

EXHIBIT B

B-1

Franchise Agreement

**(including a Site Selection Addendum, Electronic Debit Agreement,
and Lease Rider)**

LIBERTY FITNESS HOLDINGS, LLC
FRANCHISE AGREEMENT

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LIBERTY FITNESS HOLDINGS, LLC FRANCHISE AGREEMENT

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

- LIBERTY FITNESS HOLDINGS, LLC, a Delaware limited liability company with offices at 1701 Directors Blvd., Suite 110, Austin, Texas 78744 ("Franchisor"); and
- _____ a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("Franchisee").

RECITALS:

WHEREAS, Franchisor owns a format and system relating to the establishment and operation of businesses operating in buildings that bear Franchisor's interior and/or exterior trade dress (a "Club"), under the Proprietary Marks (as defined below), and specializing in offering thirty-minute fitness services using adjustable hydraulic strength training and aerobic cardiovascular equipment and exercise programs, and fitness programs primarily directed to women ("Services"), as well as the sale of associated proprietary and/or private label products and services, if and when developed, prepared for sale in the system (the "Products");

WHEREAS, the distinguishing characteristics of the "Liberty Fitness" system include, without limitation, equipment layouts, signage, distinctive interior and exterior design and accessories, Services, Products, exercise equipment, procedures for operations; quality and uniformity of products and services offered; 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 (the "System");

WHEREAS, 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 marks "Liberty Fitness" and "Liberty Fitness Club" and logo, 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");

WHEREAS, 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;

WHEREAS, Franchisee desires to enter into the business of operating a Club under Franchisor's System 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

WHEREAS, 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 Franchisor hereby grants to Franchisee the right, and Franchisee hereby accepts the obligation, to establish and operate a "Club" and to use, solely in connection that Club, the Proprietary Marks and the System, as they may be changed, improved, and further developed from time to time, at the Approved Location (as defined below), all according to the terms and conditions of this Agreement.
- 1.2 The street address of the location approved for the operation of the Club shall be set forth in Exhibit A (the "**Approved Location**"). Franchisee shall not relocate the Club without the express prior written consent of Franchisor. If, at the time of execution of this Agreement, a location for the Club has not been obtained by Franchisee and approved by Franchisor, Franchisee shall lease or acquire a location subject to Franchisor's approval as provided in Section 5 below and in the Site Selection Addendum attached to this Agreement as Exhibit B.
- 1.3 During the term of this Agreement, and except as otherwise provided in this Agreement, Franchisor agrees that it shall not establish, nor license any other person to establish, another Liberty Fitness Club at any location within the Protected Territory. The term "**Protected Territory**" is agreed to mean a circle having as its center the front door of the Club. The radius of the Protected Territory shall be set forth in Exhibit A to this Agreement. Franchisor retains all other rights and, among other things, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein. Franchisor shall have the right to:
 - 1.3.1 use and to license others to use, the System and the Proprietary Marks for the operation of "Clubs" at any location outside the Protected Territory, despite the proximity such businesses may have to the Protected Territory (Franchisee acknowledges that another Club's Protected Territory may overlap with Franchisee's Protected Territory.);
 - 1.3.2 acquire and operate any business or centers of any kind, whether located within or outside the Protected Territory despite the proximity of such business(es) or center(s) may have to the Approved Location (except that Franchisor shall not do so from a Club located in the Protected Area); and/or
 - 1.3.3 use and license the use of the Proprietary Marks and other marks in connection with the operation of centers at any location, which centers and marks may be the same as, similar to, or different from the Club and Proprietary Marks despite the proximity of such centers' proximity to the Approved Location (except that Franchisor shall not do so from a Club operating under the Proprietary Marks located in the Protected Area).
- 1.4 If and when Products are developed, Franchisee shall only sell Products to end-users and other entities that do not resell the Products. Franchisee shall offer and sell products only face-to-face

to customers who come in to Franchisee's Club to order and/or pick up products and merchandise. Franchisee shall not sell products by use of other means, including but not limited to the Internet, catalog, direct mail, and/or toll-free numbers.

- 1.5 Franchisee agrees that it will at all times faithfully, honestly and diligently perform its obligations under this Agreement, and that it will not engage in any other business or activity that may conflict with its obligations under this Agreement.
- 1.6 Franchisee agrees to actively promote and enhance the business of its Club throughout the entire term of this Agreement and to follow any reasonable promotional guidelines that may be established by Franchisor from time to time. Franchisee shall expend efforts and resources necessary, appropriate and sufficient to develop the Club in its Protected Territory to its full potential. In no way limiting the foregoing, Franchisee acknowledges and agrees that Franchisee shall be required to meet the minimum performance levels (the "Performance Levels") outlined in this Section 1.6, below. If Franchisee does not meet the Performance Levels, then, upon notice from Franchisor, Franchisee shall have ninety (90) days to correct any deficiencies. Should Franchisee not correct any such deficiencies and meet the Performance Levels by the end of the ninety (90) day period, that shall be deemed a default under this Agreement for which Franchisor shall have the right to terminate this Agreement as provided in Section 14.2 below.
 - 1.6.1 Franchisee must achieve and maintain at least one hundred fifty (150) members at the Club by the end of the first year after the Opening Date (defined below).
 - 1.6.2 At all times after the end of the second year after the Opening Date, Franchisee must maintain at least two hundred fifty (250) members at the Club.

For purposes of this Agreement, the term "Opening Date" is agreed to mean the first day the Club opens for business and shall be set forth in Exhibit A to this Agreement, or in such other written form as Franchisor may reasonably prescribe.

2 TERM AND RENEWAL.

- 2.1 Except as otherwise provided herein, the term of this Agreement shall expire at the end of the ten (10) years from the Effective Date (the "Initial Term"), and shall start as of the date of this Agreement; unless this Agreement is sooner terminated in accordance with the provisions.
- 2.2 Franchisee shall have the option to renew this Agreement for one (1) additional term of ten (10) years, subject to the following conditions, all of which must be met before renewal:
 - 2.2.1 Franchisee shall give Franchisor written notice of Franchisee's election to renew not less than six (6) months nor more than twelve (12) months prior to the end of the initial term;
 - 2.2.2 Franchisee shall have maintained or exceeded the Performance Levels required pursuant to Section 1.6 above;
 - 2.2.3 Franchisee shall make or provide for, in a manner satisfactory to Franchisor, such renovation and modernization of the Club premises as Franchisor may reasonably require, including, without limitation, renovation of the exterior facade, signs, interior furnishings, fixtures, and decor, to reflect the then-current standards and image of the System, as well as such upgrades as Franchisor may require to bring the computer hardware and software, and any related peripheral equipment, into conformity with

Franchisor's then-current standards for new Clubs (except to the extent that Franchisee has already satisfied its obligations under Section 5.11 below);

- 2.2.4 Franchisee shall upgrade all exercise equipment used in the Club to comply with Franchisor's then-current standards in effect for new Clubs;
- 2.2.5 Franchisee shall not be in default of any provision of this Agreement, as it may be amended, or any other agreement between Franchisee and Franchisor or its subsidiaries and affiliates; and, in Franchisor's reasonable judgment, 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;
- 2.2.6 Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its subsidiaries and affiliates and shall have timely met those obligations throughout the term of this Agreement;
- 2.2.7 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 thereof, which shall not supersede this Section 2), and the terms of which may differ from the terms of this Agreement, including, without limitation, a higher percentage royalty fee and advertising contribution; provided, however, that the Protected Territory shall not be changed in the renewal form of agreement;
- 2.2.8 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; and
- 2.2.9 Franchisee and its personnel shall comply with Franchisor's then-current qualification and training requirements.
- 2.2.10 Franchisee shall pay, in lieu of an initial franchise fee, a fee equal to Five Thousand Dollars (\$5,000) for the right to obtain a renewal term.

3 FRANCHISOR'S DUTIES.

- 3.1 Before the opening of the Club, Franchisor shall provide to Franchisee, or, if Franchisee is a corporation, limited liability company, partnership, or limited liability partnership, a principal or senior management employee of Franchisee designated to supervise the operation of the Club who has been previously approved by Franchisor (the "**Designated Principal**"), and one designated management employee of Franchisee, an initial training program at a location designated by Franchisor. Franchisor shall provide such ongoing training as it may, from time to time, deem appropriate. Franchisor shall be responsible for the cost of instruction and materials, subject to the terms set forth in Section 5.6 of this Agreement.
- 3.2 Franchisor shall provide, at no charge to Franchisee, standard image specifications for the construction of the Club, improvement of the premises, and for the layout of fixtures, furnishings, equipment, and signs. Franchisee acknowledges that such standard specifications shall not contain the requirements of any federal, state or local law, code or regulation, including those concerning the Americans with Disabilities Act ("**ADA**") or similar rules governing public

accommodations or commercial facilities for persons with disabilities, nor shall such plans contain the requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build a specific Club. Franchisee shall adapt, at Franchisee's expense, the standard plans and specifications to the Club location, subject to Franchisor's approval, as provided in Section 5.3 below; except that, Franchisor will not unreasonably withhold approval of special plans and specifications, prepared at Franchisee's expense, when the Approved Location will not accommodate Franchisor's standard plans and specifications, provided that such plans and specifications conform to Franchisor's general design criteria. Franchisor will provide Franchisee with its written consent or disapproval of location within fourteen (14) days after receiving all of the requested information pertaining to the proposed location. It is Franchisee's responsibility to secure a location and Franchisor will not refund the Initial Franchise Fee if Franchisee is unable to secure a satisfactory location.

- 3.3 Franchisor shall provide a representative to be present for two (2) days at the time of the opening of the Club. Upon Franchisee's request, Franchisor will provide additional on-site pre-opening and opening supervision and assistance for a fee of Seven Hundred Fifty Dollars (\$750) per day, plus all other expenses Franchisor incurs in connection with such additional assistance.
- 3.4 Franchisor shall allow Franchisee access to the confidential Marketing Manual, Operations Manual, Real Estate & Construction Manual, Start-Up Manual, and Trainer Manual (together, the "**Manuals**"), which Franchisor shall have the right to provide in any format it chooses (including, but not limited to, paper, CD, or online), 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 which Franchisee proposes to use, pursuant to Section 10 below.
- 3.6 Franchisor shall administer the "Liberty Fitness" Advertising Fund (the "**Advertising Fund**"), if such fund exists or is created, in the manner set forth in Section 10 below.
- 3.7 Franchisor shall assist Franchisee in developing and conducting the Grand Opening Advertising Program (as described in Section 10.9 below), which program shall be conducted at Franchisee's expense.
- 3.8 Franchisor shall inspect and approve the Club for opening prior to the opening of the Club. Franchisee shall not commence operation of the Club until receiving such approval from Franchisor.
- 3.9 Franchisor shall seek to maintain the high standards of quality, appearance, service, and sanitation of the System, and to that end may conduct, as it deems advisable, periodic inspections of the Club and may provide evaluations of the products sold and services rendered by the Club.
- 3.10 Franchisor will provide periodic and continuing advisory assistance to Franchisee as to the operation and promotion of the Club as Franchisor deems advisable.
- 3.11 Franchisor shall provide Franchisee with a written list of equipment and suppliers of such materials that are needed to open Franchisee's Club.
- 3.12 Franchisor shall in no event be liable to Franchisee for unavailability of or delay in shipment or receipt of merchandise ordered by Franchisee from designated sources of supply or authorized suppliers for any reason including: temporary product shortages or unavailabilities, order backlogs, production difficulties, delays or unavailability of transportation, strikes, fire, work stoppages, or other causes beyond the reasonable control of Franchisor. Franchisor's only

obligation in the event of any interruption in the shipment of franchise products from designated or authorized suppliers shall be to license additional suppliers when and if the same can be located.

4 FEES.

- 4.1 Upon execution of this Agreement, Franchisee shall pay to Franchisor an initial franchise fee of Thirty Thousand, Six Hundred Dollars (\$30,600) (the "**Initial Franchise Fee**"). The Initial Franchise Fee has been fully earned and is 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.
- 4.2 For each month during the term of this Agreement, Franchisee shall pay Franchisor a continuing royalty fee (the "**Royalty Fee**"). The Royalty Fee shall include both of the following:
 - 4.2.1 The Membership Royalty Fee. For each month during the term of this Agreement, Franchisee shall pay Franchisor an amount equal to five percent (5%) of the Membership Revenues (as defined below) of the Club (the "**Membership Royalty Fee**"); however, for each such month, Franchisee shall pay Franchisor a Membership Royalty Fee of not less than Four Hundred Ninety Five Dollars (\$495) but not more than Seven Hundred Ninety Five Dollars (\$795).
 - 4.2.2 The Overall Royalty Fee. For each month during the term of this Agreement, Franchisee shall pay Franchisor an amount up to ten percent (10%) of the Club's Non-Membership Revenues (as defined below).
- 4.3 The parties agree that all fixed dollar amounts set out in this Agreement are subject to adjustment, up or down, depending on changes in the Index. For the purpose of this Agreement, the term "**Index**" is agreed to mean the Consumer Price Index (1982-84= 100; all items; CPI-U; all urban consumers) published by the U.S. Bureau of Labor Statistics (or if the Index is no longer published, a successor index that Franchisor may reasonably specify in the Manuals or otherwise in writing). Adjustments to fixed dollar amounts set out in this Agreement shall be made no more than once each year by Franchisor, in writing, and the first such adjustment shall not be made until at least two (2) years after the date of this Agreement.
- 4.4 As used in this Agreement, the following terms have the following meanings:
 - 4.4.1 "**Gross Revenues**" shall mean Non-Membership Revenues and Membership Revenues, combined.
 - 4.4.2 "**Membership Revenues**" shall mean all revenue from the sale of memberships or similar rights to use the Club's facilities, and any ongoing, upgrade, and/or renewal fees, whether for cash, credit or otherwise (and regardless of collection in the case of credit), but not including sales and/or other taxes collected from customers by Franchisee and actually transmitted to the appropriate taxing authorities.
 - 4.4.3 "**Non-Membership Revenues**" shall mean all revenue from the sale of all services and products and all other income of every kind and nature related to the Club, including but not limited to proceeds of any business interruption insurance policies, whether for cash,

credit or otherwise (and regardless of collection in the case of credit); provided, however, that Non-Membership Revenues shall not include: (a) Membership Revenues; (b) sales or other taxes collected from customers by Franchisee and actually transmitted to the appropriate taxing authorities; and (c) other revenues designated by Franchisor.

- 4.5 All payments required by this Section 4 and by Section 10 below shall be paid by the tenth (10th) day of each month, or if that date falls on a weekend or on a holiday, then on the business day immediately following the tenth (10th) day of each month, based on the Gross Revenues for the preceding month, and shall be delivered to Franchisor together with any reports or statements required under Section 9.3 below. Franchisee shall establish an arrangement for electronic transfer or deposit of any such payments required under Sections 4 or 10 and shall execute the current form of Authorization Agreement for Prearranged Payments (Direct Debits), a copy of which is attached to this Agreement as Exhibit F. 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 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 ½%) per month, 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.

5 FRANCHISEE'S DUTIES.

- 5.1 If Franchisee will occupy the premises from which the Club is conducted under a lease or sublease, Franchisee shall, prior to the execution thereof, submit such lease to Franchisor for its written approval. Franchisor's approval of any lease is conditioned upon inclusion in the lease of the Lease Rider attached hereto as Exhibit C. However, Franchisor shall not be responsible for review of the Lease for any terms other than those contained in the Lease Rider.
- 5.2 Franchisee understands and acknowledges that every detail of the Club is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high operating standards, to increase the demand for the services and products sold by all franchisees, and to protect Franchisor's reputation and goodwill.
- 5.3 Before commencing any construction of the Club, Franchisee, at its expense, shall comply, to Franchisor's satisfaction, with all of the following requirements:
- 5.3.1 If requested by Franchisor or if required by applicable law, 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 Club based upon prototype design and image specifications furnished by Franchisor. Franchisor's approval shall be limited to conformance with Franchisor's preliminary plan and specifications 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 Club, which subjects shall be Franchisee's sole responsibility. Franchisee may request additional, modified or computer assisted design ("C.A.D.") drawings from Franchisor, and if Franchisor agrees to provide same to Franchisee, Franchisor shall advise Franchisee of the cost therefor and Franchisee shall have the right to pay such cost and receive the C.A.D. drawing, or to reject the opportunity to do so. In addition:

- 5.3.1.1 Franchisee shall comply, at Franchisee's expense, with all federal, state and local laws, codes and regulations, including the applicable provisions of the ADA regarding the construction, design and operation of the Club. In the event Franchisee receives any complaint, claim, other notice alleging a failure to comply with the ADA, Franchisee shall provide Franchisor with a copy of such notice within five (5) days after receipt hereof.
 - 5.3.1.2 Franchisee shall be responsible for obtaining all zoning classifications and clearances 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 Franchisor's prior written consent.
 - 5.3.1.3 Prior to opening the Club and prior to renovating the Club after its initial opening, Franchisee shall execute an ADA Certification in the form attached to this Agreement as Exhibit H, that certifies in writing to Franchisor that the Club and any proposed renovations comply with the ADA.
 - 5.3.1.4 Franchisee shall obtain all permits and certifications required for the lawful construction and operation of the Club.
- 5.3.2 Franchisee shall employ a qualified licensed general contractor who is reasonably acceptable to Franchisor to construct the Club and to complete all improvements. Franchisee shall obtain and maintain in force during the entire period of construction the insurance required under Section 12 below.
- 5.4 Franchisee shall construct, furnish, and open the Club according to the requirements contained herein, and Franchisee shall open the Club not later than six (6) months after 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, the Manuals, and/or elsewhere in writing by Franchisor. Within thirty (30) days of center opening, Franchisee shall provide to Franchisor a full breakdown of all costs associated with the development of the Club in such form as Franchisor may reasonably require.
- 5.5 In connection with the opening of the Club:
 - 5.5.1 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.
 - 5.5.2 Franchisee shall provide at least thirty (30) days' prior notice to Franchisor of the date on which Franchisee proposes to first open the Club for business. If Franchisor cannot provide its representative on the date that Franchisee proposes to first open the Club for business, then Franchisee shall reschedule such opening to a date on which Franchisor's representative can be in attendance; provided, that Franchisor will not permit any such rescheduling to unreasonably delay opening of the Club.
- 5.6 Before opening the Club, Franchisee (or the Designated Principal) and the full-time manager of the Club (the "**Club Manager**") (who Franchisor may disapprove if Franchisor has a reasonable objection) shall attend and successfully complete, to Franchisor's satisfaction, the basic training

program offered by Franchisor. If Franchisee desires, additional persons may attend Franchisor's basic training program, subject to space availability, for a fee per person. Currently, this fee is Seven Hundred Fifty Dollars (\$750), but Franchisor reserves the right to change this fee at any time by giving Franchisee written notice of the change. The persons trained by Franchisor must pass Franchisor's certification test prior to managing or operating the Club.

- 5.6.1 The Club shall also be under the active full-time management of a Club Manager who has been trained by Franchisor as provided in this Section 5.6; except that if such Club Manager ceases active full-time management of the Club, Franchisee shall train a replacement (who Franchisor may disapprove if Franchisor has a reasonable objection) in accordance with Franchisor's training program. Replacement personnel may attend Franchisor's training program for a fee and subject to space availability. Currently, this fee is Seven Hundred Fifty Dollars (\$750), but Franchisor reserves the right to change this fee at any time by giving Franchisee written notice of the change.
- 5.6.2 Franchisee (or Designated Principal) and the Club Manager must attend such conventions, seminars, and other training programs as Franchisor may reasonably require from time to time. Franchisor reserves the right to charge a per person fee for attendance to such required training programs. Franchisee shall be responsible for its own expenses and those of its employees who attend any such training programs and/or conventions.
- 5.6.3 Franchisor reserves the right to require Franchisee to enroll each of its employees in Franchisor's web-based training program, when developed, for which there may be a charge per employee. If web-based training is required, Franchisee shall pay the fees for such training on a monthly basis, as incurred by its employees, at the times and in the manner set forth in Section 4.4 above.
- 5.6.4 The cost of all training (instruction and required materials) shall be borne by Franchisor, except as described above in Sections 5.6.2 and 5.6.3. All other expenses incurred in connection with training, including without limitation the costs of transportation, lodging, meals, wages, and worker's compensation insurance, shall be borne by Franchisee.
- 5.7 Franchisee shall use the Club premises solely for the operation of the Club; shall keep the Club 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 Club premises for any other purpose or activity at any time without first obtaining the written consent of Franchisor. As used in this Section 5.7, the term "premises" shall include the grounds surrounding the Club.
- 5.8 Franchisee agrees to maintain a competent, conscientious, trained staff in numbers sufficient to promptly service customers, including at least one person trained in the management of the Club 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. If Franchisee has three (3) or more Clubs operating under the System, Franchisee shall employ at least one full-time supervisor (the Designated Principal may serve in this capacity), who shall be reasonably acceptable to Franchisor and shall meet such standards as may be reasonably imposed by Franchisor in the Manuals or otherwise in writing (including without limitation the requirement that the supervisor attend and successfully complete the training course specified in Section 5.6 above), to supervise and coordinate the operation of the Clubs and the activities of Club Managers.

- 5.9 Franchisee shall meet and maintain the highest health standards and ratings applicable to the operation of the Club. 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 Club.
- 5.10 Franchisee shall at all times maintain the Club 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.
- 5.11 Refurbishing.
- 5.11.1 At Franchisor's request, which shall not be more often than once every three (3) years, Franchisee shall refurbish the Club at its expense to conform to the building design, trade dress, color schemes, and presentation of the Proprietary Marks in a manner consistent with the image then in effect for new centers under the System, including, without limitation, remodeling, redecoration, and modifications to existing improvements.
- 5.11.2 Franchisee shall also, at such times and in the manner as Franchisor may require, make such upgrades and other changes that Franchisor may require to bring Franchisee's computer hardware and software, and any related peripheral equipment, into conformity with Franchisor's then-current standards for new Clubs.
- 5.12 To insure that the highest degree of quality and service is maintained, Franchisee shall operate the Club 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:
- 5.12.1 To maintain in sufficient supply, and to use and/or sell at all times only such items, products, materials, and supplies as conform to Franchisor's written standards and specifications, and to refrain from deviating there from by the use or offer of any non-conforming items without Franchisor's specific prior written consent.
- 5.12.2 To sell or offer for sale only such items, products, and services as have been expressly approved for sale in writing by Franchisor; to sell or offer for sale all the items, products, and services employing the standards and techniques, as specified by Franchisor; to refrain from making any changes to the items offered at the Club without Franchisor's prior written approval; to refrain from any deviation from Franchisor's standards and specifications, without Franchisor's prior written consent; and to discontinue selling and offering for sale any items, products, or services which Franchisor may, in its discretion, disapprove in writing at any time. 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. With respect to the offer and sale of all items, and products, Franchisee shall have sole discretion as to the prices to be charged to customers (provided that if Franchisor has imposed a maximum price on a particular product or service, Franchisee may charge any price for such product or service up to and including the maximum price set by the Franchisor).

- 5.12.3 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 Club 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.
- 5.12.4 To refrain from installing or permitting to be installed any vending machine, game or coin operated device, unless specifically approved in writing, in advance, by Franchisor.
- 5.13 Franchisee shall purchase all exercise equipment, supplies, equipment, materials, and other products used or offered for sale at the Club solely from suppliers (including manufacturers, distributors, and other sources) who demonstrate, to the continuing reasonable satisfaction of Franchisor, 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. If Franchisee desires to purchase any products from an unapproved supplier, Franchisee shall 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 to Franchisor or Franchisor's designee of reasonable continuing inspection fees and administrative costs, and license fees. Franchisor reserves the right, at its option, to re-inspect 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. 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 that Franchisor, in its sole discretion, deems confidential.
- 5.14 Franchisee shall be solely responsible for the quality of products that are sold by Franchisee.
- 5.15 Franchisee shall require all advertising and promotional materials, signs, decorations, and other items which may be designated by Franchisor to bear the Proprietary Marks in the form, color, location, and manner prescribed by Franchisor.
- 5.16 Franchisee grants Franchisor and its agents the right to enter upon the Club premises at any time for the purpose of conducting inspections. 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. Franchisee further agrees that Franchisee will reimburse Franchisor for its representative's time and travel expenses if an additional inspection at the Club is required when a violation has occurred and Franchisee has not corrected the violation.
- 5.17 Franchisee, and its staff shall in conducting the business franchised hereunder adhere to the highest business and professional standards; and shall in all dealings with its customers, suppliers,

Franchisor, and the public adhere to the highest standards of courtesy, honesty, integrity, fair dealing, and ethical conduct.

5.18 If Franchisee is a corporation or a limited liability company, the following requirements shall also apply to Franchisee:

5.18.1 Franchisee shall be newly organized and its charter shall at all times provide that its activities are confined exclusively to operating the business franchised herein.

5.18.2 Copies of Franchisee's Articles of Incorporation, Bylaws, and other governing documents, and any amendments thereto, including the resolution of the Board of Directors authorizing entry into this Agreement shall be promptly furnished to Franchisor.

5.18.3 Franchisee shall maintain stop-transfer instructions against the transfer on its records of any equity securities; and shall issue no securities upon the face of which the following printed legend does not legibly and conspicuously appear:

The transfer of this stock is subject to the terms and conditions of a Franchise Agreement with Liberty Fitness Holdings, LLC, dated _____.
Reference is made to the provisions of the said Franchise Agreement and to the Articles and Bylaws of this corporation.

5.18.4 Franchisee shall maintain a current list of all owners of record and all beneficial owners of any class of voting securities of Franchisee and shall furnish the list to Franchisor upon request.

5.18.5 Such owners of a beneficial interest in the corporation as Franchisor may request shall execute a guarantee of the performance of Franchisee's obligations under this Agreement in the form attached hereto as Exhibit D.

5.19 If Franchisee is a partnership (general or limited), a limited liability partnership, or some other form of entity that is not addressed under Section 5.17 above, Franchisee shall comply with the following requirements throughout the term of this Agreement, except as otherwise approved in writing by Franchisor:

5.19.1 Franchisee shall furnish Franchisor with its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto, which shall contain a restriction or transfer of any partnership interest without the prior written consent of Franchisor.

5.19.2 Franchisee shall prepare and furnish to Franchisor, upon request, a list of all general and limited partners in Franchisee.

5.19.3 Such partners in the partnership as Franchisor may request shall execute a guarantee of the performance of Franchisee's obligations under this Agreement in the form attached hereto as Exhibit D.

5.20 Franchisee shall comply with all other requirements set forth in this Agreement.

6 PROPRIETARY MARKS.

6.1 Franchisor represents with respect to the Proprietary Marks that:

6.1.1 Franchisor is the owner of all right, title, and interest in and to the Proprietary Marks.

6.1.2 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.

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 otherwise authorized or required by Franchisor, Franchisee shall operate and advertise the Club only under the name "Liberty Fitness Club," 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) as the owner of the Club 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 Club 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 or its counsel 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 Franchisor's ownership of, or Franchisee's right to use, the Proprietary Marks licensed hereunder. Franchisee acknowledges that Franchisor shall have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. Franchisor shall also have the sole right, but not the

obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks.

6.2.9.2 If Franchisee has used the Proprietary Marks in accordance with this Agreement, Franchisor will defend Franchisee at Franchisor's expense against any third party claim, suit, or demand involving the Proprietary Marks arising out of Franchisee's 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, and Franchisee agrees to reimburse Franchisor upon request.

6.2.9.3 If 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 Franchisor is the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them.

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

6.3.3 Neither Franchisee nor any principal of Franchisee shall directly or indirectly contest the validity or Franchisor'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.

6.3.4 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.

6.3.5 Any and all goodwill arising from Franchisee's use of the Proprietary Marks shall inure solely and exclusively to 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.

6.3.6 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:

- 6.3.6.1 To use the Proprietary Marks itself in connection with selling products and services;
- 6.3.6.2 To grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees;
- 6.3.6.3 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.
- 6.3.7 Franchisor reserves the right to substitute different Proprietary Marks for use in identifying the System and the businesses operating thereunder if Franchisor's currently owned Proprietary Marks no longer can be used, or if Franchisor, in its sole discretion, determines that substitution of different Proprietary Marks will be beneficial to the System.

7 CONFIDENTIAL 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 copy of which Franchisee acknowledges having received on loan from Franchisor, in a format chosen by Franchisor (including, but not limited to, paper, CD, or online), 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 Club, and the information contained therein, as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential. Except for those portions of the Manuals that Franchisor designates, in writing, as appropriate for copying and use at the Club, 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 Club 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 shall at all times maintain the Manuals at the Club and insure that the Manuals are kept current and up to date; and, in the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor at Franchisor's home office shall be controlling.

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, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the Club 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 Club. 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.

- 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.

9 ACCOUNTING AND RECORDS.

- 9.1 Franchisee shall maintain during the term of this Agreement, and shall preserve for at least seven (7) years from the dates of their preparation, 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. Franchisee shall maintain during the term of this Agreement, and shall preserve for at least three (3) years from the date of their preparation, all cash register tapes from the Club.
- 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), on a review basis, within ninety (90) days after the end of each fiscal year of the Club during the term of this Agreement, showing the results of operations of the Club during said fiscal year. In addition, upon Franchisor's written request, Franchisee shall prepare and submit to Franchisor a monthly and fiscal year-to-date profit and loss statement and a quarterly balance sheet (which may be unaudited) for the Club, and shall submit to Franchisor copies of all state sales tax returns for the Club. If Franchisor requests but Franchisee does not provide such annual financial statements or other required reports at the time requested and in a format reasonably satisfactory to Franchisor, then Franchisor shall have the right to require Franchisee to have such annual financial statements prepared by an independent certified public accountant satisfactory to Franchisor and submitted to Franchisor.
- 9.3 Franchisee shall also submit to Franchisor, for review or auditing, such other forms, reports, records, information, and data as Franchisor may reasonably designate (including without limitation a statement of Gross Revenues to be submitted each month with the Royalty Fee), in the form 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.
- 9.4 Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the 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 ½%) per month, or the maximum rate permitted by law, whichever is less. If an inspection is necessitated because Franchisee fails to provide sales reports or if an

inspection discloses an understatement in any report 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 Franchisor shall have the right to establish, at any time, the Advertising Fund and/or a regional advertising fund, as described in this Section 10.
- 10.2 For each month during the term of this Agreement, Franchisee shall contribute and/or expend at least One Thousand Five Hundred Dollars (\$1,500) (the "Advertising Contribution"). The Advertising Contribution shall be made by Franchisee in the manner required under this Section 10, including without limitation, Section 10.3 below. In addition to the Advertising Contribution, Franchisee shall conduct the Grand Opening Advertising Program described in Section 10.9, below.
- 10.3 Franchisee's Advertising Contribution shall be paid to the Advertising Fund, or to any Regional Ad Fund established pursuant to Section 10.5 below, or on local advertising and promotion, in such proportions as Franchisor may designate from time-to-time, in Franchisor's sole discretion; provided, however, that unless there are at least five hundred (500) Clubs open in the United States, the maximum amount that Franchisee shall be required to contribute to the Advertising Fund and/or the Regional Ad Fund (defined in Section 10.5 below) shall not be more than Three Hundred Dollars (\$300), together.
- 10.4 The Advertising Fund shall be maintained and administered by Franchisor or its designee, as follows:
 - 10.4.1 Franchisor or its designee shall direct all advertising programs, with sole discretion over the concepts, materials, and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the 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 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 Advertising Fund.
 - 10.4.2 The Advertising Fund, all contributions thereto, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, conducting, and 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, among other things, 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, point of sale, and other merchandising programs; and providing promotional and other marketing materials and services to the Clubs operated under the System. The 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 deems, in

its sole discretion, will promote general public awareness and favorable support for the System.

- 10.4.3 Franchisee shall contribute to the Advertising Fund by electronic transfer according to the Authorization Agreement for Prearranged Payments (a copy of which is attached hereto as Exhibit F) made payable to the Advertising Fund, at such times as are required under Section 4.4 above. All sums paid by Franchisee to the Advertising Fund shall be maintained in an account separate from Franchisor's other monies and shall not be used to defray any of Franchisor's expenses, except for such reasonable costs and overhead, if any, as Franchisor may incur in activities reasonably related to the direction and implementation of the Advertising Fund and advertising programs for franchisees and the System, including, among other things, costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs. The 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 Advertising Fund.
- 10.4.4 The Advertising Fund is not and shall not be an asset of Franchisor. A statement of the operations of the Advertising Fund as shown on the books of Franchisor shall be prepared annually by Franchisor and shall be made available to Franchisee.
- 10.4.5 Although the Advertising Fund is intended to be of perpetual duration, Franchisor maintains the right to terminate the Advertising Fund. The Advertising Fund shall not be terminated, however, until all monies in the Advertising Fund have been expended for advertising and/or promotional purposes.
- 10.5 Franchisor shall have the right, in its discretion, 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 Club 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 Club 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 Regional Ad Fund. The following provisions shall apply to each such Regional Ad Fund:
 - 10.5.1 Each Regional Ad Fund shall be organized and governed in a form and manner, and shall commence operations on a date approved in advance by Franchisor in writing.
 - 10.5.2 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 advertising and promotion.
 - 10.5.3 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 10.8 below.
 - 10.5.4 Franchisee shall submit its required contribution to the Regional Ad Fund at the time required under Section 4.4 above, together with such statements or reports as may be required by Franchisor or by the Regional Ad Fund with Franchisor's prior written approval. If so requested by Franchisor, Franchisee shall submit its payments and reports to the Regional Ad Fund directly to Franchisor for distribution to the Regional Ad Fund.

- 10.6 All local advertising and promotion by Franchisee shall be in such media, and of such type and format as Franchisor may approve; shall be conducted in a dignified manner; 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 10.8 below.
- 10.7 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.
- 10.8 For all advertising and promotional plans which require Franchisor's approval prior to use, as set forth in Sections 10.5 and 10.6 above, Franchisee or the Regional Ad Fund, where applicable, shall submit samples of such plans and materials to Franchisor (by means described in Section 19 below), for Franchisor's prior written approval (except with respect to prices to be charged by Franchisee). If written approval is not received by Franchisee or the Regional Ad Fund from Franchisor within fifteen (15) 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 copyright 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.
- 10.9 In lieu of the Advertising Contribution for the first month after opening the Club, Franchisee shall expend not less than Seven Thousand Five Hundred Dollars (\$7,500) with our designated grand opening consultant on local advertising and promotion conducted in conjunction with the Club's initial grand opening (the "**Grand Opening Advertising Program**"), in accordance with Franchisor's specifications therefor. Franchisee shall complete the Grand Opening Advertising Program no later than the first month after the date on which the Club first opens for business. All materials used in the Grand Opening Advertising Program shall be subject to Franchisor's approval under Section 10.8, above. For the purpose of this Agreement, the Grand Opening Advertising Program shall be considered local advertising and promotion, as provided under Section 10.12 below.
- 10.10 In addition to the Advertising Contribution, Franchisor may require Franchisee to contribute funds to such charitable organizations as Franchisor may periodically designate. For purposes of this Agreement, such contributions shall be considered local advertising and promotion.
- 10.11 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 Club.
- 10.12 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:

10.12.1 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;

10.12.2 Charitable, political, or other contributions or donations to organizations that Franchisor has not approved in writing; and

10.12.3 The value of discounts provided to consumers.

11 TECHNOLOGY.

11.1 Computer Systems and Required Software.

11.1.1 Franchisor shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware to be used by, between, or among Clubs, including without limitation: (a) back office and point of sale systems, data, audio, video, and voice storage, retrieval, and transmission systems for use at Clubs, between or among Clubs, and between and among Franchisee's Clubs and Franchisor and/or Franchisee; (b) Cash Register Systems; (c) physical, electronic, and other security systems; (d) printers and other peripheral devices; (e) archival back-up systems; and (f) Internet access mode (e.g., form of telecommunications connection) and speed (collectively, the "**Computer System**").

11.1.2 Franchisor shall have the right, but not the obligation, to develop or have developed for it, or to designate: (a) computer software programs and accounting system software that Franchisee must use in connection with the Computer System ("**Required Software**"), which Franchisee shall install; (b) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall install; (c) the tangible media upon which such Franchisee shall record data; and (d) the database file structure of Franchisee's Computer System.

11.1.3 Franchisee shall install and use the Computer System and Required Software.

11.1.4 Franchisee shall implement and periodically make upgrades and other changes to the Computer System and Required Software as Franchisor may reasonably request in writing (collectively, "**Computer Upgrades**").

11.1.5 Franchisee shall comply with all specifications issued by Franchisor with respect to the Computer System and the Required Software, and with respect to Computer Upgrades. Franchisee shall also afford Franchisor unimpeded access to Franchisee's Computer System and Required Software as Franchisor may request, in the manner, form, and at the times requested by Franchisor.

11.2 *Data.* All data provided by Franchisee, uploaded to Franchisor's system from the Franchisee's system, and/or downloaded from the Franchisee's system to Franchisor's system is and will be owned exclusively by Franchisor, and Franchisor will have the right to use such data in any manner that Franchisor deems appropriate without compensation to Franchisee. In addition, all other data created or collected by Franchisee in connection with the System, or in connection with

Franchisee's operation of the business (including but not limited to consumer and transaction data), is and will be owned exclusively by Franchisor during the term of, and following termination or expiration of, this Agreement. Copies and/or originals of such data must be provided to Franchisor upon Franchisor's request. Franchisor hereby licenses use of such data back to Franchisee, at no additional cost, solely for the term of this Agreement and solely for Franchisee's use in connection with the business franchised under this Agreement.

- 11.3 *Privacy.* Franchisor may, from time-to-time, specify in the Manuals or otherwise in writing the information that Franchisee shall collect and maintain on the Computer System installed at the Clubs, and Franchisee shall provide to Franchisor such reports as Franchisor may reasonably request from the data so collected and maintained. All data pertaining to or derived from the Clubs (including without limitation data pertaining to or otherwise about Club customers) is and shall be the exclusive property of Franchisor, and Franchisor hereby grants a royalty-free non-exclusive license to Franchisee to use said data during the term of this Agreement.
- 11.3.1 Franchisee shall abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information ("**Privacy Laws**").
- 11.3.2 Franchisee shall comply with Franchisor's standards and policies pertaining to Privacy Laws. If there is a conflict between Franchisor's standards and policies pertaining to Privacy Laws and actual applicable law, Franchisee shall: (a) comply with the requirements of applicable law; (b) immediately give Franchisor written notice of said conflict; and (c) promptly and fully cooperate with Franchisor and Franchisor's counsel in determining the most effective way, if any, to meet Franchisor's standards and policies pertaining to Privacy Laws within the bounds of applicable law.
- 11.3.3 Franchisee shall not publish, disseminate, implement, revise, or rescind a data privacy policy without Franchisor's prior written consent as to said policy.
- 11.4 *Telecommunications.* Franchisee shall comply with Franchisor's requirements (as set forth in the Manuals or otherwise in writing) with respect to establishing and maintaining telecommunications connections between Franchisee's Computer System and Franchisor's Extranet and/or such other computer systems as Franchisor may reasonably require. The term "**Extranet**" means a private network based upon Internet protocols that will allow users inside and outside of Franchisor's headquarters to access certain parts of Franchisor's computer network via the Internet.
- 11.5 *Extranet.* Franchisor may establish an Extranet (but is not required to do so or to maintain an Extranet). If Franchisor does establish an Extranet, then Franchisee shall comply with Franchisor's requirements (as set forth in the Manuals or otherwise in writing) with respect to connecting to the Extranet, and utilizing the Extranet in connection with the operation of Franchisee's Clubs. The Extranet may include, without limitation, the Manuals, training other assistance materials, and management reporting solutions (both upstream and downstream, as Franchisor may direct). Franchisee shall purchase and maintain such computer software and hardware (including but not limited to telecommunications capacity) as may be required to connect to and utilize the Extranet.
- 11.6 *Websites.* Unless otherwise approved in writing by Franchisor, Franchisee shall not establish a separate Website, but shall only have one or more references or webpage(s), as designated and approved in advance by Franchisor, within Franchisor's Website (the term "**Website**" is defined to mean a group of related documents that can be accessed through a common Internet address).

However, if Franchisor approves, in writing, a separate Website for Franchisee (which Franchisor is not obligated to approve), then each of the following provisions shall apply:

- 11.6.1 Franchisee specifically acknowledges and agrees that any Website owned or maintained by or for the benefit of Franchisee shall be deemed "advertising" under this Agreement, and will be subject to (among other things) Franchisor's approval under Section 10.7 above.
- 11.6.2 Franchisee shall not establish or use any Website without Franchisor's prior written approval.
- 11.6.3 Before establishing any Website, Franchisee shall submit to Franchisor, for Franchisor's prior written approval, a sample of the proposed Website domain name, format, visible content (including, without limitation, proposed screen shots), and non-visible content (including, without limitation, meta tags) in the form and manner Franchisor may reasonably require;
- 11.6.4 Franchisee shall not use or modify such Website without Franchisor's prior written approval as to such proposed use or modification.
- 11.6.5 In addition to any other applicable requirements, Franchisee shall comply with the Standards and specifications for Websites that Franchisor may periodically prescribe in the Manuals or otherwise in writing.
- 11.6.6 If required by Franchisor, Franchisee shall establish such hyperlinks to Franchisor's Website and others as Franchisor may request in writing.
- 11.7 *Cash Registers.* Franchisee shall record all sales on computer-based point of sale systems approved by Franchisor or on such other types of cash registers as may be designated by Franchisor in the Manuals or otherwise in writing ("**Cash Register Systems**"), which shall be deemed part of the Franchisee's Computer System. Franchisee shall utilize computer-based point-of-sale cash registers which are fully compatible with any program or system which Franchisor, in its discretion, may employ, and Franchisee shall record all Gross Revenues and all sales information on such equipment.
- 11.8 *Online Use of Marks and E-mail Solicitations.* Franchisee shall not use the Proprietary Marks or any abbreviation or other name associated with Franchisor and/or the System as part of any e-mail address, domain name, and/or other identification of Franchisee in any electronic medium. Franchisee agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail or other electronic media without first obtaining Franchisor's written consent as to: (a) the content of such e-mail advertisements or solicitations; and (b) Franchisee's plan for transmitting such advertisements. In addition to any other provision of this Agreement, Franchisee shall be solely responsible for compliance with any laws pertaining to sending e-mails including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "CAN-SPAM Act of 2003").
- 11.9 *No Outsourcing without Prior Written Approval.* Franchisee shall not hire third party or outside vendors to perform any services or obligations in connection with the Computer System,

Required Software, or any other of Franchisee's obligations without Franchisor's prior written approval therefor. Franchisor's consideration of any proposed outsourcing vendor(s) may be conditioned upon, among other things, such third party or outside vendor's entry into a confidentiality agreement with Franchisor and Franchisee in a form that is reasonably provided by Franchisor. The provisions of this Section 11.9 are in addition to and not instead of any other provision of this Agreement.

11.10 *Changes to Technology.* Franchisee and Franchisor acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisee agrees that Franchisor shall have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and Franchisee agrees that it shall abide by those reasonable new standards established by Franchisor as if this Section 11 were periodically revised by Franchisor for that purpose.

11.11 *E-Mail and Fax Communication.* Franchisee acknowledges and agrees that exchanging information with Franchisor by e-mail and fax 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 and faxes for communicating as part of the economic bargain underlying this Agreement. To facilitate the use of e-mail and fax to exchange information, Franchisee authorizes the transmission of e-mail by Franchisor and Franchisor's employees, vendors, and affiliates (on matters pertaining to the business contemplated hereunder) (together, "Official Senders") to Franchisee during the term of this Agreement.

11.11.1 In order to implement the terms of this Section 11.11, Franchisee agrees that: (a) Official Senders are authorized to send e-mails and faxes 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 (in an e-mail, electronically, or in a pen-and-paper writing, as Franchisor may reasonably require and in the form appended to this Agreement as Exhibit G or another form that Franchisor may reasonably require) to Official Senders' transmission of e-mails and faxes 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 and/or faxes, from Official Senders during the term of this Agreement.

11.11.2 The consent given in this Section 11.11 shall not apply to the provision of notices by either party under this Agreement using e-mail unless the parties otherwise agree in a pen-and-paper writing signed by both parties.

12 INSURANCE.

12.1 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 Club or other facilities on premises, or by reason of the

construction, operation, or occupancy of the Club or other facilities on premises. Such policy or policies shall be written by an insurance company or companies reasonably satisfactory to Franchisor, having a current Best's rating of at least A-IX and licensed to do business in the state in which the Club 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), the following:

- 12.1.1 Comprehensive general liability insurance (including without limitation personal injury and property damage coverage), on an occurrence form, with a combined single limit of at least One Million Dollars (\$1,000,000) for both bodily injury and property damage.
- 12.1.2 Business automobile liability insurance, including 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. Such policy shall have the contractual exclusion removed, unless Franchisee provides separate evidence that contractual liability for automobile exposure is otherwise insured. Such policy shall also have a drive other car endorsement with employees of the Club as additional insured.
- 12.1.3 Statutory workers' compensation insurance and employer's liability insurance for a limit of the greater of One Hundred Thousand Dollars (\$100,000) or the statutory minimum, as well as such other disability benefits type insurance as may be required by statute or rule of the state in which the Club is located. Such policy shall contain an "Alternate Employer Endorsement" including Franchisor as the alternate employer.
- 12.1.4 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 One Million Dollars (\$1,000,000) total limit of liability. Such umbrella liability will provide at a minimum those coverages and endorsements required in the underlying policies.
- 12.1.5 Property insurance providing coverage for direct physical loss or damage to real and personal property for all-risk perils, including the perils of flood and earthquake. Appropriate coverage shall also be provided business interruption/extra expense exposures. The policy or policies shall value property (real and personal) on a new replacement cost basis without deduction for depreciation and the amount of insurance shall not be less than ninety percent (90%) of the full replacement value of the Club, its furniture, fixtures, equipment, and stock (real and personal property). Any deductibles contained in such policy shall be subject to review and approval by Franchisor.
- 12.2 All policies listed in Section 12.1 above (unless otherwise noted below) shall contain such endorsements as shall, from time to time, be provided in the Manuals.
- 12.3 In the event of cancellation, material change, or non-renewal of any policy, sixty (60) days' advance written notice must be provided to the Franchisor in the manner provided in Section 20 below.
- 12.4 In connection with all significant construction, reconstruction, or remodeling of the Club during the term hereof, 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 satisfactory to Franchisor, having a current Best's rating of at least A-IX.

- 12.5 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 18 of this Agreement.
- 12.6 All public liability and property damage 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.
- 12.7 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 sixty (60) 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 12.1 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.
- 12.8 Franchisor may, from time to time, and in its sole discretion, 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 are similarly situated.

13 TRANSFER OF INTEREST.

- 13.1 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.
- 13.2 If Franchisee is a corporation or partnership, each principal of Franchisee ("**Principal**"), and the interest of each Principal in Franchisee, is identified in Exhibit E to this Agreement. Any person or entity which owns a direct or indirect interest in Franchisee may be designated as a Principal by Franchisor in its sole discretion, and Exhibit E shall be so amended automatically upon notice thereof to Franchisee.
- 13.3 Franchisor shall have a continuing right to designate as a Principal any person or entity which owns a direct or indirect interest in Franchisee.
- 13.4 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:

- 13.4.1 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 Club.
- 13.4.2 If Franchisee is a corporation or a 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.
- 13.4.3 If Franchisee is a partnership (general or limited), a limited liability partnership, or some other form of entity that is not addressed under Section 13.4.2 above, the partners of the entity shall not, without Franchisor's prior written consent, admit additional partners, remove a partner, or otherwise materially alter the powers of any partner. Each general partner in a general partnership shall automatically be deemed a Principal of Franchisee.
- 13.4.4 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 E.
- 13.5 Franchisor shall not unreasonably withhold any consent required by Section 13.4; provided, 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 absolute discretion to require any or all of the following as conditions of its approval:
- 13.5.1 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;
- 13.5.2 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;
- 13.5.3 After the transfer, the Principals of Franchisee 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 Club, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the Club;
- 13.5.4 If a proposed transfer would result in a change in control of Franchisee, at Franchisor's option, Franchisee shall execute, for a term ending on the expiration date of this Agreement the form of franchise agreement 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 advertising fee;

13.5.5 If so requested by Franchisor, Franchisee, at its expense, shall upgrade the Club to conform to the then-current standards and specifications of new centers then-being established in the System, and shall complete the upgrading and other requirements within the time specified by Franchisor;

13.5.6 The transferor shall remain liable for all of the obligations to Franchisor in connection with the Club 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;

13.5.7 At Franchisee's expense, one Principal designated by Franchisor shall successfully complete all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require;

13.5.8 Franchisee shall pay a transfer fee of Five Thousand Dollars (\$5,000) for Franchisor's legal, accounting, training, and other expenses incurred in connection with the transfer.

13.5.9 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Section 16.2 and Section 16.3 of this Agreement.

13.6 Right of First Refusal.

13.6.1 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.

13.6.2 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 13.6 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 13, with respect to a proposed transfer.

13.6.3 If 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 independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Franchisee, which two appraisers shall, in turn, promptly designate a third appraiser; all three 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

14.6, 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.

- 13.7 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 twelve (12) 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 twelve (12) months after the deceased's death.
- 13.8 Upon the permanent disability of any Principal with a controlling interest in Franchisee, Franchisor may, in its sole discretion, require such interest to be transferred to a third party in accordance with the conditions described in this Section 13 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 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 13.8 as of the date of refusal. Franchisor shall pay the cost of the required examination.
- 13.9 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.
- 13.10 Franchisor's consent to a transfer which is the subject of this Section 13 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.
- 13.11 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 13, including without limitation the terms of Sections 13.4, 13.5, and 13.6.
- 13.12 All materials for an offering of stock, partnership, or other ownership 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 Five Thousand Dollars (\$5,000) 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 13.13 commences. Any such offering shall be subject to all of the other provisions of this Section 13, including without limitation the terms set forth in Sections 13.4, 13.5, 13.6; 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.

14 DEFAULT AND TERMINATION.

- 14.1 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 supersedeas 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 Club's premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of Franchisee's Club shall be sold after levy thereupon by any sheriff, marshal, or constable.
- 14.2 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:
- 14.2.1 If Franchisee fails to construct and open the Club within the time limits as provided in Section 5.4 of this Agreement, and within the requirements set forth in Section 5.5.2 of the Agreement;
- 14.2.2 If Franchisee at any time ceases to operate or otherwise abandons the Club, or loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Club is located; provided, however, that: (a) 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