the Corporate Account located within the Territory.

1.3 In addition to the rights retained by Franchisor, as described in Section 1.2 above, Franchisee acknowledges and agrees that Franchisor and certain of Franchisor's affiliates and designees now sell and shall have the right to sell and/or license third parties to manufacture and/or sell Branded Products (and items of a similar nature) to wholesale and retail accounts, or otherwise, to any account and at any location within or outside the Territory. Franchisor, its affiliates, licensees and other authorized third parties also may engage in broadcast, print or other advertising in the Territory, whether by radio, television, cable, satellite, print, Internet or other media.

1.4 Unless otherwise permitted by Franchisor, Franchisee shall offer and sell products only from the Centre, and only in accordance with the requirements of this Agreement and the procedures set forth in the Manuals. Franchisee shall not offer or sell products or services authorized under this Agreement through any other means, including without limitation through catering, satellite locations, temporary locations, carts or kiosks, or through any catalog, or electronic media. Franchisee shall not market or promote any products or services in another franchisee's territory (other than incidental spillover from marketing efforts directed primarily to Franchisee's Territory), unless: (a) Franchisee offers such franchisee the right to be included in, and to pay a proportionate share of the cost of, such marketing and promotional activities, and (b) Franchisee provides notice to Franchisor of Franchisee's intent

to market or promote products or services in another franchisee's territory prior to so marketing or promoting. Notwithstanding the foregoing, Franchisor shall have the right, at any time, to prohibit Franchisee from marketing or promoting products or services in another franchisee's territory.

1.5 If Franchisor or any affiliate sells, or licenses others to sell, Compensable Items and/or Trademark Licenses under the Proprietary Marks within the Territory, pursuant to Sections 1.2 and 1.3, Franchisor, at its discretion, may make payments to Franchisee pursuant to the terms and conditions set forth in this Section 1.5.

1.5.1 For purposes of this Agreement, "**Compensable Items**" means sales of (a) Branded Products, and (b) Jenny Craig weight loss program memberships, by Franchisor or any affiliate outside of Weight Loss and Weight Management Centres (whether owned by Franchisor or any of its franchisees), or through Corporate Accounts, within the United States.

1.5.2 For purposes of this Agreement, "**Trademark Licenses**" means trademark licenses granted by Franchisor or any affiliate to third parties that license such third parties to sell Branded Products bearing the Proprietary Marks outside of Weight Loss and Weight Management Centres and within the United States of America.

1.5.3 For all sales of Compensable Items and Trademark Licenses, Franchisor shall pay to Franchisee until termination or expiration of this Agreement an amount to be determined by Franchisor in its discretion; provided, however, that such payments shall be made to Franchisee on a basis comparable to other franchisees who operate under the same form of franchise agreement as Franchisee.

1.5.4 Notwithstanding anything to the contrary in this Agreement, Franchisor shall not be required to make payments to Franchisee pursuant to this Section 1.5, and the obligation to make such payments shall not accrue, if, and for so long as, Franchisee is in default of any of its obligations under this Agreement, or any other agreement with Franchisor. If Franchisee is in compliance with this Agreement and all other agreements between Franchisee and Franchisor, payments to be made by Franchisor to Franchisee under this Section 1.5 shall be made no later than the end of the next calendar quarter following receipt of the revenue or payment by Franchisor or any affiliate, and, if applicable, a proper accounting from the licensee.

1.6 Notwithstanding the provisions of Section 1.5 above, Franchisor reserves the right for itself and its affiliates and/or their designees and licensees to sell and distribute certain new and/or test products (including Branded Products) ("**Test Products**") both within or outside the Territory pursuant to Section 1.3 above, which products shall not be considered Compensable Items. Franchisor shall have sole discretion to determine which products shall be Test Products for the purposes of this Section 1.6.

1.7 Unless authorized under this Agreement, Franchisee shall not cause or permit the manufacture, sale or distribution of, or other dealing with or disposal of any goods, packaging, wrapping or related materials or services or any advertisement or promotion of the

same that are or may in Franchisor's judgment be in any manner confusing or competitive with any products (including the Branded Products) goods, articles or services bearing or associated with the Proprietary Marks. Franchisee may sell ancillary products that do not compete with Franchisor's products (including the Branded Products) provided that the sale of such products is consented to in advance by Franchisor in writing. Franchisor shall have no obligation to consent to the sale of any such products.

2. TERM AND RENEWAL

2.1 Except as otherwise provided herein, the term of this Agreement shall expire ten (10) years from the Effective Date, unless sooner terminated in accordance with the provisions hereof.

2.2 Franchisee may, at its option, extend the right to operate the business franchised hereunder for one (1) additional term of ten (10) years, subject to the following conditions, each of which must be met prior to renewal:

2.2.1 Franchisee shall give Franchisor written notice of Franchisee's election to renew no fewer than one hundred twenty (120) days nor more than one hundred eighty (180) days prior to the end of the initial term;

2.2.2 Franchisee shall remodel and refurbish the Centre to comply with the current company standards in effect for new Weight Loss and Weight Management Centres as described in Section 5.10 below;

2.2.3 Franchisee shall not be in default of any provision of this Agreement, any amendment to this Agreement, any successor to this Agreement, or any other agreement between Franchisee and Franchisor or its subsidiaries and affiliates; and, in the reasonable judgment of Franchisor, Franchisee shall have substantially complied with all the terms and conditions of this Agreement, such other agreements, as well as the operating standards prescribed by Franchisor during the term of this Agreement;

2.2.4 Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its subsidiaries and affiliates, and to the National Advertising Fund, and shall have timely met those obligations throughout the term of this Agreement;

2.2.5 Franchisee shall execute Franchisor's then-current form of franchise agreement, which agreement shall supersede this Agreement in all respects (except with respect to the renewal provisions of the new franchise agreement, which shall not supersede this Section 2), and Franchisee acknowledges that the terms, conditions, and provisions of which, and the obligations of the parties thereto, may differ substantially from the terms, conditions, provisions and obligations in this Agreement, including, without limitation, a higher percentage royalty fee and advertising contribution;

2.2.6 Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its subsidiaries and affiliates, and their respective officers, directors, agents, and employees;

2.2.7 Franchisee and its personnel shall comply with Franchisor's then-current qualification and training requirements;

2.2.8 Franchisee shall demonstrate to Franchisor's satisfaction the right to retain lawful possession of the Approved Location for the duration of the renewal term on terms acceptable to Franchisor; and

2.2.9 Franchisee shall pay a renewal fee in the amount of fifty percent (50%) of the then-current initial franchise fee for new franchisees under the System, or the last initial franchise fee charged by Franchisor.

3. FRANCHISOR'S DUTIES

3.1 If the Centre is Franchisee's first (1st) Centre, then, prior to the date of opening of the Centre, Franchisor shall provide to Franchisee, and to Franchisee's Highly Trained Personnel (as defined in Section 5.5.1 below), such training programs as Franchisor may designate, to be conducted at such time(s) and location(s) designated by Franchisor. As part of the initial training program, Franchisor may provide Franchisee with on-site assistance at the Centre during the opening of the Centre. Franchisor shall also provide such ongoing training as it may, from time to time, deem appropriate. Franchisor shall be responsible for the cost of instruction and materials (except as set forth in Section 5.5.3 below), subject to the terms set forth in Sections 5.5 and 5.6 below.

3.2 Franchisor shall make available, at no charge to Franchisee, prototype architectural plans and specifications for the construction of a Weight Loss and Weight Management Centre and for the exterior and interior design and layout, fixtures, furnishings, equipment, and signs. Franchisee acknowledges that such specifications shall not contain the requirements of any federal, state or local law, code or regulation (including without limitation those concerning the Americans with Disabilities Act (the "ADA") or similar rules governing public accommodations or commercial facilities for persons with disabilities), compliance with all of which shall be Franchisee's responsibility and at Franchisee's expense. Franchisee shall adapt, at Franchisee's expense, the standard specifications to the Centre location, subject to Franchisor's approval, as provided in Section 5.2.1 below, which will not be unreasonably withheld, provided that such plans and specifications conform to Franchisor's general criteria. Franchisee understands and acknowledges that Franchisor has the right to modify the prototype architectural plans and specifications as Franchisor deems appropriate from time to time (however Franchisor will not modify the prototype architectural plans and specifications for the Centre developed pursuant to this Agreement once those prototype architectural plans and specifications have been given to Franchisee).

3.3 Franchisor shall have the right (but not the obligation) to provide a representative to be present at the opening of the Centre. Franchisor will provide such additional on-site pre-opening and opening supervision and assistance as Franchisor deems advisable.

3.4 Franchisor shall provide Franchisee, on loan, one (1) copy of the confidential operations manuals, which may consist of several volumes (the “**Manuals**”), as more fully described in Section 7 below.

3.5 Franchisor shall review and shall have the right to approve or disapprove all advertising and promotional materials that Franchisee proposes to use, pursuant to Section 10 below.

3.6 Franchisor shall administer the National Advertising Fund in the manner set forth in Section 10 below.

3.7 Franchisor shall have the right to specify in the Manuals or otherwise require that certain brands, types, makes, and/or models of communications, computer systems, computer software, and hardware to be used by, between, or among Weight Loss and Weight Management Centres, including without limitation: (a) back office and point of sale (POS) systems, customer relationship management (CRM) systems, data, audio, video, and voice storage, retrieval, and transmission systems for use at Franchisee’s Centre, between or among Weight Loss and Weight Management Centres, and between and among Franchisee’s Centre and Franchisor and/or Franchisee; (b) physical, electronic, and other security systems; (c) printers and other peripheral devices; (d) archival back-up systems; and (e) internet access mode and speed (collectively, the “**Computer System**”). Franchisor and/or its affiliates may offer and provide technical support for the Computer System, but Franchisor and/or its affiliates shall not be required to do so. Franchisor reserves the right to charge Franchisee a systems development and access fee in connection with the Computer System, which fee shall not exceed one hundred (\$100) per month, and Franchisor also reserves the right to charge Franchisee an additional technical support fee, which fee shall not exceed one hundred twenty-five dollars (\$125) per month. Franchisor reserves the right to require Franchisee to enter into a software license agreement for the use of certain proprietary software in connection with the Computer System, the current form of which is attached to this Agreement as Exhibit FA-11 (the “**Software License Agreement**”).

3.8 Franchisor shall have the right, but not the obligation, to inspect the Centre prior to the opening of the Centre. Franchisee shall not commence operation of the Centre without Franchisor’s prior written approval.

3.9 Franchisor will provide periodic assistance to Franchisee in the marketing, management, and operation of the Centre as Franchisor determines at the time(s) and in the manner determined by Franchisor.

3.10 Franchisee acknowledges and agrees that any designee, employee, or agent of Franchisor may perform any duty or obligation imposed on Franchisor by the Agreement, as Franchisor may direct.

4. FEES

4.1 Franchisee shall pay Franchisor an initial franchise fee of Twenty-Five Thousand Dollars (\$25,000) (the “**Initial Franchise Fee**”). If this Agreement is entered into pursuant to a Jenny Craig area development agreement between Franchisor and Franchisee (an “**Area Development Agreement**”) for the establishment of three (3) or more Weight Loss and Weight Management Centres, and provided Franchisee is in compliance with the Area Development Agreement, the Initial Franchise Fee for the third (3rd), fourth (4th), and fifth (5th) Weight Loss and Weight Management Centres established under the Area Development Agreement shall be Twenty Two Thousand Five Hundred Dollars (\$22,500); and the Initial Franchise Fee for the sixth (6th) (and for each additional) Weight Loss and Weight Management Centre established under the Area Development Agreement shall be Twenty Thousand Dollars (\$20,000). The Initial Franchise Fee shall be paid in full upon the execution of this Agreement. Payment of the Initial Franchise Fee shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor in granting this franchise and for Franchisor’s lost or deferred opportunity to franchise others; provided, however, that if this Agreement is terminated pursuant to Section 1 of the Site Selection Addendum, then the Initial Franchise Fee shall be refunded to Franchisee, less the amount of Five Thousand Dollars (\$5,000) in consideration for Franchisor’s costs and expenses in providing site selection and other initial services to Franchisee.

4.2 During the term of this Agreement, Franchisee shall: (a) pay Franchisor a continuing royalty fee (“**Royalty Fees**”) calculated in accordance with the following chart:

<u>If the Centre’s Gross Sales for the Week are:</u>	<u>The Royalty Fee will be:</u>
Less than or equal to \$5,770	0% of Gross Sales for the Week
Greater than \$5,770, but less than or equal to \$7,690	3% of Gross Sales for the Week
Greater than \$7,690, but less than or equal to \$9,615	4% of Gross Sales for the Week
Greater than \$9,615, but less than or equal to \$11,540	5% of Gross Sales for the Week

<u>If the Centre's Gross Sales for the Week are:</u>	<u>The Royalty Fee will be:</u>
Greater than \$11,540, but less than or equal to \$13,460	6% of Gross Sales for the Week
Greater than \$13,460	7% of Gross Sales for the Week

and (b) report to Franchisor in writing (or electronically) its Gross Sales for each Week (a “**Sales Report**”). Only one designated Royalty Fee percentage shall be applied to Gross Sales for the Week, and the Royalty Fee shall not be payable based on increments or portions of Gross Sales for the Week. As used in this Agreement, the following terms shall have the following meanings:

4.2.1 The term “**Gross Sales**” means all revenue from the sale of products, services and merchandise and all other income of every kind and nature related to, derived from, or originating from the Centre (or, if permitted pursuant to Section 1.2.4 above, at or from a Corporate Account) including, but not limited to, proceeds of any business interruption insurance policies, whether at retail or wholesale (whether such sales are permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit; provided, however, that “**Gross Sales**” shall be net of any customer refunds, and Gross Sales does not include the monetary value of any coupon sales, sales taxes, and/or other taxes collected from customers by Franchisee and actually transmitted to the appropriate taxing authorities.

4.2.2 The term “**Week**” means the period starting with the commencement of business on Saturday and concluding at the close of business on the following Friday (or, if the Centre is not open on a Friday, the immediately preceding business day); however, Franchisor shall have the right to designate in writing any other period of not less than seven days to constitute a “**Week**” under this Agreement.

4.3 All payments required by Section 4.2 above and Section 10 below based on the Gross Sales for the preceding Week, and the Sales Report required by Section 4.2 for the Gross Sales for the preceding Week, shall be paid and submitted so as to be received by Franchisor by the fifth business day following the end of the preceding Week. Franchisee shall deliver to Franchisor any and all reports, statements and/or other information required under Section 9.3 below, at the time and in the format reasonably requested by Franchisor. If requested by Franchisor, Franchisee shall establish an arrangement for electronic funds transfer or deposit of any payments required under Sections 4 or 10. Franchisee shall execute Franchisor’s current form of “Authorization Agreement for Prearranged Payments (Direct Debits),” a copy of which is attached to this Agreement as Exhibit FA-5, and Franchisee shall comply with the payment and reporting procedures specified by Franchisor in the Manual. Franchisee expressly acknowledges and agrees that Franchisee’s obligations for the full and timely payment of Royalty Fees and Advertising Contributions (and all other amounts provided for in this Agreement) shall be absolute, unconditional, fully earned, and due upon Franchisee’s generation and receipt of Gross Sales. Franchisee shall not for any reason delay or withhold

the payment of all or any part of those or any other payments due hereunder, put the same in escrow or set-off same against any claims or alleged claims Franchisee may allege against Franchisor, the National Advertising Fund, or others. Franchisee shall not, on grounds of any alleged non-performance by Franchisor or others, withhold payment of any fee, including without limitation Royalty Fees or Advertising Contributions, nor withhold or delay submission of any reports due hereunder including but not limited to Sales Reports.

4.4 Franchisee shall not, without Franchisor's prior written consent, subordinate to any other obligation its obligation to pay Franchisor the royalty fee and/or any other fee or charge payable to Franchisor, whether under this Agreement or otherwise.

4.5 Any payment or report not actually received by Franchisor (or the appropriate advertising fund) on or before such date shall be deemed overdue. If any payment required under this Agreement is overdue, Franchisee shall pay Franchisor, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of one and one-half percent (1.5%) per month, or any pro-rata portion thereof, or the maximum rate permitted by law, whichever is less. Entitlement to such interest shall be in addition to any other remedies Franchisor may have.

4.6 Franchisee shall pay to Franchisor, within fifteen (15) days of any written request by Franchisor which is accompanied by reasonable substantiating material, any monies which Franchisor has paid, or has become obligated to pay, on behalf of Franchisee, by consent or otherwise under this Agreement.

5. FRANCHISEE'S DUTIES

5.1 Franchisee understands and acknowledges that every detail of the Centre is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high operating standards, to increase the demand for the products sold by all franchisees, and to protect Franchisor's reputation and goodwill.

5.2 Before commencing any construction of the Centre, Franchisee, at its expense, shall comply, to Franchisor's satisfaction, with all of the following requirements:

5.2.1 Franchisee shall employ a qualified, licensed architect or engineer who is reasonably acceptable to Franchisor to prepare, for Franchisor's approval, preliminary plans and specifications for site improvement and construction of the Centre based upon prototype design and image specifications furnished by Franchisor in the Manual. Franchisor's approval shall be limited to conformance with Franchisor's standard image specifications and layout and shall not relate to Franchisee's obligations with respect to any federal, state and local laws, codes and regulations including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Centre, which subjects shall be Franchisee's sole responsibility. Franchisor reserves the right to itself prepare, and/or designate a third party to prepare, such preliminary plans and specifications.

5.2.2 Franchisee shall comply with all federal, state and local laws, codes and regulations, including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Centre. If Franchisee receives any complaint, claim, or other notice alleging a failure to comply with the ADA, or any other law or regulation related to health or safety, Franchisee agrees that it shall provide Franchisor with a copy of such notice within five (5) days after receipt thereof.

5.2.3 Franchisee shall be responsible for obtaining all zoning classifications, clearances, permits and certifications which may be required by state or local laws, ordinances, or regulations or which may be necessary or advisable owing to any restrictive covenants relating to Franchisee's location. After having obtained such approvals and clearances, Franchisee shall submit to Franchisor, for Franchisor's approval, final plans for construction based upon the preliminary plans and specifications. Once approved by Franchisor, such final plans shall not thereafter be changed or modified without the prior written permission of Franchisor. Any such change made without Franchisor's prior written permission shall constitute a material default under this Agreement and Franchisor may withhold its authorization to open the Centre for business until the unauthorized change is rectified (or reversed) to Franchisor's reasonable satisfaction.

5.2.4 Franchisee shall employ a qualified licensed general contractor who is reasonably acceptable to Franchisor to construct the Centre and to complete all improvements. Franchisee shall obtain and maintain in force during the entire period of construction the insurance required under Section 11 below; and Franchisee shall deliver to Franchisor such proof of such insurance as Franchisor shall require.

5.3 Franchisee shall construct, furnish, and open the Centre according to the requirements contained herein, and Franchisee shall open the Centre not later than one hundred eighty (180) days from the Effective Date. Time is of the essence. Prior to opening for business, Franchisee shall comply with all pre-opening requirements set forth in this Agreement (including without limitation those with respect to the Grand Opening Advertising Program), the Manuals, and/or elsewhere in writing by Franchisor. Within thirty (30) days after the opening of the Centre, Franchisee shall provide to Franchisor a full breakdown of all costs associated with the development and construction of the Centre in such form as Franchisor may reasonably require. Additionally, prior to opening the Centre, and after any renovation, Franchisee shall execute and deliver to Franchisor an ADA Certification in the form attached to this Agreement as Exhibit FA-6, to certify to Franchisor that the Centre and any proposed renovations comply with the ADA.

5.4 In connection with the opening of the Centre:

5.4.1 Franchisee shall conduct, at Franchisee's expense, such grand opening promotional and advertising activities as Franchisor may require, as set forth in Section 10 below.

5.4.2 Franchisee shall provide at least ten (10) days' prior notice to Franchisor of the date on which Franchisee proposes to first open the Centre for business.

5.4.3 Franchisee shall not open the Centre until Franchisor has determined that all construction has been substantially completed, and that such construction conforms to Franchisor's standards including, but not limited, to materials, quality of work, signage, decor, paint, and equipment, and Franchisor has given written Franchisee approval to open, which approval shall not be unreasonably withheld. Franchisor's approval to open the Centre does not constitute a waiver of Franchisor's right to require Franchisee to conform the Centre to Franchisor's standards.

5.4.4 Franchisee shall not open the Centre until the Highly Trained Personnel (as defined in Section 5.5) have successfully completed all training required by Franchisor, and Franchisee has hired and trained to Franchisor's standards a sufficient number of employees to service the anticipated level of the Centre's customers.

5.5 Prior to the opening of the Centre, Franchisee (or, if Franchisee is a corporation, partnership, limited liability company, or limited liability partnership, one of Franchisee's principals who is designated to supervise the operation of the Centre and who has been previously approved by Franchisor (the "**Operating Partner**")), and one (1) additional employee designated by Franchisee and reasonably acceptable to Franchisor (collectively, the "**Highly Trained Personnel**"), shall attend and successfully complete, to Franchisor's satisfaction, the initial training program offered by Franchisor, pursuant to Section 3.1 above. Notwithstanding the foregoing, Franchisee may, with Franchisor's prior written approval, designate as Highly Trained Personnel individuals who have previously completed Franchisor's initial training program in connection with another Weight Loss and Weight Management Centre established and operated by Franchisee. The Centre shall also be under the active full-time management of either Franchisee or the Operating Partner who has successfully completed (to Franchisor's satisfaction) Franchisor's initial training program. For the purposes of this Section 5.5, the Operating Partner must be a person who has an ownership interest in Franchisee, and who has executed the Guarantee, Indemnification and Acknowledgement appended to this Agreement as Exhibit FA-3.

5.5.1 If Franchisee (or the Operating Partner), or any of the Highly Trained Personnel cease active management or employment at the Centre, and Franchisee proposes to replace such individual, Franchisee shall enroll, at Franchisee's expense, a qualified replacement (who shall be reasonably acceptable to Franchisor) in Franchisor's initial training program not more than thirty (30) days after the cessation of the former person's full-time employment and/or management responsibilities. The replacement shall attend and successfully complete the basic management training program to Franchisor's reasonable satisfaction, as soon as it is practical to do so.

5.5.2 The Highly Trained Personnel may also be required to attend such refresher courses, seminars, and other training programs as Franchisor may reasonably specify from time to time.

5.5.3 The cost of initial training (instruction and required materials) for up to two (2) Highly Trained Personnel shall be borne by Franchisor. The cost of initial training for any Highly Trained Personnel in addition to the first two (2), all subsequent training of Highly Trained Personnel, and all expenses incurred in connection with training and, if required, attendance at Franchisor's annual convention, including without limitation the costs of transportation, lodging, meals, wages, and worker's compensation insurance, shall be borne by Franchisee.

5.5.4 If Franchisee requests that Franchisor provide on-site training in addition to that described in Sections 3.1 and 5.5 above, and Franchisor is able to do so, then Franchisee agrees that it shall pay Franchisor's then-current per diem charges and out-of-pocket expenses, which shall be as set forth in the Manual or otherwise in writing.

5.6 Franchisee shall use the Centre premises solely for the operation of the Centre; shall keep the Centre open and in normal operation for such hours and days as Franchisor may from time to time specify in the Manuals or as Franchisor may otherwise approve in writing; and shall refrain from using or permitting the use of the Centre premises for any other purpose or activity at any time. As used in this Section 5.6, the term "premises" shall include the grounds surrounding the Centre.

5.7 Franchisee agrees to maintain a competent, conscientious, trained staff in numbers sufficient to promptly service customers, including at least one (1) manager on duty at all times and to take such steps as are necessary to ensure that its employees preserve good customer relations and comply with such dress code as Franchisor may prescribe. Franchisor shall have the right to require Franchisee to employ one or more regional managers (who shall be individuals reasonably acceptable to Franchisor) to supervise the day to day operations of Franchisee's centres, if Franchisee (and/or an affiliate of Franchisee) operates two or more Weight Loss and Weight Management Centres. Any such regional managers shall be required to attend and successfully complete the training course specified in Section 5.5 above.

5.8 Franchisee shall meet and maintain the highest health standards and ratings applicable to the operation of the Centre. Franchisee shall furnish to Franchisor, within five (5) days after receipt thereof, a copy of all inspection reports, warnings, citations, certificates, and/or ratings resulting from inspections conducted by any federal, state or municipal agency with jurisdiction over the Centre.

5.9 Franchisee shall at all times maintain the Centre in a high degree of sanitation, repair, and condition, and in connection therewith shall make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, and decor as Franchisor may reasonably direct ("**Facilities Maintenance**").

5.10 Not sooner than one (1) year after the date upon which the Centre opens for business, and again as a pre-condition to renewal pursuant to Section 2.2.2 above, Franchisee

shall refurbish the Centre at its expense to conform to the building design, exterior facade, trade dress, signage, furnishings, decor, color schemes, and presentation of the Proprietary Marks in a manner consistent with the image then in effect for new Centres, including without limitation remodeling, redecoration, and modifications to existing improvements, as Franchisor may require in writing (collectively, "**Facilities Remodeling**").

5.10.1 In addition to Facilities Remodeling, Franchisee shall make, from time to time, such upgrades and other changes to the electronic equipment utilized in the Centre and the Computer System as Franchisor may request in writing (and as also specified in Section 3.9 above) (collectively, "**Equipment Upgrades**"). Franchisor shall have the right to require any Equipment Upgrades it deems necessary for Franchisee's Centre.

5.10.2 Facilities Remodeling shall not include Facilities Maintenance, or the normal upkeep of, the Centre, nor shall it include Equipment Upgrades.

5.10.3 Franchisee shall not be required to engage in Facilities Remodeling more than once every five (5) years during the term of this Agreement; provided, however, that Franchisor may require Facilities Remodeling more often if such Facilities Remodeling is required as a pre-condition to renewal as described in Section 2.2.2 above.

5.10.4 Franchisee shall have six (6) months after receipt of Franchisor's written notice within which to complete Facilities Remodeling.

5.11 To assure that the highest degree of quality and service is maintained, Franchisee shall operate the Centre in strict conformity with such methods, standards, and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing. Franchisee agrees:

5.11.1 To maintain in sufficient supply, and to use and/or sell at all times only such products, services, materials, and supplies, as conform to Franchisor's written standards and specifications, and to refrain from deviating therefrom by the use or offer of any non-conforming items without Franchisor's specific prior written consent.

5.11.2 To sell or offer for sale only such products as have been expressly approved for sale in writing by Franchisor; to sell or offer for sale all such products, to all customers (whether such customers are Franchisee's customers or customers of other franchised or company-owned Weight Loss and Weight Management Centres), utilizing the methods and employing the standards and techniques for presentation of products, as specified by Franchisor; to refrain from any deviation from Franchisor's standards and specifications, including manner of preparation of products, without Franchisor's prior written consent; and to discontinue selling and offering for sale any products which Franchisor has not approved. If Franchisee deviates or proposes to deviate from Franchisor's standards and specifications, whether or not such deviation is approved by Franchisor, such deviation shall become the property of Franchisor.

5.11.3 To purchase and install, at Franchisee's expense, all fixtures, furnishings, equipment, decor, and signs as Franchisor shall specify; and to refrain from installing or

permitting to be installed on or about the Centre premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting Franchisor's standards and specifications.

5.12 Notwithstanding anything to the contrary in this Agreement, Franchisee may elect to enter into the Food Products Purchase Agreement attached hereto as Exhibit G, and in so doing shall designate one of Franchisor's affiliates as Franchisee's exclusive source for the purchase of Branded Products to be sold by Franchisee from the Centre. If Franchisee does not elect to enter into the Food Products Purchase Agreement, Franchisee shall purchase all Branded Products, and other food products and merchandise only from Jenny Craig Products, Inc., Jenny Craig Operations, Inc., or alternate suppliers approved by Franchisor in the manner set forth in Section 5.13 below.

5.13 Franchisee shall purchase all Branded Products, products, supplies, materials, and other products used or offered for sale at the Centre solely from suppliers that Franchisor has approved in writing. In determining whether it will approve any particular supplier, Franchisor shall consider various factors, including but not limited to whether the supplier can demonstrate, to Franchisor's continuing reasonable satisfaction, the ability to meet Franchisor's then-current standards and specifications for such items; who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably; whose approval would enable the System, in Franchisor's sole opinion, to take advantage of marketplace efficiencies; and who have been approved in writing by Franchisor prior to any purchases by Franchisee from any such supplier, and have not thereafter been disapproved. For the purpose of this Agreement, the term "supplier" shall include, but not be limited to, manufacturers, distributors, resellers, and other vendors. Franchisee recognizes that Franchisor shall have the right to appoint only one manufacturer, distributor, reseller, and/or other vendor for any particular item.

5.13.1 Franchisor, its affiliates, and/or designees may establish food commissaries and distribution facilities, and Franchisor may designate these as approved or required manufacturers, suppliers or distributors.

5.13.2 If Franchisee wishes to purchase any products or any items from an unapproved supplier, Franchisee shall first submit to Franchisor a written request for such approval. Franchisee shall not purchase from any supplier until, and unless, such supplier has been approved in writing by Franchisor. Franchisor shall have the right to require that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to Franchisor or to an independent laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by Franchisee or the supplier. Franchisor may also require that the supplier comply with such other requirements as Franchisor may deem appropriate, including payment of reasonable continuing inspection fees and administrative costs, or other payment to Franchisor by the supplier on account of their dealings with Franchisee or other franchisees, for use, without restriction (unless otherwise instructed by the supplier) and for services that Franchisor may render to such suppliers. Franchisor reserves the right, at its option,

to reinspect from time to time the facilities and products of any such approved supplier and to revoke its approval upon the supplier's failure to continue to meet any of Franchisor's then-current criteria.

5.13.3 Nothing in the foregoing shall be construed to require Franchisor to approve any particular supplier, nor to require Franchisor to make available to prospective suppliers, standards and specifications for formulas, which Franchisor shall have the right to deem confidential.

5.13.4 Notwithstanding anything to the contrary contained in this Agreement, Franchisee acknowledges and agrees that, at Franchisor's sole option, Franchisor may establish one or more strategic alliances or preferred vendor programs with one or more nationally or regionally-known suppliers who are willing to supply all or some Centres with some or all of the products and/or services that Franchisor requires for use and/or sale in the development and/or operation of Centres. In this event, Franchisor may limit the number of approved suppliers with whom Franchisee may deal, designate sources that Franchisee must use for some or all products and other products and services, and/or refuse any of Franchisee's requests if Franchisor believes that this action is in the best interests of the System or the network of Centres. Franchisor shall have unlimited discretion to approve or disapprove of the suppliers who may be permitted to sell products to Franchisee.

5.14 Franchisee shall require all advertising and promotional materials, signs, decorations, paper goods, any and all replacement trade dress products, and other items which may be designated by Franchisor to bear the Franchisor's then-current Proprietary Marks and logos in the form, color, location, and manner then-prescribed by Franchisor.

5.15 Franchisee grants Franchisor and its agents the right to enter upon the Centre premises at any time for the purpose of conducting inspections, for among other purposes, preserving validity of the Proprietary Marks, and verifying Franchisee's compliance with this Agreement and the policies and procedures outlined in the Manuals. Franchisee shall cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, Franchisee shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection.

5.16 At Franchisor's request, Franchisee shall purchase or lease, and thereafter maintain, the Computer System. Franchisor shall have the right at any time to retrieve and use such data and information from Franchisee's Computer System that Franchisor deems necessary or desirable. In view of the contemplated interconnection of computer systems and the necessity that such systems be compatible with each other, Franchisee expressly agrees that it shall strictly comply with Franchisor's standards and specifications for all item(s) associated with Franchisee's Computer System, and will otherwise operate its Computer System in accordance with Franchisor's standards and specifications. To ensure full operational efficiency and optimum communication capability between and among equipment and computer systems installed by Franchisee, Franchisor, and other franchisees, Franchisee

agrees, at its expense, that Franchisee shall keep its Computer System in good maintenance and repair, and, at its expense, and following the determination that Franchisor shall have the right to make, to the effect that same will prove economically or otherwise beneficial to all System franchisees, that Franchisee shall promptly install such additions, changes, modifications, substitutions and/or replacement to Franchisee's computer hardware, software, telephone and power lines, and other related facilities, as Franchisor directs periodically in writing.

5.16.1 Franchisee acknowledges and agrees that exchanging information with Franchisor by E-mail is an important way to enable quick, effective, and efficient communication, and that Franchisor is entitled to rely upon Franchisee's use of E-mail for communicating as part of the economic bargain underlying this Agreement. To facilitate the use of E-mail to exchange information, Franchisee authorizes the transmission of E-mail by Franchisor and Franchisor's employees, vendors, and affiliates (on matters pertaining to the Weight Loss and Weight Management Centre) (together, "**Official Senders**") to Franchisee during the term of this Agreement.

5.16.2 In order to implement the terms of this Section 5.16, Franchisee agrees that: (a) Official Senders are authorized to send E-mails to those of Franchisee's employees as Franchisee may occasionally designate for the purpose of communicating with Franchisor; (b) it will cause its officers, directors, and employees (as a condition of their employment or position with Franchisee) to give their consent to Official Senders' transmission of E-mails to those persons, and that such persons shall not opt-out, or otherwise ask to no longer receive e-mails, from Official Senders during the time that such person works for or is affiliated with Franchisee; and (c) it will not opt-out, or otherwise ask to no longer receive e-mails, from Official Senders during the term of this Agreement.

5.17 Franchisee shall offer for sale, and will honor for purchases by customers, any incentive, coupon, or customer loyalty programs which Franchisor may institute from time to time, and Franchisee shall do so in compliance with Franchisor's standards and procedures for such programs.

5.18 Franchisee agrees that Franchisor may set reasonable restrictions on the maximum prices Franchisee may charge for the menu items, products and services offered and sold hereunder. With respect to the sale of all such menu items, products, or services, Franchisee shall have sole discretion as to the prices to be charged to customers; provided, however, that Franchisor may set maximum prices on such menu items, products, and services. If Franchisor has imposed such a maximum price on a particular menu item, product, or service, Franchisee may charge any price for such menu item, product, or service, up to and including the maximum price set by Franchisor.

5.19 Beginning thirteen (13) months after the opening of the Centre, Franchisee is required to collect minimum Gross Sales in the amount of Five Thousand Dollars (\$5,000) per Week for the Centre; provided, however, that Franchisee shall not be in violation of this Section 5.19 if the average Weekly Gross Sales for the Centre exceed Seven Thousand Five

Hundred Dollars (\$7,500) per Week for any period of at least twelve (12) consecutive Weeks during the previous twelve (12) months.

5.20 Except as otherwise approved in writing by Franchisor, Franchisee shall: (i) confine its activities, and its governing documents shall at all times provide that its activities are confined, exclusively to operating the Centre; (ii) if Franchisee is a corporation, maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Franchisee and furnish the list to Franchisor upon request; (iii) if Franchisee is a partnership or limited liability partnership, prepare and furnish to Franchisor, upon request, a current list of all general and limited partners in Franchisee; and (iv) if Franchisee is a limited liability company, prepare and furnish to Franchisor, upon request, a current list of all general and limited partners in Franchisee.

6. PROPRIETARY MARKS

6.1 Franchisor represents with respect to the Proprietary Marks that:

6.1.1 Franchisor's parent company, Jenny Craig, Inc., or one of its affiliates ("JCI"), is the owner of all right, title, and interest in and to the Proprietary Marks.

6.1.2 Franchisor, through a license from JCI, has the right to use, and to license others to use, the Proprietary Marks.

6.1.3 Franchisor has taken and will take all steps reasonably necessary to preserve and protect the ownership and validity in, and of, the Proprietary Marks.

6.2 With respect to Franchisee's use of the Proprietary Marks, Franchisee agrees that:

6.2.1 Franchisee shall use only the Proprietary Marks designated by Franchisor, and shall use them only in the manner authorized and permitted by Franchisor; all items bearing the Proprietary Marks shall bear the then-current logo.

6.2.2 Franchisee shall use the Proprietary Marks only for the operation of the business franchised hereunder and only at the location authorized hereunder, or in franchisor-approved advertising for the business conducted at or from that location.

6.2.3 Unless Franchisor otherwise directs Franchisee, in writing, to do so, Franchisee shall operate and advertise weight loss centres only under the name "Jenny Craig" without prefix or suffix.

6.2.4 During the term of this Agreement and any renewal of this Agreement, Franchisee shall identify itself (in a manner reasonably acceptable to Franchisor) to its customers, the public, its employees, and all others, as the owner of the Centre in conjunction with any use of the Proprietary Marks, including, but not limited to, uses on invoices, order

forms, receipts, and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Centre as Franchisor may designate in writing.

6.2.5 Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of Franchisor's rights.

6.2.6 Franchisee shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor.

6.2.7 Franchisee shall not use the Proprietary Marks as part of its corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee in any electronic medium.

6.2.8 Franchisee shall execute any documents deemed necessary by Franchisor to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability.

6.2.9 With respect to litigation involving the Proprietary Marks, the parties agree that:

6.2.9.1 Franchisee shall promptly notify Franchisor of any suspected infringement of the Proprietary Marks, any known challenge to the validity of the Proprietary Marks, or any known challenge to JCI's ownership of, or Franchisor or Franchisee's right to use, the Proprietary Marks licensed hereunder. Franchisee acknowledges that JCI and Franchisor shall have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. JCI and Franchisor shall also have the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out-of-pocket litigation costs in doing such acts and things, except that Franchisee shall bear the salary costs of its employees, and Franchisor shall bear the costs of any judgment or settlement. To the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisee shall reimburse Franchisor for the cost of such litigation (or, upon Franchisor's written request, pay Franchisor's legal fees directly), including without limitation attorney's fees, as well as the cost of any judgment or settlement.

6.2.9.2 If Franchisee has used the Proprietary Marks in accordance with this Agreement, Franchisor shall defend Franchisee at Franchisor's expense against any third party claim, suit, or demand involving the Proprietary Marks arising out of Franchisee's proper use thereof. If Franchisee has not used the Proprietary Marks in accordance with this Agreement, Franchisor will defend Franchisee, at Franchisee's expense, against such third party claims, suits, or demands.

6.2.9.3 If JCI or Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Franchisee shall execute any and all documents and do such acts and things as may, in the opinion of counsel for Franchisor, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out-of-pocket costs in doing such acts and things, except that Franchisee shall bear the salary costs of its employees, and Franchisor shall bear the costs of any judgment or settlement. To the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisee shall reimburse Franchisor for the cost of such litigation, including without limitation attorney's fees, as well as the cost of any judgment or settlement.

6.3 Franchisee expressly understands and acknowledges that:

6.3.1 The Proprietary Marks are valid and serve to identify the System and those who are authorized to operate under the System.

6.3.2 Neither Franchisee nor any principal of Franchisee shall directly or indirectly contest the validity of JCI's ownership of the Proprietary Marks, nor shall Franchisee, directly or indirectly, seek to register the Proprietary Marks with any government agency, except with Franchisor's express prior written consent.

6.3.3 Franchisee's use of the Proprietary Marks does not give Franchisee any ownership interest or other interest in or to the Proprietary Marks, except the license granted by this Agreement.

6.3.4 Any and all goodwill arising from Franchisee's use of the Proprietary Marks shall inure solely and exclusively to JCI and Franchisor's benefit, and upon expiration or termination of this Agreement and the license herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the System or the Proprietary Marks.

6.3.5 The right and license of the Proprietary Marks granted hereunder to Franchisee is non-exclusive, and Franchisor thus has and retains the rights, among others:

6.3.5.1 To use the Proprietary Marks itself in connection with selling products and services;

6.3.5.2 To grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees;

6.3.5.3 To develop and establish other systems using the same or similar Proprietary Marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to Franchisee.

6.3.6 Franchisor reserves the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder if the Proprietary Marks no longer can be used, or if Franchisor, exercising its right to do so, determines that substitution of different proprietary marks will be beneficial to the System. In such circumstances, the use of the substituted proprietary marks shall be governed by the terms of this Agreement.

7. CONFIDENTIAL OPERATING MANUALS

7.1 In order to protect the reputation and goodwill of Franchisor and to maintain high standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct its business in accordance with the Manuals, one (1) copy of which Franchisee acknowledges having received on loan from Franchisor for the term of this Agreement.

7.2 Franchisee shall at all times treat the Manuals, any other manuals created for or approved for use in the operation of the Centre, and the information contained therein, as confidential, and shall use best efforts to maintain such information as secret and confidential. Franchisee shall not at any time copy, duplicate, record, or otherwise reproduce the foregoing materials, in whole or in part, nor otherwise make the same available to any unauthorized person.

7.3 The Manuals shall at all times remain the sole property of Franchisor and shall at all times be kept in a secure place on the Centre premises.

7.4 Franchisor may from time to time revise the contents of the Manuals, and Franchisee expressly agrees to make corresponding revisions to its copy of the Manuals and to comply with each new or changed standard.

7.5 Franchisee recognizes and agrees that from time to time, Franchisor may change or modify the System and that Franchisee will accept and use for the purpose of this Agreement any such change in the System, including new or modified trade names, service marks, trademarks or copyrighted materials, new products, new equipment or new techniques, as if they were part of this Agreement at the time of execution hereof, provided the financial burden placed upon Franchisee is not substantial. Franchisee will make such expenditures and such changes or modifications as Franchisor may reasonably require pursuant to this Section 7.5, and to Section 5 above.

8. CONFIDENTIAL INFORMATION

8.1 Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised hereunder which may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's operation under the terms of this Agreement. Franchisee shall divulge such confidential information only to such of its employees as must have access to it in order to operate the Centre. Any and all information, knowledge, know-how, and techniques which Franchisor designates as confidential shall be

deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention prior to disclosure thereof by Franchisor; or which, at or after the time of disclosure by Franchisor to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others. Any employee who may have access to any confidential information regarding the Centre shall execute a covenant that s/he will maintain the confidentiality of information they receive in connection with their association with Franchisee. Such covenants shall be on a form provided by Franchisor, which form shall, among other things, designate Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

8.2 Franchisee acknowledges that any failure to comply with the requirements of this Section 8 will cause Franchisor irreparable injury, and Franchisee agrees to pay all court costs and reasonable attorney's fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 8.

8.3 Franchisee agrees to disclose to Franchisor all ideas, concepts, methods, techniques and products conceived or developed by Franchisee, its affiliates, owners or employees during the term of this Agreement relating to the development and/or operation of the Centres. Franchisee hereby grants to Franchisor and agrees to procure from its affiliates, owners or employees a perpetual, non-exclusive, and worldwide right to use any such ideas, concepts, methods, techniques and products in all food service businesses operated by Franchisor or its affiliates, franchisees and designees. Franchisor shall have no obligation to make any payments to Franchisee with respect to any such ideas, concepts, methods, techniques or products. Franchisee agrees that Franchisee will not use or allow any other person or entity to use any such concept, method, technique or product without obtaining Franchisor's prior written approval.

9. ACCOUNTING AND RECORDS

9.1 With respect to the operation and financial condition of the Centre, Franchisee shall adopt, until otherwise specified by Franchisor, a fiscal year consisting of not less than twelve (12) accounting periods of four or five weeks each, which coincides with Franchisor's then-current fiscal year, as specified by Franchisor. Franchisee shall maintain for a period of not less than three (3) years during the term of this Agreement, and, for not less than three (3) years following the termination, expiration, or non-renewal of this Agreement, full, complete, and accurate books, records, and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by Franchisor from time to time in the Manuals or otherwise in writing.

9.2 Franchisee shall, at its expense, provide to Franchisor, in a format specified by Franchisor, a complete annual financial statement (prepared according to generally accepted accounting principles, that includes a fiscal year-end balance sheet, an income statement of the Centre for such fiscal year reflecting all year-end adjustments, and a statement of changes in cash flow of Franchisee), on a review basis, prepared by an independent certified public accountant satisfactory to Franchisor, no later than ninety (90) days after the end of each fiscal

year of the Centre, showing the results of operations of the Centre during the most recently completed fiscal year. In addition, no later than the thirtieth (30th) day of each month during the term of this Agreement after the opening of the Centre, Franchisee shall submit to Franchisor, in a format acceptable to (or, at Franchisor's election, specified by) Franchisor, certified by the chief executive or Operating Partner of Franchisee that to the best of his/her knowledge, the following are true, accurate and complete: (i) a fiscal period and fiscal year-to-date profit and loss statement (which may be unaudited) for the Centre; (ii) reports of those income and expense items of the Centre which Franchisor specifies from time to time for use in any revenue, earnings, and/or cost summary it chooses to furnish to prospective franchisees, provided that Franchisor will not identify to prospective franchisees any specific financial results of the Centre; and (iii) copies of all state sales tax returns for the Centre. In addition, if Franchisee (and/or any affiliate of Franchisee) operates two (2) or more Centres, pursuant to separate franchise agreements, then at its expense, Franchisee shall also furnish to Franchisor, no later than ninety (90) days after the end of each fiscal year for the preceding fiscal year of the Centre during the term hereof, an Administrative P&L. The term "Administrative P&L" is understood to mean a profit and loss statement, and such additional financial information in such detail as Franchisor may reasonably require, relating to the expenses Franchisee (and/or its affiliates) incurred with respect to the management of its operations (including without limitation Centre management) during said fiscal year; and such Administrative P&L shall be prepared on a review basis by an independent certified public accountant satisfactory to Franchisor.

9.3 Franchisee shall also submit to Franchisor in addition to the Sales Reports required pursuant to Section 4.2, for review or auditing, such other forms, reports, records, information, and data as and when Franchisor may reasonably designate, in the form and format, and at the times and places reasonably required by Franchisor, upon request and as specified from time to time in the Manuals or otherwise in writing, including, without limitation, via computer diskette, or otherwise in electronic format, and/or restated in accordance with Franchisor's financial reporting periods, consistent with Franchisor's then current financial reporting periods and accounting practices and standards.

9.4 Franchisor or its designated agents shall have the right at all reasonable times to examine, copy, and/or personally review or audit, at Franchisor's expense, all books, records, and sales and income tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books of Franchisee. If an inspection should reveal that any payments have been understated in any report to Franchisor, then Franchisee shall immediately pay Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less. If an inspection is necessitated because Franchisee fails to timely provide Sales Reports or if an inspection discloses an understatement in any report by Franchisee of two percent (2%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages expenses, and reasonable accounting and legal costs). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

10. ADVERTISING

10.1 For each Week during the term of this Agreement, Franchisee shall be required to contribute for advertising and promotion an amount up to ten percent (10%) of the first Fourteen Thousand Five Hundred Dollars (\$14,500) of Gross Sales for the Centre during the preceding Week, and up to five percent (5%) of all Gross Sales in addition to the first Fourteen Thousand Five Hundred Dollars (\$14,500) during the preceding Week (the “**Advertising Contribution**”). The Advertising Contribution shall be paid by Franchisee in the manner required under Section 4.3 above (and as otherwise provided in this Section 10). In addition to the Advertising Contribution, Franchisee shall undertake and complete the Grand Opening Advertising Program, as provided in Section 10.8 below.

10.2 Franchisee’s Advertising Contribution shall be paid to the national advertising fund (the “**National Advertising Fund**”), or to any Regional Ad Fund established pursuant to Section 10.4 below, or for local advertising and promotion, in such proportions as Franchisor shall have the right to designate from time-to-time; provided that Franchisee shall not be required to contribute or expend, in total, more than the amount of the Advertising Contribution.

10.3 The National Advertising Fund shall be maintained and administered by Franchisor or its designee, as follows:

10.3.1 Franchisor or its designee shall have the right to direct all advertising programs, as well as all aspects thereof, including without limitation, the concepts, materials, and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the National Advertising Fund is intended to maximize general public recognition, acceptance, and use of the System; and that Franchisor and its designee are not obligated, in administering the National Advertising Fund, to make expenditures for Franchisee which are equivalent or proportionate to Franchisee’s contribution, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the National Advertising Fund.

10.3.2 The National Advertising Fund, all contributions thereto, and any earnings thereon, shall be used exclusively (except as otherwise provided in this Section 10.3), in Franchisor’s discretion as to the allocation of amounts, to meet any and all costs of maintaining, administering, directing, conducting, creating and/or otherwise preparing advertising, marketing, public relations and/or promotional programs and materials, and any other activities which Franchisor believes will enhance the image of the System, including, without limitation, the costs of preparing and conducting: media advertising campaigns; direct mail advertising; marketing surveys and other public relations activities; employing advertising and/or public relations agencies to assist therein; purchasing promotional items, conducting and administering visual merchandising, POS, and other merchandising programs; and providing promotional and other marketing materials and services to the Centres operated under the System. Advertising, marketing and promotional materials created and/or used in connection with the National Advertising Fund may include mention of franchise availability; provided, that such materials

shall not be used primarily for the purpose of advertising franchise availability. The National Advertising Fund may also be used to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, approved in advance by Franchisor, which products, services, or improvements Franchisor shall have the right to determine will promote general public awareness and favorable support for the System.

10.3.3 Franchisee shall submit the Advertising Contribution in the manner specified in Sections 4.3 and 10.2 above. Each Advertising Contribution paid by Franchisee to the National Advertising Fund shall be maintained in an account separate from Franchisor's other monies. Franchisor shall have the right to charge the National Advertising Fund for such reasonable administrative costs and overhead as Franchisor may incur in activities reasonably related to the direction and implementation of the National Advertising Fund and advertising programs for franchisees and the System, including, without limitation, costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs. Other than the extent to which the National Advertising Fund benefits Franchisor's company-owned Weight Loss and Weight Management Centres, the National Advertising Fund and its earnings shall not otherwise inure to the benefit of Franchisor. Franchisor or its designee shall maintain separate bookkeeping accounts for the National Advertising Fund.

10.3.4 The National Advertising Fund is not and shall not be an asset of Franchisor, nor a trust, and Franchisor does not assume any fiduciary obligation to Franchisee for maintaining, directing or administering the National Advertising Fund or for any other reason. A statement of the operations of the National Advertising Fund as shown on the books of Franchisor shall be prepared annually by Franchisor and shall be made available to Franchisee.

10.3.5 Although the National Advertising Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate the National Advertising Fund. The National Advertising Fund shall not be terminated, however, until all monies in the National Advertising Fund have been expended for advertising and/or promotional purposes.

10.3.6 Franchisor reserves the right to establish an advertising association to administer the National Advertising Fund (a "**National Advertising Association**"). If established by Franchisor, the National Advertising Association shall be organized by Franchisor, and governed in a form and manner, and shall commence operations on a date, approved by Franchisor in writing. Unless otherwise specified by Franchisor, the activities carried on by the National Advertising Association shall be decided by a majority vote. Any Weight Loss and Weight Management Centres that Franchisor (or Franchisor's affiliate) operates shall have the same voting rights in the National Advertising Association as those owned by its franchisees. Each Weight Loss and Weight Management Centre owner shall be entitled to cast one (1) vote with the National Advertising Association for each Weight Loss and Weight Management Centre owned.

10.4 Franchisor shall have the right to designate any geographical area for purposes of establishing a regional advertising fund ("**Regional Ad Fund**"). If a Regional Ad Fund for the geographic area in which the Centre is located has been established at the time Franchisee

commences operations hereunder, Franchisee shall immediately become a member of such Regional Ad Fund. If a Regional Ad Fund for the geographic area in which the Centre is located is established during the term of this Agreement, Franchisee shall become a member of such Regional Ad Fund within thirty (30) days after the date on which the Regional Ad Fund commences operation. In no event shall Franchisee be required to be a member of more than one (1) Regional Ad Fund. The following provisions shall apply to each such Regional Ad Fund:

10.4.1 Each Regional Ad Fund shall be administered by a regional advertising association (a “**Regional Advertising Association**”). The Regional Advertising Association shall be organized by the members of the Regional Ad Fund, and governed in a form and manner, and shall commence operations on a date, approved by Franchisor in writing. Unless otherwise specified by the members of the Regional Ad Fund, the activities carried on by the Regional Advertising Association shall be decided by a majority vote of its members. Any Weight Loss and Weight Management Centres that Franchisor (or Franchisor’s affiliate) operates shall have the same voting rights in the Regional Advertising Association as those owned by its franchisees. Each Weight Loss and Weight Management Centre owner shall be entitled to cast one (1) vote with the Regional Advertising Association for each Weight Loss and Weight Management Centre owned.

10.4.2 Each Regional Ad Fund shall be organized for the exclusive purpose of administering regional advertising programs and developing, subject to Franchisor’s approval, standardized promotional materials for use by the members in local and regional advertising and promotion.

10.4.3 No advertising or promotional plans or materials may be used by a Regional Ad Fund or furnished to its members without the prior approval of Franchisor, pursuant to the procedures and terms as set forth in Section 10.7 below.

10.4.4 Franchisee shall contribute to the Regional Ad Fund through the Advertising Contribution at the time required under Section 10.2 above, together with such statements or reports as may be required by Franchisor or by the Regional Advertising Association with Franchisor’s prior written approval.

10.4.5 Although once established, each Regional Ad Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate any Regional Ad Fund. A Regional Ad Fund shall not be terminated, however, until all monies in that Regional Ad Fund have been expended for advertising and/or promotional purposes.

10.5 All local advertising and promotion by Franchisee shall be in such media, and of such type and format as Franchisor may approve; and, shall conform to such standards and requirements as Franchisor may specify. Franchisee shall not use any advertising or promotional plans or materials unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in Section 10.7 below. Franchisor reserves the right to require Franchisee to provide Franchisor with a written report of all local

advertising and promotion expenditures for each month (or such other time period as Franchisor may determine) during the term of the Agreement no later than the fifteenth (15th) day after the end of each month, or as otherwise required. If, at the end of any particular year of this Agreement, Franchisor determines that Franchisee has not expended the required amount on local advertising and promotion as set forth in Section 10.2 above, Franchisor shall have the right to direct Franchisee to deposit the amount of such deficiency into the National Advertising Fund.

10.6 Franchisor shall make available to Franchisee from time to time, at Franchisee's expense, advertising plans and promotional materials, including newspaper mats, coupons, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, community relations programs, and similar advertising and promotional materials for use in local advertising and promotion.

10.7 For all proposed advertising, marketing, and promotional plans, Franchisee shall submit samples of such plans and materials to Franchisor (by means described in Section 19 below), for Franchisor's review and prior written approval (except with respect to maximum prices to be charged by Franchisee). If written approval is not received by Franchisee from Franchisor within fourteen (14) days of the date of receipt by Franchisor of such samples or materials, Franchisor shall be deemed to have disapproved them. Franchisee acknowledges and agrees that any and all copyrights in and to advertising and promotional materials developed by or on behalf of Franchisee shall be the sole property of Franchisor, and Franchisee agrees to execute such documents (and, if necessary, require its independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision.

10.8 In addition to and not in lieu of the Advertising Contribution, Franchisee shall expend not less than Three Thousand Dollars (\$3,000) for grand opening advertising and promotional programs in conjunction with the Centre's initial grand opening, pursuant to a grand opening marketing plan development by Franchisor or developed by Franchisee and approved in writing by Franchisor (the "**Grand Opening Advertising Program**"). The Grand Opening Advertising Program shall be executed and completed within sixty (60) days after the Centre commences operation. Franchisee shall submit to Franchisor, for Franchisor's prior written approval, a marketing plan and samples of all advertising and promotional material not prepared or previously approved by Franchisor. For the purpose of this Agreement, the Grand Opening Advertising Program shall be considered local advertising and promotion, as provided under Section 10.10 below.

10.9 Franchisee understands and acknowledges that the required contributions and expenditures are minimum requirements only, and that Franchisee may, and is encouraged by Franchisor to, expend additional funds for local advertising and promotion of a local nature which will focus on disseminating advertising directly related to Franchisee's Weight Loss and Weight Management Centre.

10.10 As used in this Agreement, the term “**local advertising and promotion**” shall consist only of the direct costs of purchasing and producing advertising materials (including, but not limited to, camera-ready advertising and point of sale materials), media (space or time), and those direct out-of-pocket expenses related to costs of advertising and sales promotion spent by Franchisee in its local market or area, advertising agency fees and expenses, postage, shipping, telephone, and photocopying; however, the parties expressly agree that advertising and sales promotion shall not include costs or expenses incurred by or on behalf of Franchisee in connection with any of the following:

10.10.1 Salaries and expenses of any employees of Franchisee, including salaries or expenses for attendance at advertising meetings or activities, or incentives provided or offered to such employees, including discount coupons;

10.10.2 Charitable, political, or other contributions or donations;

10.10.3 The value of discounts provided to customers; and

10.10.4 The cost of food items.

10.11 Franchisee specifically acknowledges and agrees it shall not establish a Website (as defined below), nor offer, promote, or sell any products or services, or make any use of the Proprietary Mark, through the Internet without Franchisor’s prior written approval. As a condition to granting any such consent, Franchisor shall have the right to establish such requirements as Franchisor deems appropriate, including but not limited to the requirement that Franchisee’s only presence on the Internet shall be through a webpage established by Franchisor on Franchisor’s website. Any Website shall be deemed “advertising” under this Agreement, and will be subject to (among other things) to Franchisor’s approval under Section 10.7 above. (As used in this Agreement, the term “**Website**” means an interactive electronic document, contained in a network of computers linked by communications software. The term Website includes, but is not limited to, Internet and World Wide Web home pages.)

10.12 Franchisee shall maintain a business telephone and advertise continuously in the classified or Yellow Pages of the local telephone directory under listings deemed appropriate by Franchisor using mats of the type and size approved in advance by Franchisor. When more than one (1) Weight Loss and Weight Management Centre serves a metropolitan area, if Franchisor so requests, classified advertisements shall list all Weight Loss and Weight Management Centres (as of the date the advertisement is placed) within the distribution area of such classified directories, and Franchisee shall contribute its pro rata share of the cost of such advertisement. Franchisee’s expenditures required under this Section 10.12 shall count towards Franchisee’s required expenditures for local advertising and promotion as set forth above in Section 10.5.

10.13 Franchisee acknowledges and agrees that certain associations between Franchisee and/or the Centre, and/or the Proprietary Marks and/or the System, on the one hand, and certain political, religious, cultural or other types of groups, organizations, causes, or

activities, on the other, however well-intentioned and/or legal, may create an unwelcome, unfair, or unpopular association with, and/or an adverse effect on, the reputation of Franchisor or the good will associated with the Marks. Accordingly, Franchisee shall not, without the prior written approval of Franchisor, engage in any activities with, or donate any money, products, services, goods, or other items to, any charitable, political or religious organization, group, or activity, if such action is taken, or may be perceived by the public to be taken, in the name of, in connection or association with Franchisee, the Proprietary Marks, the Centre, the Franchisor, or the System.

11. INSURANCE

11.1 Prior to the commencement of any activities or operations pursuant to this Agreement, Franchisee shall procure and maintain in full force and effect during the term of this Agreement (and for such period thereafter as is necessary to provide the coverages required hereunder for events having occurred during the Term of this Agreement), at Franchisee's expense, the following insurance policy or policies in connection with the Centre or other facilities on premises, or by reason of the construction, operation, or occupancy of the Centre or other facilities on premises. Such policy or policies shall be written by an insurance company or companies approved by Franchisor, having a rating of at least "A-VII" in the most recent Key Rating Guide published by the A.M. Best Company (or another rating that Franchisor reasonably designates if A.M. Best Company no longer publishes the Key Rating Guide) and licensed to do business in the state in which the Centre is located, and shall include, at a minimum (except as additional coverages and higher policy limits may reasonably be specified for all franchisees from time to time by Franchisor in the Manuals or otherwise in writing to reflect inflation, identification of new risks, changes in the law or standards of liability, higher damage awards and other relevant changes in circumstances), the following:

11.1.1 Commercial general liability insurance, written on an occurrence basis, extended to include contractual liability, products and completed operations, and personal and advertising injury, with a combined bodily injury and property damage limit of not less than One Million Dollars (\$1,000,000) per occurrence.

11.1.2 Business automobile liability insurance, including a combined single bodily injury and property damage coverage for all owned, non-owned, and hired vehicles, with limits of liability not less than One Million Dollars (\$1,000,000) per occurrence for both bodily injury and property damage.

11.1.3 Statutory workers' compensation insurance and employer's liability insurance for a minimum limit of at least One Million Dollars (\$1,000,000), as well as such other disability benefits type insurance as may be required by statute or rule of the state in which the Centre is located.

11.1.4 Commercial umbrella liability insurance with limits which bring the total of all primary underlying coverages (comprehensive general liability, business auto liability, and employers liability) to not less than Two Million Dollars (\$2,000,000) total limit of liability.