

11.1.5 Property insurance providing coverage for direct physical loss or damage to real and personal property for all-risk perils.

11.1.6 Business interruption insurance covering losses in revenue and/or profit normally expected for the duration of the interruption. Such business interruption insurance also shall include a provision that Franchisor shall be paid directly from the insurance company all royalty and advertising payments based on normally expected Gross Sales, as well as interest and other payments due under this Agreement.

11.1.7 Any other insurance coverage that is required by federal, state, or municipal law.

11.2 All policies listed in Section 11.1 above (unless otherwise noted below) shall contain such endorsements as shall, from time to time, be provided in the Manuals.

11.3 In the event of cancellation, material change, or non-renewal of any policy, thirty (30) days' advance written notice must be provided to Franchisor in the manner provided in Section 20 below.

11.4 In connection with all significant construction, reconstruction, or remodeling of the Centre during the term of this Agreement, Franchisee will cause the general contractor, its subcontractors, and any other contractor, to effect and maintain at general contractor's and all other contractor's own expense, such insurance policies and bonds with such endorsements as are set forth in the Manuals, all written by insurance or bonding companies approved by Franchisor, having a rating as set forth in Section 11.1 above.

11.5 Franchisee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section 17.4 below.

11.6 All commercial general liability policies shall list Franchisor as an additional named insured, and shall also contain a provision that Franchisor, although named as an insured, shall nevertheless be entitled to recover under said policies on any loss occasioned to Franchisor or its servants, agents, or employees by reason of the negligence of Franchisee or its servants, agents, or employees.

11.7 At least thirty (30) days prior to the time any insurance is first required to be carried by Franchisee, and thereafter at least thirty (30) days prior to the expiration of any such policy, Franchisee shall deliver to Franchisor, certificates of insurance evidencing the proper coverage with limits not less than those required hereunder. All certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given Franchisor in the event of material alteration to, cancellation, or non-renewal of the coverages evidenced by such certificates. Further certificates evidencing the insurance required by Section 11.1 above shall name Franchisor, and each of its affiliates, directors, agents, and employees as additional insureds, and shall expressly provide that any interest of same therein shall not be affected by

any breach by Franchisee of any policy provisions for which such certificates evidence coverage.

11.8 Franchisor shall have the right, from time to time, to make such changes in minimum policy limits and endorsements as it may determine; provided, however, all changes shall apply to all franchisees of Franchisor who operate under the same form of franchise agreement as Franchisee.

## 12. **TRANSFER OF INTEREST**

12.1 Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.

12.2 If Franchisee is a corporation, limited liability company, partnership, or limited liability partnership, each principal of Franchisee with an ownership interest (“Principal”), and the interest of each Principal in Franchisee, is identified in Exhibit FA-4 hereto. Franchisee represents and warrants that its owners are as set forth on Exhibit FA-4 attached to this Agreement, and covenants that it will not permit the identity of such owners, or their respective interests in Franchisee, to change without complying with this Agreement. Franchisor shall have the right to designate any person or entity which owns a direct or indirect interest in Franchisee as a Principal, and Exhibit C shall be so amended automatically upon notice thereof to Franchisee.

12.3 Franchisor shall have a continuing right to designate as a Principal any person or entity that owns a direct or indirect interest in Franchisee.

12.4 Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee’s or Franchisee’s Principals’ business skill, financial capacity, and personal character. Accordingly:

12.4.1 Franchisee shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and obligations of Franchisee under this Agreement; or (b) any material asset of Franchisee or the Centre.

12.4.2 If Franchisee is a corporation or limited liability company, Franchisee shall not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities shall become a Principal under this Agreement, if so designated by Franchisor.

12.4.3 If Franchisee is a partnership or limited partnership, the partners of the partnership shall not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner. Each general partner shall automatically be deemed a Principal of Franchisee.

12.4.4 A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Franchisee as shown in Exhibit D.

12.5 Franchisor shall not unreasonably withhold any consent required by Section 12.4 above; provided, that if Franchisee proposes to transfer its obligations hereunder or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Franchisee, Franchisor shall have the right to require any or all of the following as conditions of its approval:

12.5.1 The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Franchisee and Franchisor or its affiliates, and federal, state, and local laws and rules;

12.5.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Franchisee; and, if the obligations of Franchisee were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor;

12.5.3 Franchisee's new Principals shall meet Franchisor's educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the Centre, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the Centre;

12.5.4 If a proposed transfer would result in a change in control of Franchisee, at Franchisor's option, the transferee shall execute the then-current form of franchise agreement for the full term then being offered to new System franchisees, and such other ancillary agreements required by Franchisor for the business franchised hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher royalty and/or advertising fee. The transferee shall pay to Franchisor the then-current initial franchise fee due under the form of franchise agreement then being offered to new System Franchisees at the time of transfer, which fee shall be prorated to apply only to the additional number of months the new franchise agreement extends beyond the remaining term of this Agreement at the time of transfer. For example, if there are 55 months remaining (out of a 120 month term) in the term of this Agreement at time of transfer (*i.e.*, 45.8% of the term remains), the transferee gets a new term of 120 months, and the initial franchise fee under the new franchise agreement is \$25,000, the transferee would pay to Franchisor an initial franchise fee of \$13,550 (or 54.2% of \$25,000).

12.5.5 If a proposed transfer would result in a change in control of Franchisee, and if so requested by Franchisor, Franchisee, at its expense, shall upgrade the Centre to conform to the then-current standards and specifications of new stores then-being established in the System, and shall complete the upgrading and other requirements set forth in Section 5.10 above within the time specified by Franchisor;

12.5.6 All monetary obligations of Franchisee hereunder shall be paid in full on a current basis, and Franchisee must not be otherwise in default of any of its obligations hereunder including, without limitation, its reporting obligations;

12.5.7 The transferor shall remain liable for all of the obligations to Franchisor in connection with the Centre that arose prior to the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;

12.5.8 If a proposed transfer would result in a change in control of Franchisee, at Franchisee's expense, one (1) Principal designated by Franchisor to be a new Operating Partner shall successfully complete (to Franchisor's satisfaction) all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require (and while Franchisor will not charge a fee for attendance at such training programs, the transferee shall be responsible for the salary and all expenses of the person who attends training; or if Franchisor deems it necessary to send a trainer(s) to the Centre to conduct such training, Franchisee shall be responsible for such trainer's travel expenses (including transportation, lodging and meals), plus a reasonable per diem expense for such trainer(s));

12.5.9 If a proposed transfer would result in a change in control of Franchisee, the Franchisee's business, or the Centre, and to compensate Franchisor for Franchisor's legal, accounting, training, and other expenses incurred in connection with the transfer, Franchisee shall pay Franchisor a transfer fee in the amount of Five Thousand Dollars (\$5,000); provided, however, that the transfer fee under the following circumstances shall be:

12.5.9.1 One Thousand Dollars (\$1,000) if Franchisee is an individual and such transfer is made to Franchisee's spouse and/or children;

12.5.9.2 Two Thousand Five Hundred Dollars (\$2,500) if this Agreement is the second (2<sup>nd</sup>) or later franchise agreement to be transferred in connection with the simultaneous transfer of an Area Development Agreement; and

12.5.9.3 Five Hundred Dollars (\$500) if this Agreement is the second (2<sup>nd</sup>) or later franchise agreement to be transferred in connection with the simultaneous transfer of an Area Development Agreement between Franchisee and Franchisor, if Franchisee is an individual and such transfer is made to Franchisee's spouse and/or children.

12.5.10 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Sections 15.2 and 15.3 below.

## 12.6 Right of First Refusal.

12.6.1 If Franchisee or any Principal desires to accept any *bona fide* offer from a third party to purchase Franchisee, any material assets of Franchisee, or any direct or indirect interest in Franchisee, Franchisee or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor.

12.6.2 Any material change in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 12.6 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 12, with respect to a proposed transfer.

12.6.3 In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they must attempt to appoint a mutually-acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one (1) independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Franchisee, which two (2) appraisers shall, in turn, promptly designate a third appraiser; all three (3) appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Franchisee. The cost of any such appraisal shall be shared equally by Franchisor and Franchisee. If Franchisor elects to exercise its right under this Section 12.6, Franchisor shall have the right to set off all amounts due from Franchisee, and one-half (½) of the cost of the appraisal, if any, against any payment to the seller.

12.7 Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within six (6) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within six (6) months after the deceased's death.

12.8 Upon the permanent disability of any Principal with a controlling interest in Franchisee, Franchisor shall have the right to require such interest to be transferred to a third party in accordance with the conditions described in this Section 12 within six (6) months after

notice to Franchisee. “**Permanent Disability**” shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) consecutive months from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician selected by Franchisor upon examination of such person or, if such person refuses to be examined, then such person shall automatically be deemed permanently disabled for the purposes of this Section 12.8 as of the date of refusal. Franchisor shall pay the cost of the required examination.

12.9 Upon the death or permanent disability any Principal of Franchisee, such person or his representative shall promptly notify Franchisor of such death or claim of permanent disability. Any transfer upon death or permanent disability shall be subject to the same terms and conditions as any *inter vivos* transfer.

12.10 Franchisor’s consent to a transfer which is the subject of this Section 12 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor’s right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

12.11 If Franchisee or any person holding any interest (direct or indirect) in Franchisee becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties’ understanding and agreement that any transfer of Franchisee, Franchisee’s obligations and/or rights hereunder, any material assets of Franchisee, or any indirect or direct interest in Franchisee shall be subject to all of the terms of this Section 12, including without limitation the terms of Sections 12.4, 12.5, and 12.6 above.

12.12 All materials for an offering of stock or partnership interests in Franchisee or any affiliate of Franchisee which are required by federal or state law shall be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by Franchisee or any affiliate of Franchisee shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the securities of Franchisee or Franchisee’s affiliates; and Franchisor’s review of any offering shall be limited solely to the relationship between Franchisor and Franchisee and any subsidiaries and affiliates, if applicable. Franchisor may, at its option, require the offering materials to contain a written statement prescribed by Franchisor concerning the limitations stated in the preceding sentence. Franchisee (and the offeror if not Franchisee), the Principals, and all other participants in the offering must fully indemnify Franchisor, its subsidiaries, affiliates, successor, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, Franchisee shall pay Franchisor a non-refundable fee of Ten Thousand Dollars (\$10,000) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering. Franchisee shall give Franchisor written notice at

least thirty (30) days before the date that any offering or other transaction described in this Section 12.12 commences. Any such offering shall be subject to all of the other provisions of this Section 12, including without limitation the terms set forth in Sections 12.4, 12.5, 12.6; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to Franchisor's approval as to the structure and voting control of the offeror (and Franchisee, if Franchisee is not the offeror) after the financing is completed.

### **13. DEFAULT AND TERMINATION**

13.1 Franchisee shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Franchisee, if Franchisee shall become insolvent or makes a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee; or if Franchisee is adjudicated a bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless unappealed or a supersede as bond is filed); or if Franchisee is dissolved; or if execution is levied against Franchisee's business or property; or if suit to foreclose any lien or mortgage against the Centre premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of Franchisee's Centre shall be sold after levy thereupon by any sheriff, marshal, or constable.

13.2 Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon the delivery of written notice to Franchisee by Franchisor (in the manner set forth under Section 20 below), upon the occurrence of any of the following events:

13.2.1 If Franchisee fails to construct and open the Centre within the time limits as provided in Section 5.3 above, and within the requirements set forth in Section 5.4 above;

13.2.2 If Franchisee at any time ceases to operate or otherwise abandons the Centre for two (2) consecutive business days, or loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Centre is located; provided, however, that if, through no fault of Franchisee, the premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within ninety (90) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld;

13.2.3 If Franchisee or any Principal is convicted, or pleads no contest to a felony or misdemeanor involving moral turpitude, fraud, or dishonesty, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;

13.2.4 If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Centre, or if Franchisee violates any law, regulation, order or Franchisor standard relating to health, sanitation or safety and fails to cure the default within twenty-four (24) hours after delivery or attempted delivery of written notice by Franchisor, or fails to provide evidence of such remedy to Franchisor;

13.2.5 If Franchisee or any Principal purports to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of Section 12 above;

13.2.6 If Franchisee fails to comply with the covenants in Section 15.2 below or fails to timely obtain execution of the covenants required under Section 15.5 below;

13.2.7 If, contrary to the terms of Sections 7 or 8 above, Franchisee discloses or divulges the contents of the Manuals or other confidential information provided to Franchisee by Franchisor;

13.2.8 If Franchisee knowingly maintains false books or records, or submits any false reports (including, but not limited to, information provided as part of Franchisee's application for this franchise) to Franchisor;

13.2.9 If Franchisee commits three (3) or more defaults under this Agreement in any fifty-two (52) week period, whether or not each such default has been cured after notice;

13.2.10 If Franchisee sells products not previously approved by Franchisor, or purchases any product from a supplier not previously approved by Franchisor;

13.2.11 If Franchisee is found to have understated Gross Sales by five percent (5%) or more for any period of time;

13.2.12 If Franchisee engages in any conduct or practice that is fraudulent, unfair, unethical, or a deceptive practice;

13.2.13 If Franchisee makes any unauthorized or improper use of the Proprietary Marks, or if Franchisee or a Principle of Franchisee fails to utilize the Proprietary Marks solely in the manner and for the purposes directed by Franchisor, or directly or indirectly contests the validity of Franchisor's ownership of the Proprietary Marks or its right to use and to license others to use the Proprietary Marks; and/or

13.2.14 If Franchisee fails to achieve the minimum Gross Sales in violation of Section 5.19 above



13.2.15 If Franchisee fails to make any payment to Franchisor required under this Agreement, or any other agreement between Franchisee and Franchisor, and fails to cure such default within ten (10) days after such payment has become overdue.

13.3 Except as otherwise provided in Sections 13.1 and 13.2 above, upon any other default by Franchisee of its obligations hereunder, Franchisor may terminate this Agreement only by giving written notice of termination (in the manner set forth under Section 20 below) setting forth the nature of such default to Franchisee at least thirty (30) days prior to the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor, all within the thirty (30) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.

13.4 If Franchisor is entitled to terminate this Agreement in accordance with Sections 13.2 or 13.3 above, Franchisor shall have the right to undertake any one or more of the following actions instead of terminating this Agreement:

13.4.1 Franchisor may terminate or modify any rights that Franchisee may have with respect to "exclusivity" in the Territory, as granted under Section 1.2 above, effective ten (10) days after delivery of written notice thereof to Franchisee;

13.4.2 Franchisor may modify, or eliminate completely, the Territory described in Section 1.3 above; and/or

13.4.3 Franchisor shall be entitled to any lesser remedy than full termination of this Agreement, including, without limitation, declaratory or injunctive relief.

If any of such rights, options, arrangements, or areas are terminated or modified in accordance with this Section 13.4, such action shall be without prejudice to Franchisor's right to terminate this Agreement in accordance with Sections 13.2 or 13.3 above, and/or to terminate any other rights, options or arrangements under this Agreement at any time thereafter for the same default or as a result of any additional defaults of the terms of this Agreement.

#### **14. OBLIGATIONS UPON TERMINATION OR EXPIRATION**

Upon termination or expiration of this Agreement, all rights granted hereunder to Franchisee shall forthwith terminate, and:

14.1 Franchisee shall immediately cease to operate the Centre, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor.

14.2 Franchisee shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the mark "Jenny Craig" and all other Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, and any other articles that display the Proprietary Marks.

14.3 Franchisee shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the mark "Jenny Craig", and all other Proprietary Marks, and/or any other service mark or trademark of Franchisor, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after termination or expiration of this Agreement.

14.4 In connection with Franchisor's consent to the Approved Location pursuant to Sections 1.1 and 5 above, Franchisee shall execute, and cause the landlord to execute, the Lease Rider appended hereto as Exhibit FA-8.

14.4.1 If Franchisor does not elect or is unable to exercise any option it may have to acquire the lease or sublease for the premises of the Centre, or otherwise acquire the right to occupy the premises, Franchisee shall make such modifications or alterations to the premises operated hereunder (including, without limitation, the changing of the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of said premises from that of other Centres, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose.

14.4.2 Upon termination or expiration of this Agreement, Franchisee shall cease use of all telephone numbers, and any domain names, websites, e-mail addresses, and any other identifiers, whether or not authorized by Franchisor, used by Franchisee while operating the Centre. In no event shall Franchisee use such number(s) or identifier(s) for any other business. Franchisee shall immediately take all such actions as may be necessary to transfer any telephone number and any telephone directory listings associated with the Centre or the Proprietary Marks to Franchisor. Franchisee acknowledges that, as between Franchisor and Franchisee, Franchisor has the sole right to and interest in all telephone numbers and directory listings associated with the Weight Loss and Weight Management Centres or the Proprietary Marks. Concurrently with the execution of this Agreement, Franchisee shall execute and deliver the form of assignment of telephone numbers and listings (the "**Telephone Number Assignment**"), required by the applicable local telephone company or, if the local telephone company has no form, Franchisor's current blank assignment form attached to this Agreement as Exhibit J. Franchisee acknowledges and agrees that the telephone company and all listing agencies may accept this Agreement and/or the Telephone Number Assignment as conclusive evidence of Franchisor's exclusive right in such telephone numbers and directory listings and its authority to direct their transfer. The parties further agree that if the telephone company requires that the parties execute the telephone company's assignment forms or other documentation at the time of termination or expiration of this Agreement, Franchisor's execution of such forms or documentation on Franchisee's behalf shall effectuate Franchisee's consent and agreement to the assignment. The

parties agree that at any time after the date hereof, they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein and the Telephone Number Assignment upon termination or expiration of this Agreement.

14.4.3 If Franchisee fails or refuses to comply with the requirements of this Section 14.4, Franchisor (or its designee) shall have the right to enter upon the premises of the Centre, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

14.5 Franchisee agrees, if it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute Franchisor's rights in and to the Proprietary Marks, and further agrees not to utilize any designation of origin, description, trademark, service mark, or representation which suggests or represents a present or past association or connection with Franchisor, the System, or the Proprietary Marks.

14.6 Franchisee shall promptly pay all sums owing to Franchisor and its subsidiaries and affiliates (regardless whether those obligations arise under this Agreement or otherwise). In the event of termination for any default of Franchisee, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default.

14.7 Franchisee shall pay Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Section 14.

14.8 Franchisee shall immediately deliver to Franchisor the Manuals, all copies of customer lists, all information concerning customer prospects and leads of the franchised business, all documents, promotional or other materials of a proprietary nature or which bear any of the Proprietary Marks, and all other records, and instructions containing confidential information (including without limitation any copies thereof, or electronic copies of such materials, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of Franchisor. Franchisor may, at its option, direct Franchisee to destroy and provide Franchisor with evidence of destruction of any such materials in lieu of returning them to Franchisor.

14.9 Franchisor shall have the option, to be exercised within thirty (30) days after termination or default under the lease, to purchase from Franchisee any or all of the furnishings, equipment, signs, fixtures, supplies, and products (including Branded Products) of Franchisee related to the operation of the Centre, at the lesser of Franchisee's cost or fair market value. The cost shall be determined based upon a five (5) year straight-line

depreciation of original costs. For equipment that is five (5) or more years old, the parties agree that fair market value shall be deemed to be ten percent (10%) of the equipment's original cost. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set off all amounts due from Franchisee.

14.10 In order to preserve the goodwill of the System following termination, Franchisor (or its designee) shall have the right to enter the Centre (without liability to Franchisee, Franchisee's Principals, or otherwise) for the purpose continuing the Centre's operation and maintaining the goodwill of the business.

## **15. COVENANTS**

15.1 Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (or one (1) designated management employee who will assume primary responsibility for the franchise operations and shall have been previously approved in writing by Franchisor) shall devote full time, energy, and best efforts to the management and operation of the Centre.

15.2 Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

15.2.1 Divert or attempt to divert any business or customer of the Centre or of any Centre using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System.

15.2.2 Unless released in writing by the employer, employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee or developer of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment.

15.3 Franchisee covenants that, except as otherwise approved in writing by Franchisor, it shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Centre; and shall not for a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 12 above; (b) expiration or termination of this Agreement (regardless of the cause for termination); or (c) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with

respect to the enforcement of this Section 15.3; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity), own, maintain, operate, engage in, or have any interest in any weight loss or weight management centre offering weight loss or weight maintenance products or services, whether or not identical or similar to Weight Loss and Weight Management Centres, and which business is, or is intended to be, located within a three (3) mile radius of either the Approved Location, the Territory, or any other Weight Loss and Weight Management Centre operating at the time that the obligations under this Section 15.3 commence.

15.4 Section 15.3 above shall not apply to ownership by Franchisee of less than a Five Hundred Thousand Dollar (\$500,000) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "publicly-held corporation" shall be deemed to refer to a corporation or other entity which has securities that have been registered under the Securities Exchange Act of 1934.

15.5 Franchisee shall require and obtain execution of covenants similar to those set forth in Sections 6.3.3, 8, 12, 14, and this Section 15 (as modified to apply to an individual) from any or all of the following persons: the Principals and the Highly Trained Personnel. The covenants required by this Section 15.5 shall be in the form provided in Exhibit I to this Agreement. Failure by Franchisee to obtain execution of a covenant required by this Section 15.5 shall constitute a default under Section 13.2.6 above.

15.6 The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 15 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 15.

15.7 Franchisee understands and acknowledges that Franchisor shall have the right to reduce the scope of any covenant set forth in Sections 15.2 and 15.3 in this Agreement, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof; and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 20 below.

15.8 Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 15. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 15.

15.9 Franchisee acknowledges that Franchisee's violation of the terms of this Section 15 would result in irreparable injury to Franchisor for which no adequate remedy at

law may be available, and Franchisee accordingly consents to the issuance of an injunction prohibiting any conduct by Franchisee in violation of the terms of this Section 15.

## **16. TAXES, PERMITS, AND INDEBTEDNESS**

16.1 Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the business franchised under this Agreement. Franchisee shall pay Franchisor an amount equal to any sales tax, gross sales tax, or similar tax (other than income tax) imposed on Franchisor with respect to any payments to Franchisor required under this Agreement, unless the tax is credited against income tax otherwise payable by Franchisor.

16.2 In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Centre, or any improvements thereon.

16.3 Franchisee shall have sole responsibility for compliance with all federal, state, and local laws, rules, and regulations relating to the full and proper conduct of the business franchised under this Agreement, including, without limitation, licenses to do business, health certificates, food handler's permits, fictitious name registrations, sales tax permits, and fire clearances. Franchisee shall timely obtain any and all permits, certificates, or licenses which may be necessary pursuant to such laws, rules and regulations. To the extent that the requirements of said laws are in conflict with the terms of this Agreement, the Manuals, or other instructions of Franchisor, Franchisee shall: (a) comply with said laws; and (b) immediately provide written notice describing the nature of such conflict to Franchisor.

## **17. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

17.1 It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them; that Franchisee shall be an independent contractor; and, that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

17.2 At all times during the term of this Agreement and any extensions hereof, Franchisee shall hold itself out to the public as an independent contractor operating the business pursuant to a franchise from Franchisor.

17.3 It is understood and agreed that nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and that Franchisor shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Franchisor

be liable by reason of any act or omission of Franchisee in its conduct of the Centre or for any claim or judgment arising therefrom against Franchisee or Franchisor.

17.4 Franchisee shall indemnify and hold Franchisor, Franchisor's owners and affiliates, and their respective officers, directors, employees, and agents harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Centre (notwithstanding any claims that Franchisor or Franchisor's owners and affiliates, or their respective officers, directors, employees, or agents, are or were negligent), as well as the costs, including attorneys' fees, of defending against them.

## **18. FORCE MAJEURE**

18.1 Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: (a) acts of God; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties; and/or (d) the inability of Franchisor and/or its affiliates or suppliers to manufacture, purchase, and/or cause delivery of any products used in the operation of the Centre.

18.2 The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of Section 18.1 above. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost; provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay; and further provided, however, that Franchisee shall remain obligated to promptly pay all fees owing and due to Franchisor hereunder, without any such delay or extension.

## **19. APPROVALS AND WAIVERS**

19.1 Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing.

19.2 Franchisee acknowledges and agrees that Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

19.3 No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Franchisee or any other franchisee under any of the terms, provisions, covenants, or conditions of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power as against Franchisee, or as to subsequent breach or default by Franchisee. Subsequent acceptance by

Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding or succeeding breach by Franchisee of any terms, provisions, covenants, or conditions of this Agreement.

## **20. NOTICES**

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on Exhibit A hereto, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.

## **21. ENTIRE AGREEMENT AND AMENDMENT**

This Agreement and the exhibits referred to herein constitute the entire, full, and complete Agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Franchisee to execute this Agreement. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

## **22. SEVERABILITY AND CONSTRUCTION**

22.1 Except as expressly provided to the contrary herein, each portion, section, part, term, and/or provision of this Agreement shall be considered severable; and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement.

22.2 Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee, Franchisor, and such of Franchisee's and Franchisor's respective successors and assigns as may be contemplated (and, as to Franchisee, permitted) by Section 12 above, any rights or remedies under or by reason of this Agreement.

22.3 Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unenforceable in a final decision to which Franchisor is a party, or from



reducing the scope of any promise or covenant to the extent required to comply with such a court order.

22.4 All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

22.5 All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.

### **23. APPLICABLE LAW AND DISPUTE RESOLUTION**

23.1 This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the state in which Franchisor maintains its principal place of business, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of the state's choice-of-law rules); provided, however, that if the covenants in Section 15 of this Agreement would not be enforceable under the laws of state in which Franchisor maintains its principal place of business, and the Centre is located outside of that state, then such covenants shall be interpreted and construed under the laws of the state in which the Centre is located. Nothing in this Section 23.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the state in which Franchisor maintains its principal place of business to which this Agreement would not otherwise be subject.

23.2 Subject to Section 23.3 below, the parties agree that any action brought by Franchisee against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Franchisee in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 23.2 shall not be construed as preventing either party from removing an action from state to federal court; provided, however, that venue shall be as set forth above. Franchisee hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

23.3 Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided below). Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 23.3 shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation.

23.3.1 The non-binding mediation provided for hereunder shall be commenced by the party requesting mediation (the “**complainant**”) providing written notice of the request for mediation (the “**request**”) to the party with whom mediation is sought (the “**respondent**”). The request shall specify with reasonable particularity the matter or matters on which non-binding mediation is sought. A copy of the request shall be given by the complainant simultaneously to Franchisor if Franchisor is not a complainant or respondent.

23.3.2 Non-binding mediation commenced hereunder shall be concluded within sixty (60) days of the issuance of the request or such longer period as may be agreed upon by the parties in writing. All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatever. Complainant and respondent shall each bear their own costs of mediation, and each shall bear one-half the cost of the mediator or mediation service.

23.4 No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

23.5 Franchisor and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.

23.6 Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and Franchisor, or Franchisee’s operation of the Centre, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or, it is expressly acknowledged and agreed by all parties, such claim or action shall be irrevocably barred.

23.7 Franchisor and Franchisee hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

## 24. **ACKNOWLEDGMENTS**

24.1 Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Franchisee and if a corporation or a partnership or other business organization, its owners as independent businesspersons. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received from Franchisor or any employee, representative or other party purporting to act on Franchisee’s behalf, any warranty, promise or guarantee, express or implied, as to the potential sales volume, profits, or success of the business venture contemplated by this Agreement.

24.2 Franchisee acknowledges that it received a copy of this Agreement, the exhibit(s) hereto, and agreements relating hereto, if any, with all of the blank lines therein filled in, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it received the uniform franchise offering circular required by the Federal Trade Commission Franchise Rule at least ten (10) business days prior to the date on which this Agreement was executed.

24.3 Franchisee acknowledges that it has read and understood this Agreement, the exhibits hereto, and agreements relating thereto, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

24.4 Franchisee acknowledges that it understands the terms of final decision and order of the Federal Trade Commission signed on February 19, 1998 (the "**FTC Consent Order**") with respect to the administrative proceeding entitled *Federal Trade Commission v. Jenny Craig International, Inc.* (Docket No. 9260; filed September 1993). Franchisee further acknowledges that it understands that the FTC Consent Order imposes detailed advertising restrictions on the advertising of the System, and Franchisee further agrees that it will comply with all restrictions of the FTC Consent Order, as Franchisor may specify.

24.5 Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.

24.6 Franchisee acknowledges that it shall have sole and complete responsibility for the choice of the Approved Location; that Franchisor has not (and shall not be deemed to have (and shall not be deemed to have, even by Franchisor's approval of the site that is the Approved Location) given any representation, promise, or guarantee of Franchisee's success at the Approved Location; and that Franchisee shall be solely responsible for its own success at the Approved Location.

24.7 Franchisee and its Principals agree to comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its Principals certify, represent, and warrant that none of their property or interests are subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its Principals are not otherwise in violation of any of the Anti-Terrorism Laws. "**Anti-Terrorism Laws**" means Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by Franchisee, its Principals, or their employees, or any "blocking" of Franchisee's assets under the Anti-Terrorism Laws shall constitute grounds for immediate termination of this Agreement and any

other agreement Franchisee has entered with Franchisor or one of its affiliates, in accordance with the termination provisions of this Agreement.

24.8 Although Franchisor retains the right to establish and periodically modify System standards, which Franchisee has agreed to maintain in the operation of the Centre, Franchisee retains the right and sole responsibility for the day to day management and operation of the Centre and the implementation and maintenance of system standards at the Centre.

24.9 Franchisee acknowledges and agrees that Franchisor may modify the offer of its franchises to other franchisees in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.

**[Signature Page To Follow]**

**IN WITNESS WHEREOF**, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

**Jenny Craig Franchising, LLC**  
Franchisor

\_\_\_\_\_  
Franchisee Entity

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

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

Name: Doug Fisher

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

Title: Vice President of Franchising

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

**JENNY CRAIG  
FRANCHISE AGREEMENT**

**EXHIBIT FA-1**

**APPROVED LOCATION AND TERRITORY**

1. The Approved Location is:

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2. The Territory is:

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3. The designated addresses for notices under Section 20 of the Agreement should be as follows:

Notices to Franchisor:  
Jenny Craig Franchising, LLC  
5770 Fleet St.  
Carlsbad, CA 92008  
Telephone: (760) 696-4710  
Fax: (760) 696-4709  
Attn: Vice President of Franchising

Notices to Franchisee:

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Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Attn: \_\_\_\_\_

Copy To:  
Jenny Craig, Inc.  
5770 Fleet St.  
Carlsbad, CA 92008  
Telephone: (760) 696-4040  
Fax: (760) 696-4008  
Attn: General Counsel

**JENNY CRAIG  
FRANCHISE AGREEMENT**

**EXHIBIT FA-2**

**SITE SELECTION AND TERRITORY ADDENDUM**

Jenny Craig Franchising, LLC ("**Franchisor**") and \_\_\_\_\_ ("**Franchisee**") have this day entered into a Jenny Craig Franchise Agreement ("**Franchise Agreement**") and desire to supplement its terms as set out below in this Site Selection Addendum ("**Addendum**"). The parties hereto agree as follows:

**AGREEMENT**

1. **Time to Locate Site:** Within one hundred and twenty (120) days after the date hereof, Franchisee shall acquire or lease, at Franchisee's expense, commercial real estate that is properly zoned for the use of the business to be conducted by Franchisee under the Franchise Agreement (a "**Centre**") at a site approved by Franchisor as hereinafter provided. Such location shall be within the following area: \_\_\_\_\_

\_\_\_\_\_ (the "**Site Selection Area**"). The Site Selection Area is described solely for the purpose of selecting a site for the Centre. Franchisor shall not establish, nor franchise another to establish, a Weight Loss and Weight Management Centre operating under the System within the Site Selection Area until Franchisor approves of a location for the Centre, or until the expiration of the search period referenced herein, whichever event first occurs. Failure by Franchisee to acquire or lease a site for the Franchised Business within the time required in Section 1 hereof shall constitute a default under Section 13.2 of the Franchise Agreement and under this Addendum, and Franchisor, in its sole discretion, may terminate the Franchise Agreement and this Addendum pursuant to the terms of Section 13.2 of the Franchise Agreement; provided, however, that 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.

2. **Site Evaluation Services:** Franchisor shall furnish to Franchisee site selection guidelines, including Franchisor's minimum standards for a location for the Centre, and such site selection counseling and assistance as Franchisor may deem advisable. Franchisor shall perform any on-site evaluation as Franchisor may deem advisable in response to Franchisee's requests for site approval; provided, however, that Franchisor shall not be required to provide on-site evaluation for any proposed site. If on-site evaluation is deemed necessary and appropriate by Franchisor (on its own initiative or at Franchisee's request) for any Centre to be established, Franchisor reserves the right to charge Franchisee a site evaluation fee, which fee shall not exceed Seven Hundred and Fifty Dollars (\$750) ("**Site Evaluation Fee**").

3. **Site Selection Package Submission and Approval:** Franchisee shall submit to Franchisor, in the form specified by Franchisor, a copy of the site plan and such other

information or materials as Franchisor may reasonably require, together with an option contract, letter of intent or other evidence satisfactory to Franchisor which confirms Franchisee's favorable prospects for obtaining the site. Franchisee acknowledges that time is of the essence. Franchisor shall have fifteen (15) days after receipt of such information and materials from Franchisee to approve or disapprove, in its sole discretion, the proposed site as the location for the Centre. In the event Franchisor does not approve a proposed site by written notice to Franchisee within said fifteen (15) days, such site shall be deemed disapproved by Franchisor.

4. **Lease Responsibilities:** Within sixty (60) days of site approval by Franchisor, Franchisee shall execute a lease which shall be coterminous with the Franchise Agreement, or a binding agreement to purchase the site. Franchisor's approval of any lease is conditioned upon inclusion in the lease of the **Lease Rider** attached to the Franchise Agreement as **Exhibit H**. However, Franchisor shall not be responsible for review of the Lease for any terms other than those contained in the Lease Rider.

5. **Approved Location:** After the location for the Centre is approved by Franchisor pursuant to Section 3 hereof and leased or acquired by Franchisee pursuant to Section 4 hereof, the location shall constitute the **Approved Location** described in Section 1.1 of the Franchise Agreement. The Approved Location shall be specified on **Exhibit A** to the Franchise Agreement, and shall become a part the Franchise Agreement. The Territory, as defined under Section 1.2 of the Franchise Agreement, shall be the geographic area thereafter described in **Exhibit A** to the Franchise Agreement, and shall become a part of the Franchise Agreement. Franchisee hereby acknowledges and agrees that approval by Franchisor of a site does not constitute an assurance, representation, or warranty of any kind, express or implied, as to the suitability of the site for the Centre or for any other purpose. Approval by Franchisor of the site indicates only that Franchisor believes the site complies with acceptable minimum criteria established by Franchisor solely for its purposes as of the time of the evaluation. Both Franchisee and Franchisor acknowledge that application of criteria that have been effective with respect to other sites and premises may not be predictive of potential for all sites and that, subsequent to approval by Franchisor of a site, demographic and/or economic factors, such as competition from other similar businesses, included in or excluded from criteria used by Franchisor could change, thereby altering the potential of a site. Such factors are unpredictable and are beyond the control of Franchisor. Franchisor shall not be responsible for the failure of a site approved by Franchisor to meet Franchisee's expectations as to revenue or operational criteria. Franchisee further acknowledges and agrees that its acceptance of a franchise for the operation of the Centre at the site is based on its own independent investigation of the suitability of the site.

6. **Construction.** This Addendum shall be considered an integral part of the Franchise Agreement between the parties hereto, and the terms of this Addendum shall be controlling with respect to the subject matter hereof. Except as modified or supplemented by this Addendum, the terms of the Franchise Agreement are hereby ratified and confirmed.



IN WITNESS WHEREOF, each party hereto has caused its duly authorized representative to duly execute and deliver this Addendum on the date first above written.

**Jenny Craig Franchising, LLC**  
Franchisor

\_\_\_\_\_  
Franchisee Entity

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

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

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

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

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

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

**JENNY CRAIG  
FRANCHISE AGREEMENT**

**EXHIBIT FA-3**

**PERSONAL GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT**

As an inducement to Jenny Craig Franchising, LLC ("**Franchisor**") to execute the Jenny Craig Franchise Agreement between Franchisor and \_\_\_\_\_ ("**Franchisee**"), dated \_\_\_\_\_, 200\_\_\_\_ (the "**Agreement**"), the undersigned, jointly and severally, hereby unconditionally guarantee to Franchisor and Franchisor's successors and assigns that all of Franchisee's monetary obligations under the Agreement will be punctually paid and performed and that all monetary obligations will be punctually paid and performed.

Upon demand by Franchisor, the undersigned each hereby jointly and severally agree to immediately make each payment required of Franchisee under the Agreement and waive any right to require Franchisor to: (a) proceed against Franchisee for any payment required under the Agreement; (b) proceed against or exhaust any security from Franchisee; (c) pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee; or (d) give notice of demand for payment by Franchisee. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee, and the undersigned each hereby jointly and severally waive notice of same and agree to remain and be bound by any and all such amendments and changes to the Agreement.

The undersigned each hereby jointly and severally agree to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of financial and other investigation, court costs, and fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement, any amendment thereto, or any other agreement executed by Franchisee referred to therein.

The undersigned each hereby jointly and severally acknowledge and expressly agree to be individually bound by all of the covenants contained in Sections 6.3.3, 8, 12, 14, and 15 of the Agreement, and acknowledge and agree that this Guarantee does not grant the undersigned any right to use the "Jenny Craig" marks or system licensed to Franchisee under the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to

their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with Section 24 of the Agreement. This Guarantee shall be interpreted and construed under the laws of the state in which Franchisor maintains its principal place of business. In the event of any conflict of law, the laws of the state in which Franchisor maintains its principal place of business shall prevail (without regard to, and without giving effect to, the application of the state's conflict of law rules).

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement.

GUARANTOR(S)

(Seal)

Signed: \_\_\_\_\_  
(In his/her individual capacity)

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

Address: \_\_\_\_\_  
\_\_\_\_\_

(Seal)

Signed: \_\_\_\_\_  
(In his/her individual capacity)

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

Address: \_\_\_\_\_  
\_\_\_\_\_

(Seal)

Signed: \_\_\_\_\_  
(In his/her individual capacity)

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

Address: \_\_\_\_\_  
\_\_\_\_\_

**JENNY CRAIG  
FRANCHISE AGREEMENT**

**EXHIBIT FA-4**

**LIST OF PRINCIPALS**

<b>Name of Principal</b>	<b>Address and Telephone</b>	<b>Email address</b>	<b>Principal Occupation</b>	<b>Interest %</b>

**JENNY CRAIG  
FRANCHISE AGREEMENT**

**EXHIBIT FA-5**

**AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS**  
**(DIRECT DEBITS)**

\_\_\_\_\_ (Name of Person or Legal Entity)  
\_\_\_\_\_ (ID Number)

The undersigned depositor ("**Depositor**") ("**Franchisee**") hereby authorizes Jenny Craig Franchising, LLC ("**Franchisor**") or any of its affiliates to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**") ("**Bank**") to debit or credit such account(s) pursuant to Franchisor's instructions.

Depository	Branch	
City	State	Zip Code
Bank Transit/ABA Number	Account Number	

This authority is to remain in full and force and effect until sixty (60) days after Franchisor has received written notification from Franchisee of its termination.

Depositor	Depository
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**JENNY CRAIG  
FRANCHISE AGREEMENT**

**EXHIBIT FA-6**

**ADA CERTIFICATION**

Jenny Craig Franchising, LLC (“**Franchisor**”) and \_\_\_\_\_ (“**Franchisee**”) are parties to a franchise agreement dated \_\_\_\_\_, 200\_\_\_\_ (the “**Franchise Agreement**”) for the operation of a Jenny Craig Weight Loss and Weight Management Centre at \_\_\_\_\_

\_\_\_\_\_ (the “**Centre**”). In accordance with Section 5.3 of the Franchise Agreement, Franchisee certifies to Franchisor that, to the best of Franchisee’s knowledge, the Centre and its adjacent areas comply with all applicable federal, state and local accessibility laws, statutes, codes, rules, regulations and standards, including but not limited to the Americans with Disabilities Act. Franchisee acknowledges that it is an independent contractor and the requirement of this certification by Franchisor does not constitute ownership, control, leasing or operation of the Centre. Franchisee acknowledges that Franchisor has relied on the information contained in this certification. Furthermore, Franchisee agrees to indemnify Franchisor and the officers, directors, and employees of Franchisor in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with Franchisee’s compliance with the Americans with Disabilities Act, as well as the costs, including attorneys’ fees, related to the same.

\_\_\_\_\_  
Franchisee:

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

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

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

**JENNY CRAIG  
FRANCHISE AGREEMENT**

**EXHIBIT FA-7**

**FOOD PRODUCTS PURCHASE AGREEMENT**

THIS FOOD PRODUCTS PURCHASE AGREEMENT (the "**Agreement**") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the "**Effective Date**"), by and between:

- Jenny Craig Operations, Inc. and/or Jenny Craig Products, Inc., each a California corporation whose principal place of business is 5770 Fleet Street, Carlsbad, California 92008 ("**Company**"); and
- \_\_\_\_\_ a  
[resident of] [corporation organized in] [limited liability company organized in] \_\_\_\_\_  
and having offices at \_\_\_\_\_  
\_\_\_\_\_  
 ("**Franchisee**").

**BACKGROUND**

A. Company is an affiliate of Jenny Craig Franchising, LLC, a Delaware limited liability company ("**Franchisor**").

B. Franchisor and Franchisee have entered into a Franchise Agreement effective as of \_\_\_\_\_, 20\_\_ (the "**Franchise Agreement**"), whereby Franchisee will open or has opened a Jenny Craig Weight Loss and Weight Management Centre (the "**Centre**").

C. Franchisee has requested that Company enter into this Agreement in order to define and establish the terms of Franchisee's purchase of food, food supplements and beverage products ("**Food Products**") for use in the Centre.

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. COMPANY AS EXCLUSIVE SOURCE**

1.1 Appointment. Franchisee appoints Company as exclusive source for the purchase of Food Products to be sold by Franchisee in the Centre, and Company agrees to provide such Food Products. Company reserves the exclusive right to determine what Food Products it will offer. Company may designate an affiliate to fulfill some or all of its obligations under this Agreement.

1.2 Term. Franchisee's appointment of Company as exclusive source is irrevocable for ten (10) years from the Effective Date of this Agreement or until expiration or termination of