



85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198  
www.commerce.state.mn.us  
651.295.4026 FAX 651.297.1959  
An equal opportunity employer

May 3, 2012

AMY CHENG  
CHENG COHEN LLC  
311 N ABERDEEN ST SUITE 400  
CHICAGO, IL 60607

Re: F-4017  
FITNESS TOGETHER FRANCHISE CORPORATION  
FITNESS TOGETHER FRANCHISE AGREEMENT (UNIT)

Dear Ms. Cheng:

The Annual Report has been reviewed and is in compliance with Minnesota Statute Chapter 80C and Minnesota Rules Chapter 2860.

This means that there continues to be an effective registration statement on file and that the franchisor may offer and sell the above-referenced franchise in Minnesota.

The franchisor is not required to escrow franchise fees, post a Franchise Surety Bond or defer receipt of franchise fees during this registration period.

As a reminder, the next annual report is due within 120 days after the franchisor's fiscal year end, which is December 31, 2012.

Sincerely,

MIKE ROTHMAN  
Commissioner

By:

Daniel Sexton  
Commerce Analyst Supervisor  
Registration Division  
(651) 296-4520

MR:DES:dlw

F-4017

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE  
REGISTRATION DIVISION  
(651) 296-4520

IN THE MATTER OF THE REGISTRATION OF:  
FITNESS TOGETHER FRANCHISE AGREEMENT (UNIT)  
By FITNESS TOGETHER FRANCHISE CORPORATION

ORDER AMENDING  
REGISTRATION

WHEREAS, an application to amend the registration and amendment fee have been filed,

IT IS HEREBY ORDERED that the registration dated June 19, 2002, is amended as of the date set forth below.



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MIKE ROTHMAN  
Commissioner  
Department of Commerce  
85 7th Place East, Suite 500  
St Paul, MN 55101

Date: May 3, 2012

UNIFORM FRANCHISE REGISTRATION APPLICATION

File No. F-4017  
(Insert file number of immediately Preceding filing of Applicant)

State: Minnesota

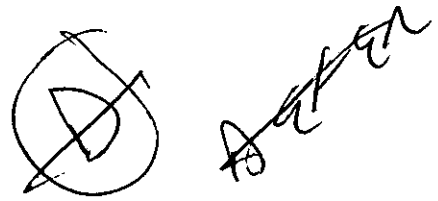
Fee: \$300.00

APPLICATION FOR (Check only one):

- INITIAL REGISTRATION OF AN OFFER OR SALE OF FRANCHISES
- REGISTRATION APPLICATION OR ANNUAL REPORT
- PRE-EFFECTIVE AMENDMENT
- POST-EFFECTIVE MATERIAL AMENDMENT

State of Minnesota  
Dept. of Commerce  
MAR 30 2012  
Rec'd \$ 300

1. Full legal name of Franchisor:  
Fitness Together Franchise Corporation
2. Name of the franchise offering:  
Fitness Together® (Unit Franchise Program)
3. Franchisor's principal business address:  
9092 South Ridgeline Boulevard  
Suite A  
Highlands Ranch, Colorado 80129



4. Name and address of Franchisor's agent in this State authorized to receive service of process:  
  
Commissioner of Commerce  
Department of Commerce  
85 7<sup>th</sup> Street East, Suite 500  
St. Paul, Minnesota 55101

5. The states in which this application is or will be shortly on file:

Hawaii, Indiana, Maryland, Minnesota, Rhode Island, Virginia and Wisconsin with exemptions perfected in California, Illinois, New York and Washington

5-3-12  
AK Amended  
12/31 6-19-02

6. Name, address, telephone and facsimile numbers, and e-mail address of person to whom communications regarding this application should be directed:

Amy Cheng, Esq.  
 Cheng Cohen LLC  
 311 N. Aberdeen, Suite 400  
 Chicago, IL 60607  
 Tel: (312) 243-1716  
 Fax: (312) 277-3961  
 Email: amy.cheng@chengcohen.com

**Certification**

I certify and swear under penalty of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of March 30, 2012 attached as an exhibit, and that all material facts stated in those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

Signed at Highlands Ranch, Colorado, on March 28, 2012

Franchisor:

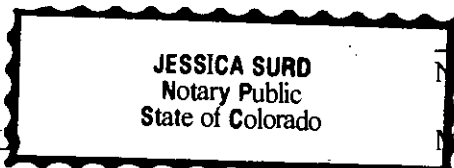
Fitness Together Franchise Corporation  
 (Unit Franchise Program)

By: *Amy Powers*  
 Amy Powers  
 Executive Vice President  
 and General Counsel

STATE OF COLORADO )  
 ) SS  
 COUNTY OF DOUGLAS )

On this 28<sup>th</sup> day of March     , 2012, before me Jessica Surd  
 \_\_\_\_\_ (Notary Public), the undersigned officer, personally appeared Amy Powers, known personally to me to be the Executive Vice President and General Counsel of the above-named corporation, and that she, as such officer, being authorized to do so, executed the foregoing instrument for purposes therein contained, by signing the name of the corporation by herself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(NOTARIAL SEAL) 

*Jessica Surd*  
 \_\_\_\_\_  
 Notary Public  
 My Commission Expires:  
September 12, 2015

JESSICA SURO  
Notary Public  
State of Colorado



85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198  
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651.296.4026 FAX 651.297.1959  
An equal opportunity employer

April 4, 2012

Amy Cheng  
Cheng Cohen LLC  
311 North Aberdeen Suite 400  
Chicago, IL 60607

Re: F-4017, Fitness Together Franchise Corporation

Dear Ms. Cheng:

The annual report (renewal) and amendment applications for the above-referenced franchise registration have been examined. Please correct or otherwise address the following deficiencies:

Due to the deficit ratio of current assets to current liabilities in the franchisor's most recent audited financial statement, the franchisor will be required to comply with one of the following as a condition of registration:

- a) Impound initial franchise fees in a bank located in Minnesota until the franchised business opens. Submit 3 original signature Minnesota Impoundment Agreements; 2 will be returned to the applicant for the Impound Agent and the Franchisor.
- b) Post a Minnesota Surety Bond; amount is the initial franchise fee times the number of franchises projected to be opened in Minnesota (Item 20 in Franchise Disclosure Document). A minimum of one is required.
- c) Defer payment of initial franchise fees until business opens; amend Franchise Disclosure Document (Items 5 and 7) and agreement(s) accordingly.

Forms can be downloaded at [www.commerce.state.mn.us](http://www.commerce.state.mn.us).

Please disclose Option a. in Item 5 and option b. in Item 21 of the Franchise Disclosure Document.

When the franchisor submits its next audited financial statement, a request may be made of the Department to lift this requirement.

Please respond to this letter within a reasonable time. Applications may be withdrawn or canceled if not diligently pursued.

Sincerely yours,

MIKE ROTHMAN  
Commissioner

BY:

DANIEL E. SEXTON  
Commerce Analyst Supervisor  
Market Assurance Division  
[dan.sexton@state.mn.us](mailto:dan.sexton@state.mn.us)  
(651) 296-4520  
GW/DES/dw

**Sexton, Dan (COMM)**

---

**From:** Susan Cory [Susan.Cory@chengcohen.com]  
**Sent:** Wednesday, May 02, 2012 3:51 PM  
**To:** Sexton, Dan (COMM)  
**Cc:** Amy Cheng  
**Subject:** RE: Fitness Together Franchise Corporation - File No. F-4017  
**Attachments:** FT (Unit) - Redline of Item 21 of FDD re MN Comment.pdf; FT (Unit) - Ex. D - 03\_2012 Guarantee\_Financials for MN.pdf

Mr. Sexton,

You are absolutely right. Let's try this again. Attached please find the following:

1. One (1) redlined copy of page 53 of the Company's revised Franchise Disclosure Document; and
2. One (1) revised copy of Exhibit D to the Company's FDD which now includes the executed Guarantee of Performance and audited financial statements of Fitness Together Holdings, Inc.

Please let me know if the attached will suffice. Thanks.

Susan

Susan B. Cory  
CHENG COHEN LLC  
311 N. Aberdeen, Suite 400  
Chicago, IL 60607

P 312.243.1715  
F 312.277.3961

[susan.cory@chengcohen.com](mailto:susan.cory@chengcohen.com)  
[www.chengcohen.com](http://www.chengcohen.com)

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**From:** Sexton, Dan (COMM) [<mailto:Dan.Sexton@state.mn.us>]  
**Sent:** Wednesday, May 02, 2012 3:13 PM  
**To:** Susan Cory  
**Subject:** RE: Fitness Together Franchise Corporation - File No. F-4017

They would have to put their financials in the document and meet the financial test.

Thanks

Daniel E. Sexton  
State Program Administrative Director, Securities  
Insurance Product Filing & Securities Registration  
Market Assurance Division  
Minnesota Department of Commerce



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(651) 296-4520  
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[dan.sexton@state.mn.us](mailto:dan.sexton@state.mn.us)

---

**From:** Susan Cory [<mailto:Susan.Cory@chengcohen.com>]  
**Sent:** Wednesday, May 02, 2012 2:33 PM  
**To:** Sexton, Dan (COMM)  
**Cc:** Amy Cheng  
**Subject:** Fitness Together Franchise Corporation - File No. F-4017

Mr. Sexton,

In connection with the Annual Report/Amendment Application recently filed on behalf of Fitness Together Franchise Corporation (the "Company") and in response to your comment letter dated April 4, 2012, I have attached the following materials:

1. One (1) redlined copy of page 53 of the Company's revised Franchise Disclosure Document; and
2. A Guarantee of Performance executed by an officer of the Company's parent company, Fitness Together Holdings, Inc.

As noted in the attached materials, the Company's parent company, Fitness Together Holdings, Inc., will guarantee the Company's performance of its obligations to franchisees under the Franchise Agreement and related documents for franchises registered under the Minnesota Franchises Act. In addition, a copy of this Guarantee will also be included in Item 21 of the revised FDD.

If you should have any questions or comments, please do not hesitate to contact me.

Susan

Susan B. Cory  
CHENG COHEN LLC  
311 N. Aberdeen, Suite 400  
Chicago, IL 60607

P 312.243.1715  
F 312.277.3961

[susan.cory@chengcohen.com](mailto:susan.cory@chengcohen.com)  
[www.chengcohen.com](http://www.chengcohen.com)

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## ITEM 21 FINANCIAL STATEMENTS

Attached as Exhibit D are ~~on the~~ audited financial statements of Fitness Together Holdings, Inc. as of December 31, 2009, 2010, and 2011. ~~Our fiscal year-end is December 31.~~ Fitness Together Holdings, Inc. has guaranteed our performance of obligations to you under the Franchise Agreement and related documents for franchises registered under the Minnesota Franchises Act. A copy of the Guarantee is attached as part of Exhibit D.

## ITEM 22 CONTRACTS

Attached to this Disclosure Document are the following Exhibits:

- A State Addenda to the Disclosure Document and Franchise Agreement
- B Franchise Agreement and Exhibits
- G Consent to Transfer
- H Form of Conversion Program Addendum to the Franchise Agreement
- I Form of Renewal Addendum
- J Form of General Release

There are no other contracts or agreements you are required to sign to purchase your Studio

## ITEM 23 RECEIPTS

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

**EXHIBIT D**

**GUARANTEE OF PERFORMANCE AND  
AUDITED FINANCIAL STATEMENTS OF  
FITNESS TOGETHER HOLDINGS, INC.  
FOR THE YEARS ENDED 2009, 2010, AND 2011**

**Exhibit D**

## GUARANTEE OF PERFORMANCE

For value received, Fitness Together Holdings, Inc., a Delaware corporation (the "Guarantor"), located at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, absolutely and unconditionally guarantees to assume the duties and obligations of Fitness Together Franchise Corporation, located at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (the "Franchisor"), under its franchise agreement identified in its 2012 Minnesota Franchise Disclosure Document, as it may be amended, and as that franchise agreement may be entered into with franchisees and amended, modified or extended from time to time for franchises registered under the Minnesota Franchises Act (the "Franchise Agreements"). This guarantee continues until all such obligations of the Franchisor under the Franchise Agreements are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreements has been completely discharged, whichever first occurs. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns.

The Guarantor signs this guarantee at Highlands Ranch, Colorado on the 2<sup>nd</sup> day of

May, 2012.

Guarantor:

Fitness Together Holdings, Inc.

By: 

Name: AMY POWERS

Title: EVP



1 Client 1 Trainer 1 Goal

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidated Financial Statements  
and  
Independent Auditors' Report  
December 31, 2011, 2010, and 2009**

**EKS&H**

**EHRHARDT • KEEFE  
STEINER • HOTTMAN PC**

CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS

**FITNESS TOGETHER HOLDINGS, INC.**

**Table of Contents**

	<u>Page</u>
Independent Auditors' Report.....	1
Consolidated Financial Statements	
Consolidated Balance Sheets.....	2
Consolidated Statements of Operations.....	3
Consolidated Statement of Changes in Equity.....	4
Consolidated Statements of Cash Flows.....	5
Notes to Consolidated Financial Statements.....	7
Accompanying Information	
Consolidating Balance Sheet.....	32
Consolidating Statement of Operations.....	34

**INDEPENDENT AUDITORS' REPORT**

Board of Directors and Stockholders  
Fitness Together Holdings, Inc.  
Highlands Ranch, Colorado

We have audited the accompanying consolidated balance sheets of Fitness Together Holdings, Inc. (the "Company") as of December 31, 2011, 2010, and 2009, and the related consolidated statements of operations, changes in equity, and cash flows for the periods then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fitness Together Holdings, Inc. as of December 31, 2011, 2010, and 2009, and the results of its operations and its cash flows for the periods then ended in conformity with accounting principles generally accepted in the United States of America.

Our audits were made for the purpose of forming an opinion on the basic consolidated financial statements taken as a whole. The information included in the accompanying schedules is presented only for supplementary analysis purposes and is not a required part of the basic consolidated financial statements. The supplementary information is the responsibility of the Company's management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole.

*Ehrhardt Keefe Steiner + Hottman PC*

Ehrhardt Keefe Steiner & Hottman PC

February 20, 2012  
Denver, Colorado

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidated Balance Sheets**

	December 31,		
	2011	2010	2009
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	\$ 3,450,770	\$ 2,845,118	\$ 631,957
Accounts receivable, net	546,034	578,796	742,984
Notes receivable, current	58,494	49,117	50,640
Deferred franchise costs, current	813,905	291,059	457,138
Other current assets	202,671	152,800	173,234
<b>Total current assets</b>	<u>5,071,874</u>	<u>3,916,890</u>	<u>2,055,953</u>
<b>Non-current assets</b>			
Restricted cash	10,268	20,392	46,012
Property and equipment, net	358,828	461,462	477,122
Notes receivable, less current portion	379,160	653,003	785,864
Deferred franchise costs, less current portion	1,122,012	526,024	594,322
Deferred tax asset, net	-	-	1,251,147
Deferred financing costs, net	184,623	276,687	368,751
Intangible assets, net	2,680,367	2,642,489	2,553,263
Goodwill	16,143,406	16,074,707	15,653,311
<b>Total non-current assets</b>	<u>20,878,664</u>	<u>20,654,764</u>	<u>21,729,792</u>
<b>Total assets</b>	<u>\$ 25,950,538</u>	<u>\$ 24,571,654</u>	<u>\$ 23,785,745</u>
<b>Liabilities and Equity</b>			
<b>Current liabilities</b>			
Accounts payable	\$ 56,689	\$ 51,058	\$ 77,688
Accrued expenses	1,789,389	828,874	981,253
Deferred revenue, current	1,593,927	929,530	785,497
Current portion of long-term debt	1,257,204	1,113,802	738,849
<b>Total current liabilities</b>	<u>4,697,209</u>	<u>2,923,264</u>	<u>2,583,287</u>
<b>Non-current liabilities</b>			
Deferred revenues, less current portion	3,084,832	3,237,011	4,925,344
Long-term debt, less current portion	6,868,057	7,208,515	6,504,627
<b>Total non-current liabilities</b>	<u>9,952,889</u>	<u>10,445,526</u>	<u>11,429,971</u>
<b>Total liabilities</b>	<u>14,650,098</u>	<u>13,368,790</u>	<u>14,013,258</u>
<b>Equity</b>			
<b>FTHI stockholders' equity</b>			
Series A preferred stock, \$0.001 par value, 6,000,000 authorized and 3,500,000 issued and outstanding at December 31, 2011, 2010, and 2009, respectively. (Liquidation preference of \$5,453,000)	3,500	3,500	3,500
Series A-1 preferred stock, \$0.001 par value, 1,024,316 authorized, issued, and outstanding at December 31, 2011, 2010, and 2009 respectively. (Liquidation preference of \$1,024,316)	1,024	1,024	1,024
Series B preferred stock, \$0.001 par value, 36,998,252, 31,762,560, and 24,781,848 authorized, 36,998,252, 31,762,650, and 23,734,728 issued and outstanding at December 31, 2011, 2010, and 2009 respectively. (Liquidation preference of \$21,199,998)	36,998	31,763	23,735
Common stock, \$0.001 par value, 50,471,204, 45,235,602, and 40,000,000 shares authorized, 2,796,012, 2,743,860, and 2,637,363 issued and outstanding as of December 31, 2011, 2010, and 2009, respectively.	2,768	2,743	2,637
Class A common stock, \$0.001 par value, 4,504,196 shares authorized, issued and outstanding as of December 31, 2011, 2010, and 2009, respectively.	4,504	4,504	4,504
Additional paid-in capital	27,791,138	24,796,161	20,204,295
Accumulated deficit	(16,552,695)	(13,657,175)	(10,519,265)
<b>Total FTHI stockholders' equity</b>	<u>11,287,237</u>	<u>11,182,520</u>	<u>9,720,430</u>
<b>Non-controlling interests</b>	13,203	20,344	52,057
<b>Total equity</b>	<u>11,300,440</u>	<u>11,202,864</u>	<u>9,772,487</u>
<b>Total liabilities and equity</b>	<u>\$ 25,950,538</u>	<u>\$ 24,571,654</u>	<u>\$ 23,785,745</u>

See notes to consolidated financial statements.



**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidated Statements of Operations**

	For the Years Ended		
	December 31,		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
<b>Revenues</b>			
Royalties	\$ 5,625,599	\$ 5,693,920	\$ 5,776,932
Franchise fees	2,164,420	2,513,524	2,854,887
Equipment revenue	279,951	182,125	586,682
Other revenues	<u>699,665</u>	<u>724,847</u>	<u>581,776</u>
Total revenues	<u>8,769,635</u>	<u>9,114,416</u>	<u>9,800,277</u>
<b>Expenses</b>			
Franchise related costs	3,256,738	3,542,577	3,975,225
Payroll	3,710,692	3,175,564	2,721,838
Advertising and promotion	362,285	570,665	753,698
General and administrative	2,172,426	1,703,674	2,009,230
Rent and occupancy	258,205	238,833	407,208
Depreciation and amortization	966,245	981,857	827,133
Impairment of goodwill	-	-	8,482,000
Impairment of intangible assets	-	-	<u>1,762,000</u>
Total expenses	<u>10,726,591</u>	<u>10,213,170</u>	<u>20,938,332</u>
Loss from operations	<u>(1,956,956)</u>	<u>(1,098,754)</u>	<u>(11,138,055)</u>
<b>Other (expense) income</b>			
Interest expense	(933,980)	(917,096)	(904,669)
Interest income	891	2,347	13,318
Other	-	-	<u>1,200</u>
Total other (expense) income	<u>(933,089)</u>	<u>(914,749)</u>	<u>(890,151)</u>
Net loss from continuing operations before income taxes	(2,890,045)	(2,013,503)	(12,028,206)
Income tax (expense) benefit	<u>(7,608)</u>	<u>(1,143,060)</u>	<u>1,323,373</u>
Net loss from continuing operations	(2,897,653)	(3,156,563)	(10,704,833)
Discontinued operations	<u>-</u>	<u>15,813</u>	<u>(96,711)</u>
Net loss	(2,897,653)	(3,140,750)	(10,801,544)
Less net loss attributed to non-controlling interests, net of tax	<u>2,133</u>	<u>2,840</u>	<u>39,986</u>
Net loss attributable to FTHI	<u>\$ (2,895,520)</u>	<u>\$ (3,137,910)</u>	<u>\$ (10,761,558)</u>

See notes to consolidated financial statements.

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidated Statement of Changes In Equity  
For the Years Ended December 31, 2011, 2010, and 2009**

	Preferred Stock						Common Stock				Additional Paid-in Capital	(Accumulated Deficit) Retained Earnings	Total Stockholders' Equity	Non- Controlling Interests	Total Equity
	Series A		Series A-I		Series B		Voting		Non-Voting - Series A						
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount					
Balance - December 31, 2008	3,500,000	\$ 3,500	1,024,316	\$ 1,024	22,687,608	\$ 22,688	2,637,363	\$ 2,637	-	\$ -	\$ 19,598,851	\$ 242,293	\$ 19,870,993	\$ 99,083	\$ 19,970,076
Issuance of Series B preferred stock	-	-	-	-	1,047,120	1,047	-	-	-	-	598,953	-	600,000	-	600,000
Issuance of Series A non-voting common stock	-	-	-	-	-	-	-	-	4,504,106	4,504	-	-	4,504	-	4,504
Distribution to non-controlling interest	-	-	-	-	-	-	-	-	-	-	6,491	-	6,491	(7,040)	(549)
Net loss	-	-	-	-	-	-	-	-	-	-	-	(10,761,558)	(10,761,558)	(39,986)	(10,801,544)
Balance - December 31, 2009	3,500,000	3,500	1,024,316	1,024	23,734,728	23,735	2,637,363	2,637	4,504,106	4,504	20,204,295	(10,519,265)	9,720,430	52,057	9,772,487
Issuance of Series B preferred stock	-	-	-	-	8,027,922	8,028	-	-	-	-	4,591,972	-	4,600,000	-	4,600,000
Vesting of restricted common stock	-	-	-	-	-	-	106,497	106	-	-	(106)	-	-	-	-
Liquidation of non-controlling interests (FT-Two and FT-Three)	-	-	-	-	-	-	-	-	-	-	-	-	-	(28,873)	(28,873)
Net loss	-	-	-	-	-	-	-	-	-	-	-	(3,137,910)	(3,137,910)	(2,840)	(3,140,750)
Balance - December 31, 2010	3,500,000	3,500	1,024,316	1,024	31,762,650	31,763	2,743,860	2,743	4,504,106	4,504	24,796,161	(13,657,175)	11,182,520	20,344	11,202,864
Issuance of Series B preferred stock	-	-	-	-	5,235,602	5,235	-	-	-	-	2,994,765	-	3,000,000	-	3,000,000
Exercise of stock options	-	-	-	-	-	-	23,752	25	-	-	212	-	237	-	237
Distribution to non-controlling interest	-	-	-	-	-	-	-	-	-	-	-	-	-	(5,008)	(5,008)
Net loss	-	-	-	-	-	-	-	-	-	-	-	(2,895,520)	(2,895,520)	(2,133)	(2,897,653)
Balance - December 31, 2011	<u>3,500,000</u>	<u>\$ 3,500</u>	<u>1,024,316</u>	<u>\$ 1,024</u>	<u>36,998,252</u>	<u>\$ 36,998</u>	<u>2,767,612</u>	<u>\$ 2,768</u>	<u>4,504,106</u>	<u>\$ 4,504</u>	<u>\$ 27,791,138</u>	<u>\$ (16,552,695)</u>	<u>\$ 11,287,237</u>	<u>\$ 13,203</u>	<u>\$ 11,300,440</u>

See notes to consolidated financial statements.

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidated Statements of Cash Flows**

	For the Years Ended		
	December 31,		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Cash flows from operating activities			
Net loss	\$ (2,897,653)	\$ (3,140,750)	\$ (10,801,544)
Adjustments to reconcile net loss to net cash used in operating activities			
Depreciation and amortization	1,058,308	1,073,921	919,197
Impairment of intangibles	-	-	1,762,000
Impairment of goodwill	-	-	8,482,000
Provision for bad debt	81,142	67,092	134,036
Loss on disposal of assets	-	-	14,958
Adjustment to non-controlling interest	(5,008)	(28,873)	-
Payment-in-kind interest (accrued interest)	146,420	143,488	140,615
Stock-based compensation	-	-	4,504
Deferred tax provision	-	1,251,147	(1,346,094)
Changes in assets and liabilities			
Accounts receivable	(20,772)	97,096	(147,439)
Other current assets	(49,871)	20,434	(265,985)
Deferred franchise costs	(1,118,834)	234,377	310,955
Accounts payable	5,631	(26,630)	(212,748)
Accrued expenses	960,515	(152,379)	(12,221)
Deferred revenue	628,618	(1,594,630)	(2,255,875)
	<u>1,686,149</u>	<u>1,085,043</u>	<u>7,527,903</u>
Net cash used in operating activities	<u>(i,211,504)</u>	<u>(2,055,707)</u>	<u>(3,273,641)</u>
Cash flows from investing activities			
Restricted cash	10,124	25,620	(2,133)
Purchases of property and equipment	(123,611)	(185,520)	(367,648)
Proceeds from sale of property and equipment	-	-	34,411
Repurchase of Area Director territories	-	-	(96,250)
Issuance of notes receivable	(25,000)	-	-
Payments on notes receivable	61,958	184,714	282,141
Net cash (used in) provided by investing activities	<u>(76,529)</u>	<u>24,814</u>	<u>(149,479)</u>
Cash flows from financing activities			
Payments on debt	(1,106,552)	(355,946)	-
Proceeds on the issuance of preferred stock	3,000,000	4,600,000	600,000
Proceeds on the issuance of common stock	237	-	-
Payments of financing costs	-	-	(490)
Net cash provided by financing activities	<u>1,893,685</u>	<u>4,244,054</u>	<u>599,510</u>
Net increase (decrease) in cash and cash equivalents	605,652	2,213,161	(2,823,610)
Cash and cash equivalents - beginning of period	<u>2,845,118</u>	<u>631,957</u>	<u>3,455,567</u>
Cash and cash equivalents - end of period	<u>\$ 3,450,770</u>	<u>\$ 2,845,118</u>	<u>\$ 631,957</u>

(Continued on the following page)

See notes to consolidated financial statements.

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidated Statements of Cash Flows**

(Continued from the previous page)

**Supplemental disclosure of cash flow information:**

Cash paid for interest for the years ended December 31, 2011, 2010, and 2009 was \$518,868, \$681,569, and \$672,797, respectively.

**Supplemental disclosure of non-cash activity:**

In 2011, the Company repurchased nine master franchise agreements for notes payable of \$763,076, the rights to receive a franchise agreement for two Elements studios valued at \$45,000, the rights to receive one franchise agreement for a Fitness Together studio valued at \$19,500, and the option to buy two studios at a discounted rate valued at \$19,000. In 2010, the Company repurchased eight master franchise agreements for \$1,291,299 in exchange for notes payable. In 2009, the Company repurchased one master franchise agreement for \$220,917 in exchange for a note payable.

In 2009, the Company issued 4,504,106 shares of Class A non-voting restricted common stock in exchange for services to be rendered by employees (Note 8).

In 2011, 2010, and 2009, the Company issued \$68,500, \$50,330, and \$10,000, respectively, in notes receivable in exchange for initial franchise fees and other similar fees. Further, in 2011, the Company terminated three master franchise agreements in exchange for waiving \$268,400 in outstanding notes receivable, which has been reflected as a reduction of deferred revenue. The Company also deemed \$27,608 in notes receivable as uncollectible, which has been reflected in the provision for bad debt.

See notes to consolidated financial statements.

**FITNESS TOGETHER HOLDINGS, INC.**

**Notes to Consolidated Financial Statements**

**Note 1 - Description of Business and Summary of Significant Accounting Policies**

**Description of Business**

Fitness Together Holdings, Inc. ("FTHI") is the parent company of Fitness Together Franchise Corporation and subsidiaries ("FTFC") and Elements Therapeutic Massage, Inc. ("ETMI" or "Elements") (collectively, the "Company"). The Company was incorporated on June 28, 2006 in the state of Delaware for the purpose of acquiring FTFC, ETMI, and other companies.

FTFC is in the business of franchising fitness studios featuring one-on-one and small group personal training in the United States and abroad. FTFC was incorporated on January 25, 1996 in the state of Arizona under the name Fitness for Life Franchise Corporation. On March 7, 2005, FTFC changed its name to Fitness Together Franchise Corporation. FT-One, LLC ("FT-One"), FT-Two, LLC ("FT-Two"), and FT-Three, LLC ("FT-Three") were formed in 2007. At formation, FTFC owned 75%, 87.5%, and 50% of FT-One, FT-Two, and FT-Three, respectively. During 2008, FTFC's ownership in FT-Two increased to 90%. During 2009, FTFC's ownership in FT-Three increased to 60%. As further discussed in Note 10, during 2010, FTFC fully liquidated and discontinued the operations of FT-Two and FT-Three. All intercompany accounts and transactions have been eliminated in consolidation.

FTFC also enters into master franchise agreements with Area Directors for the right to develop a state. The Area Director pays an initial master franchise fee of varying amounts based upon the state selected. The Area Director is entitled to receive up to half of the initial master franchise fees for the studios developed in his or her area and half of the royalties received for the term of the franchise. The studio franchisee pays an initial franchise fee for the right to open a studio and pays royalties of 5% or 6% of revenue received, depending on when the franchise agreement was executed. Both the studio franchise agreement and the master franchise agreement provide a term of ten years and are renewable after the initial term. Studio franchise agreements are renewable for an additional fee.

At December 31, 2011, FTFC had 17 Area Director agreements and had 279 open studio franchises. Six Area Director agreements were reacquired during the year ended December 31, 2011.

The following table summarizes the number of the studios in operation for FTFC:

	<u>December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Studios open at beginning of year	318	354	409
Studios open during the year	4	8	19
Studios closed during the year	<u>(43)</u>	<u>(44)</u>	<u>(74)</u>
Studios in operation as of the end of the year	<u>279</u>	<u>318</u>	<u>354</u>
Studios sold but not yet operational	<u>23</u>	<u>31</u>	<u>66</u>

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Description of Business (continued)

Elements is in the business of franchising massage studios in the United States and abroad. Elements was incorporated on August 4, 2006 in the state of Delaware. Elements franchises either the right to open a massage studio or the right to develop a number of studios within a territory. The studio franchisee pays an initial franchise fee and royalties equal to 6% of revenue received. Each Area Director pays an initial master franchise fee to Elements and has the right to receive up to half of the initial franchise fee and royalties received from each studio developed in his or her territory. Both the studio franchise agreement and the master franchise agreement are for a term of ten years and are renewable for after the initial term. Studio franchise agreements are renewable for an additional fee. An Elements massage studio normally consists of five to eight massage rooms, plus a reception area in a retail space providing the massage clients an atmosphere of calm and relaxation.

Upon ETMI's inception, the rights to the intellectual property associated with two operating studios were acquired. At December 31, 2011, ETMI had 16 Area Director agreements and had 83 open studio franchises. Area Director agreements were reacquired during the year ended December 31, 2011.

The following table summarizes the number of the studios in operation for ETMI:

	<u>December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Studios open at beginning of year	76	74	71
Studios open during the year	12	7	14
Studios closed during the year	<u>(5)</u>	<u>(5)</u>	<u>(11)</u>
Studios in operation as of the end of the year	<u>83</u>	<u>76</u>	<u>74</u>
Studios sold but not yet operational	<u>75</u>	<u>16</u>	<u>13</u>

#### Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Fitness Together Holdings, Inc. and its subsidiaries, Fitness Together Franchise Corporation and subsidiaries, and Elements Therapeutic Massage, Inc. All intercompany accounts and transactions have been eliminated in consolidation.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. As a result, actual results could differ from those estimates.

#### Cash and Cash Equivalents

The Company considers all highly liquid instruments purchased with an original maturity of three months or less to be cash equivalents. The Company continually monitors its positions with, and the credit quality of, the financial institutions with which it invests.

#### Concentrations of Credit Risk

The Company grants credit in the normal course of business to franchisees related to the collection of royalties and other operating revenues. In select cases credit is issued for initial franchise fees and master franchise fees. The Company periodically performs credit analysis and monitors the financial condition of the franchisees to reduce credit risk.

#### Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable primarily consists of royalties receivable from franchisees. The Company considers a reserve for doubtful accounts based on the creditworthiness of the franchisee. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on specific identification and historical performance that is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ materially in the near term from the amounts estimated in determining the allowance. The Company has an allowance of \$71,723, \$233,405, and \$195,259 as of December 31, 2011, 2010, and 2009, respectively.

#### Deferred Financing Costs

Costs associated with obtaining debt financing are deferred and amortized on a straight-line basis over the term of the debt, which approximates the effective interest method. During 2011, 2010, and 2009, the Company recognized amortization expense of approximately \$92,000. Amortization expense is expected to be approximately \$92,000 for each of the remaining two years.

## FITNESS TOGETHER HOLDINGS, INC.

### Notes to Consolidated Financial Statements

#### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

##### Restricted Cash

The Company maintains a certificate of deposit in accordance with a requirement of a lease expiring in June 2012. As of December 31, 2011, 2010, and 2009 the Company had \$10,268, \$20,392, and \$46,012, respectively, being held in restricted cash.

##### Property and Equipment

Property and equipment is stated at cost. Depreciation is provided utilizing the straight-line method over the estimated useful lives for owned assets, ranging from two to five years, and the related lease terms for leasehold improvements.

##### Intangible Assets

Intangible assets consist primarily of franchise agreements acquired during a reorganization, reacquired rights resulting from the repurchase of master franchise agreements during 2009 and 2010, and a trademark.

##### *Franchise Agreements*

As part of a reorganization in 2006, the Company acquired franchise agreements that were recorded based upon the fair value of these assets at the date of the reorganization. The agreements are being amortized over their estimated remaining lives at the time of purchase which was approximately ten years. Furthermore, the Company assesses its franchise agreements for impairment whenever events or changes in circumstances indicate that the carrying value may be greater than the fair value. Fair value is determined primarily using the income approach that utilizes projections of undiscounted cash flows expected to be generated by the franchise agreements. As a result, during 2009, the Company recorded an impairment charge of \$1,762,000 as a component of operating expenses. No impairment charges were recognized for 2011 or 2010.

##### *Reacquired Rights*

During 2011, 2010, and 2009, the Company has entered into certain agreements to repurchase select territories held by Area Directors under master franchise agreements. The reacquired master franchise rights are recorded as an intangible asset, measured at the fair value of the remaining contractual term of the rights at the date of acquisition. Any remaining consideration paid over the value of the reacquired right is recorded as goodwill, all of which is expected to be deductible for tax purposes. The reacquired right intangible asset is amortized over the remaining life of the contract. If the terms of the contract that give rise to a reacquired right are favorable or unfavorable relative to similar market transactions, a settlement gain or loss is recognized. The Company has determined that the terms of the contract are consistent with similar market transactions, and, accordingly, no settlement gain or loss was recorded for the years ended December 31, 2011, 2010, and 2009 (Note 5).



# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Intangible Assets (continued)

##### *Trademarks*

The Company has determined that its trademarks have an indefinite life, and, accordingly, these assets are not being amortized but are subject to impairment.

##### Goodwill

Goodwill represents the excess of purchase price over the fair value of tangible net assets at the date of the Company's reorganization and the excess of purchase price over the fair value of reacquired rights at the date the master franchise agreements were repurchased. The Company reviews goodwill for impairment annually. The carrying value of goodwill is considered impaired when the anticipated undiscounted cash flows from such assets are separately identifiable and are less than its carrying value. In that event, a loss is recognized based on the amount by which the carrying value exceeds the fair value of goodwill. Fair value is determined primarily using the anticipated cash flows discounted at a rate commensurate with the risk involved (Note 6).

##### Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset. During the Company's assessment for 2009, certain impairments were identified for franchise agreements (Note 1 - Intangible Assets). No impairments were identified for 2011 or 2010.

##### Franchise Fee Revenue Recognition and Related Franchise Costs

The Company's revenues consist of fees from franchisees such as initial fees, royalties, renewal fees, transfer fees, and master franchise fees.

Initial fees received from a franchisee are recognized as revenue when the Company has performed substantially all initial services required by the franchise agreement, which is generally upon the opening of a studio. Royalties are based upon a percentage of franchisee sales and recognized when earned. Renewal fees are recognized when a renewal agreement with a franchisee becomes effective. Transfer fees are recognized when the transfer agreement becomes effective and when the fee has been received. Additionally, the Company recognizes master franchise fee revenues over the life of the master franchise fee agreement and only to the extent that the cash consideration has been received for the master franchise fee. These agreements are normally for a term of ten years.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Franchise Fee Revenue Recognition and Related Franchise Costs (continued)

Deferred franchise costs represent certain costs incurred to develop new franchises and are expensed when the related revenue is recognized, generally upon the opening of a studio. Franchise costs will not be deferred in excess of the amount of revenue to be recognized.

The Company has the right to collect a marketing and production fund fee of up to 1% of the gross receipts of each franchise studio. The Company is currently not collecting this fee.

#### Equipment Revenue

During 2011, the Company began a program whereby franchisees order equipment directly from a Company-specified vendor and the Company receives a rebate from the vendor, which is recorded as equipment revenue when received. Prior to this change, the Company purchased equipment and sold it to the franchisee for a profit. The Company recognized revenue upon the opening of the studio. Shipping and handling charges to customers were included in revenue. Shipping and handling charges incurred by the Company were included in cost of equipment.

#### Stock-Based Compensation

The Company accounts for stock-based compensation by recognizing compensation expense for stock-based payments based on the estimated grant-date fair value of the awards. Tax benefits relating to the deductibility of increases in the value of equity instruments issued under stock-based compensation arrangements that are not included in costs applicable to sales (excess tax benefits) are presented as financing cash inflows in the consolidated statements of cash flows. In accordance with authoritative guidance, no compensation cost is required to be recognized for options granted that have an exercise price equal to or greater than the market value of the underlying common stock on the date of the grant.

#### Income Taxes

The Company files a consolidated return with its subsidiaries. The Company utilizes a method that allocates current and deferred taxes to members of the group as if it were a separate taxpayer. The Company recognizes deferred tax liabilities and assets based on the differences between the tax basis of assets and liabilities and their reported amounts in the consolidated financial statements that will result in taxable or deductible amounts in future years. The Company's temporary differences result primarily from net operating loss carryforwards, amortization of franchise agreements, and recognition of revenue.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Income Taxes (continued)

The Company accounts for any uncertainty in income taxes by recognizing the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The Company measures the tax benefits recognized in the consolidated financial statements from such a position based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The application of income tax law is inherently complex. Laws and regulations in this area are voluminous and are often ambiguous. As such, the Company is required to make many subjective assumptions and judgments regarding income tax exposures. Interpretations of and guidance surrounding income tax law and regulations change over time and may result in changes to the Company's subjective assumptions and judgments which can materially affect amounts recognized in the consolidated balance sheets and consolidated statements of operations. The result of the reassessment of the Company's tax positions did not have an impact on the consolidated financial statements. The Company's federal tax returns for all years after 2008 and the Company's state tax returns after 2006 are subject to future examination by tax authorities for all the Company's tax jurisdictions. The Company recognizes interest and penalties related to income tax matters in other income (expense) and selling, general, and administrative expenses, respectively. After evaluating the tax positions taken, none are considered to be uncertain; therefore, no amounts have been recognized as of December 31, 2011, 2010, and 2009.

#### Advertising Costs

The Company expenses advertising costs as incurred. Advertising expense for the years ended December 31, 2011, 2010, and 2009 was approximately \$179,000, \$368,000, and \$392,000, respectively.

**FITNESS TOGETHER HOLDINGS, INC.**

Notes to Consolidated Financial Statements

**Note 2 - Notes Receivable**

Notes receivable consist of the following:

	December 31,		
	2011	2010	2009
Notes receivable for initial franchise fees financed by the Company, at a 0% interest rate, due in monthly payments at various amounts, and due upon a defined due date ranging from December 31, 2012 to December 31, 2015.	\$ 57,417	\$ 29,667	\$ 53,386
Notes receivable for initial franchise fees and initial master franchise fees financed by the Company, at a 0% interest rate, and due upon various specified terms in the agreements.	359,624	636,425	756,126
Notes receivable from franchisees, due in monthly payments at various amounts, at 0%-8% interest rate, maturing August 1, 2013.	<u>20,613</u>	<u>36,028</u>	<u>26,992</u>
Less current portion	<u>437,654</u> <u>(58,494)</u>	<u>702,120</u> <u>(49,117)</u>	<u>836,504</u> <u>(50,640)</u>
	<u>\$ 379,160</u>	<u>\$ 653,003</u>	<u>\$ 785,864</u>

The Company has not recorded a discount for the notes receivable issued with 0% discount as it is not material. The Company reserves an allowance for doubtful collections. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on historical performance of the notes, which is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ materially in the near term from the amounts estimated in determining the allowance. As of December 31, 2011, 2010, and 2009 management determined that no allowance was necessary. The notes are collateralized by the related franchise agreements.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 3 - Property and Equipment

Property and equipment consist of the following:

	December 31,		
	2011	2010	2009
Office equipment	\$ 141,673	\$ 176,345	\$ 156,122
Software	559,045	497,260	292,044
Computer equipment	112,035	66,172	73,397
Leasehold improvements	71,446	85,859	85,859
Capital projects in process	<u>7,478</u>	<u>67,512</u>	<u>102,829</u>
	891,677	893,148	710,251
Less accumulated depreciation	<u>(532,849)</u>	<u>(431,686)</u>	<u>(233,129)</u>
	<u>\$ 358,828</u>	<u>\$ 461,462</u>	<u>\$ 477,122</u>

Depreciation expense for the years ended December 31, 2011, 2010, and 2009 was \$226,246, \$202,707, and \$176,084, respectively.

### Note 4 - Deferred Financing Costs

Deferred financing costs consist of the following:

	December 31,		
	2011	2010	2009
Deferred financing fees	\$ 649,007	\$ 649,007	\$ 649,007
Accumulated amortization	<u>(464,384)</u>	<u>(372,320)</u>	<u>(280,256)</u>
	<u>\$ 184,623</u>	<u>\$ 276,687</u>	<u>\$ 368,751</u>

**FITNESS TOGETHER HOLDINGS, INC.**

**Notes to Consolidated Financial Statements**

**Note 5 - Intangible Assets**

Intangible assets consist of the following:

	<u>December 31, 2011</u>		
	<u>Gross Carrying</u>	<u>Less</u>	<u>Net Intangible</u>
	<u>Amount</u>	<u>Accumulated</u>	<u>Assets</u>
		<u>Amortization</u>	
Franchise agreements	\$ 3,614,761	\$ (2,109,741)	\$ 1,505,020
Reacquired rights	1,834,081	(778,734)	1,055,347
Trademark	100,000	-	100,000
Other	<u>20,000</u>	<u>-</u>	<u>20,000</u>
	<u>\$ 5,568,842</u>	<u>\$ (2,888,475)</u>	<u>\$ 2,680,367</u>
	<u>December 31, 2010</u>		
	<u>Gross Carrying</u>	<u>Less</u>	<u>Net Intangible</u>
	<u>Amount</u>	<u>Accumulated</u>	<u>Assets</u>
		<u>Amortization</u>	
Franchise agreements	\$ 3,614,761	\$ (1,748,264)	\$ 1,866,497
Reacquired rights	1,056,203	(400,211)	655,992
Trademark	100,000	-	100,000
Other	<u>20,000</u>	<u>-</u>	<u>20,000</u>
	<u>\$ 4,790,964</u>	<u>\$ (2,148,475)</u>	<u>\$ 2,642,489</u>
	<u>December 30, 2009</u>		
	<u>Gross Carrying</u>	<u>Less</u>	<u>Net Intangible</u>
	<u>Amount</u>	<u>Accumulated</u>	<u>Assets</u>
		<u>Amortization</u>	
Franchise agreements	\$ 3,614,761	\$ (1,367,798)	\$ 2,246,963
Reacquired rights	186,300	-	186,300
Trademark	100,000	-	100,000
Other	<u>20,000</u>	<u>-</u>	<u>20,000</u>
	<u>\$ 3,921,061</u>	<u>\$ (1,367,798)</u>	<u>\$ 2,553,263</u>

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 5 - Intangible Assets (continued)

Amorfization expense for the years ended December 31, 2011, 2010, and 2009 was \$739,999, \$780,677, and \$678,817, respectively. Amortization expense for the next five years is expected to be as follows:

#### Year Ending December 31,

2012	\$	802,766
2013		639,314
2014		535,246
2015		455,262
2016		<u>127,779</u>
	\$	<u>2,560,367</u>

### Reacquired Rights

During 2011, 2010, and 2009, the Company repurchased six, seven, and two FTFC territories, respectively, held by Area Directors under master franchise agreements. During 2011 and 2010, the Company repurchased three ETMI Colorado territories and one ETMI Arkansas territory, respectively, held by Area Directors under master franchise agreements. These master franchise agreements entitled the Area Directors to a portion of certain revenues generated in the territories, which will now be retained wholly by the Company. The valuation technique utilized in the acquisition considered the trailing 12 months' royalties from the territory as a basis for the anticipated royalty stream over the remaining life of the contract, less certain fees and expenses.

The first ETMI Colorado territory was acquired on November 22, 2011 in exchange for Area Director's commission on future royalty fees actually received by ETMI from certain studios for a period of three years following the repurchase, which is recorded as a note payable of \$206,222. The note payable will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$206,222, which was recognized as a reacquired right.

The second ETMI Colorado territory was acquired on October 31, 2011 in exchange for Area Director's commission on future royalty fees actually received from ETMI from certain studios for a period of three years following the repurchase, which is recorded as a note payable of \$97,380 and the right to receive an Elements franchise agreement at an estimated value of \$22,500. The note payable will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$119,880, which was recognized as a reacquired right.

The FTFC Georgia territory was acquired on August 25, 2011 for \$100,000 in exchange for a note payable, which will be paid in thirty-six equal monthly installments. The fair value of the remaining contractual term of the agreement is \$100,000, which was recognized as a reacquired right.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 5 - Intangible Assets (continued)

#### Reacquired Rights (continued)

The third ETMI Colorado territory was acquired on August 9, 2011 in exchange for Area Director's commission on future royalty fees actually received from ETMI from certain studios for a period of four years following the repurchase, which is recorded as a note payable of \$58,606; the rights to receive a franchise agreement for two Elements' studios valued at \$22,500; the rights to receive one franchise agreement for a Fitness Together studio valued at \$19,500; and the option to buy two studios at a discounted rate valued at \$19,000. The note payable will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$119,606, which was recognized as a reacquired right.

The FTFC Kansas/Missouri territory was acquired on June 14, 2011 for \$110,089 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$110,089, which was recognized as a reacquired right.

The FTFC Nebraska territory was acquired on June 14, 2011 for \$18,078 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$18,078, which was recognized as a reacquired right.

The FTFC Pennsylvania territory was acquired on June 14, 2011 for \$65,473 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$6,236, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The FTFC Missouri territory was acquired on June 14, 2011 for \$57,557 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$57,557, which was recognized as a reacquired right.

The FTFC Oregon territory was acquired on June 12, 2011 for \$49,672 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$40,211, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of acquisition.



## FITNESS TOGETHER HOLDINGS, INC.

### Notes to Consolidated Financial Statements

#### Note 5 - Intangible Assets (continued)

##### Reacquired Rights (continued)

The FTFC Florida/Alabama territory was acquired on February 3, 2010 for \$519,800 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$470,297, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The FTFC Utah territory was acquired on January 31, 2010 for \$16,951 in exchange for a note payable, which will be paid in forty-two equal monthly installments. The fair value of the remaining contractual term of the agreement is \$16,951, which was recognized as a reacquired right.

The FTFC Arkansas territory was acquired on January 26, 2010 for \$336,953 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$34,841, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The ETMI Arkansas territory was acquired on January 26, 2010 for \$94,354, in exchange for a note payable which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$94,354, which was recognized as a reacquired right.

The FTFC Michigan/Virginia territory was acquired on January 7, 2010 for \$323,241 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$253,460, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The FTFC southern California territory was acquired on December 31, 2009 for \$220,917, in exchange for a note payable. The fair value of the remaining contractual term of the agreement is \$26,300, which was recognized as a reacquired right. The remainder of the purchase price is recorded as goodwill at the date of acquisition.

The FTFC New York territory was acquired on July 9, 2009 for a lump-sum payment of \$160,000. The fair value of the remaining contractual term of the agreement is \$160,000, which was recognized as a reacquired right.

Unearned revenue that existed at the date of acquisition for these master franchise agreements was recognized as revenue. Total unearned revenue released as a result of these acquisitions was approximately \$277,000, \$297,000, and \$98,000 for the years ended December 31, 2011, 2010, and 2009, respectively.

**FITNESS TOGETHER HOLDINGS, INC.**

Notes to Consolidated Financial Statements

**Note 6 - Goodwill**

The Company reviews goodwill at the end of each year. The impairment test is a two-step process. The first step identifies potential impairments by comparing the calculated fair value of a reporting unit's net assets with the related book values. If the fair value of the reporting unit's net assets exceeds the book value, goodwill is not impaired, and the second step is not necessary. If the carrying value exceeds the fair value, the second step includes determining the implied fair value through further market research. Specifically, the estimated fair value of the Company determined in the first step is allocated to recognized and unrecognized net assets, including allocations to intangible assets. The implied fair value of goodwill is then compared with the carrying amount to determine if an impairment loss is recorded.

During 2009, the first step of the impairment test showed that the fair value of one of the reporting unit's net assets was less than the book value amount, indicating a potential impairment of that reporting unit. The second step of the impairment test concluded that the implied fair value of the Company's goodwill was reduced to \$15,653,311. This resulted in an impairment of goodwill totaling \$8,482,000. During 2011 and 2010, management's first step of the analysis did not indicate an impairment.

The fair value of the Company calculated in the first step was determined primarily using the anticipated cash flows discounted at a rate commensurate with the risk involved. As part of the second step, the Company assigned fair value to the franchise agreement intangible assets based on an income approach that utilizes projections of undiscounted cash flows expected to be generated by the franchise agreements. This resulted in the aforementioned impairment loss of \$1,762,000.

Goodwill acquired during the years ended December 31, 2011, 2010, and 2009 resulted from the repurchase of certain master franchise agreements.

The rollforward of goodwill is as follows:

	December 31,		
	2011	2010	2009
Goodwill balance, beginning of the year	\$ 16,074,707	\$ 15,653,311	\$ 23,840,687
Goodwill acquired during the year	68,699	421,396	294,624
Impairment losses	-	-	(8,482,000)
Goodwill balance, end of year	<u>\$ 16,143,406</u>	<u>\$ 16,074,707</u>	<u>\$ 15,653,311</u>

**FITNESS TOGETHER HOLDINGS, INC.**

**Notes to Consolidated Financial Statements**

**Note 7 - Long-Term Debt**

Long-term debt consists of the following:

	<u>December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Note payable to a former equity partner, bearing interest of 9.5% currently payable and 2.0% of payment-in-kind for interest (interest accrued to the principal of the note) per annum, matures November 2013. The note is collateralized by substantially all assets of the Company.	\$ 6,626,218	\$ 7,166,047	\$ 7,022,559
Subordinated, unsecured notes payable due to former Area Directors. Payments are made monthly consistent with 50% of the royalty revenues received in the Area Directors' former territory, with the total balance due on or before specified due dates ranging from December 31, 2012 to December 31, 2015.	1,139,474	1,156,270	220,917
Subordinated, unsecured notes payable due to former Area Directors. Payments are made monthly consistent with 50% of the royalty revenues received in the Area Directors' former territory, with the total balance due on or before specified due dates ranging from December 31, 2014 to December 31, 2015.	<u>359,569</u>	<u>-</u>	<u>-</u>
	8,125,261	8,322,317	7,243,476
Less current portion	<u>(1,257,204)</u>	<u>(1,113,802)</u>	<u>(738,849)</u>
	<u>\$ 6,868,057</u>	<u>\$ 7,208,515</u>	<u>\$ 6,504,627</u>

Maturities of long-term obligations are estimated as follows:

**Year Ending December 31,**

2012	\$ 1,257,204
2013	6,349,990
2014	391,698
2015	<u>126,369</u>
	<u>\$ 8,125,261</u>

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 8 - Stockholders' Equity

#### Preferred Stock

At December 31, 2011, the Company has authorized 6,000,000 shares of Series A redeemable preferred stock ("Series A"), of which 3,500,000 were issued at \$1.00 per share.

At December 31, 2011, the Company has authorized and issued 1,024,316 shares of Series A-1 redeemable preferred stock ("Series A-1").

At December 31, 2011, the Company has authorized and issued 36,998,252 shares of Series B. At the start of 2009, the Company had issued 22,687,608 shares. On December 31, 2009, the Company issued 1,047,120 shares at \$0.573 per share, in exchange for cash contributions. In 2010, the Company issued 8,027,922 shares at \$0.573 per share, in exchange for cash contributions. In 2011, the Company issued 5,235,602 shares at \$0.573 per share, in exchange for cash contributions.

#### *Conversion Rights*

The holders of the Series B are entitled to convert their shares into common stock at the option of the holder, at any time, into fully paid and nonassessable shares of common stock. The number of shares of common stock to which a holder of Series B can convert is obtained by multiplying the conversion rate that is in effect by the number of shares of Series B being converted. The conversion rate is determined by dividing the liquidation price by the applicable conversion price (initially the original purchase price, as adjusted for certain dilutive events). Under the terms, each share of Series B will be automatically converted into shares of common stock (based on the then effective Series Preferred Conversion Price) if there is an affirmative election of the majority of the holders of the outstanding shares of Series B. Accordingly, the Company reserves out of its authorized but unissued common stock the number of common shares sufficient to effect the conversion of all outstanding shares of Series B.

#### *Dividend Rights*

Under the amended articles of incorporation, dividends may be declared by the Series B stockholders upon a majority vote. In the event that the Company declares dividends to the Series A, Series A-1, or common stockholders, the Series B stockholders will receive a dividend of an equivalent amount. No dividends were declared during 2011, 2010, or 2009.

#### *Voting Rights*

The holders of the Series B are entitled to the number of votes equal to the number of shares of common stock into which the holders of Series B could be converted. The holders of the Series A and Series A-1 do not have voting rights.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 8 - Stockholders' Equity (continued)

#### Preferred Stock (continued)

##### *Voting Rights (continued)*

The vote or written consent of a majority of the outstanding Series B is required to amend, alter, or repeal the Certificate of Incorporation or Bylaws of the Company, effect any stock split or reverse stock split of Series B, issue any additional equity, convertible debt or debt, redeem or repurchase any common stock or Series A, Series A-1, or Series B, declare or pay any dividends or make any distributions of assets, issue any additional shares of Series B, incur any additional debt in excess of \$250,000, and amend any other powers, preferences, or other special rights, privileges, or restrictions of the Series B.

##### *Liquidation Rights*

In accordance with the articles of incorporation, any event of liquidation, dissolution, or winding up of the Company, any amounts that are available for distribution to its stockholders to be paid out of the assets of the Company have the following order of preference to be paid to the existing stockholders of the Company: The holders of Series B have a first priority of an amount equal to the per share stated value of the original issue price, plus any accrued, declared, and unpaid dividends; the holders of Series A and Series A-1 have a second order of priority of an amount equal to the per share stated value of the original issued price, plus any declared and unpaid dividends. Upon payment of all preferential amounts required to be paid to the holders of Series B and Series A, the holders of common stock shall be entitled to receive their ratable portion. The liquidation preference for Series A, Series A-1, and Series B is \$1.558, \$1.00, and \$0.573 per share, respectively.

##### *Redemption Rights*

The Series A and A-1 may only be redeemed if a majority of the holders vote to require the redemption and at a price equal to the liquidation value.

#### Common Stock

At December 31, 2011, the Company has authorized 50,471,204 shares of common stock. In 2006, the Company issued 2,526,316 shares common stock, of which 2,000,000 shares were issued to officers and investors of the Company in exchange for cash, and 526,316 shares of common stock were issued as part of the reorganization in exchange for cash. In 2008, as part of the debt restructure, the Company issued 111,047 shares of common stock in exchange for the common stock warrant agreement that was issued by the Company in connection with the note payable under the reorganization in 2006.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 8 - Stockholders' Equity (continued)

#### Restricted Stock

At December 31, 2011, the Company has authorized 4,504,196 shares of Class A non-voting common restricted stock ("restricted stock"). During 2009, the Company issued 4,504,196 shares of restricted stock to certain employees in exchange for the rendering of services. The restricted stock had a fair market value of \$0.001 at the date of grant as determined by the Board of Directors. The restricted stock vests upon various time and performance based criteria.

Restricted stock units are valued using the fair market value of the Company's common stock as of the grant date. The Company recognizes compensation expense, net of estimated forfeitures, on a straight-line basis over the vesting period. Estimated forfeitures are reviewed periodically and changes to the estimated forfeitures are adjusted through current period earnings. The remaining unvested shares are subject to forfeiture and restrictions on sale or transfer up until the vest date. Restricted stock awards are valued using the fair market value of the common stock as of the grant date.

#### Equity Incentive Plan

The Company maintains an Equity Incentive Plan (the "Plan") under which the Company may issue stock awards to employees, directors, and consultants in the form of either 1) authorized but unissued or reacquired common stock or 2) shares of common stock subject to outstanding options to the extent (i) the options expire or terminate for any reason prior to exercise in full or (ii) the options are canceled in accordance with certain provisions. Pricing and vesting are determined by the Board of Directors, and awards are evidenced by an award agreement extended to the recipient.

During 2010, 106,497 shares of restricted common stock issued under the Plan vested and, accordingly, were shown as increase to common stock in the accompanying consolidated statement of changes in equity. The valuation of the shares on the date of grant were \$0.

Stock options vest over periods ranging from one to four years and expire ten years from the date of grant. During 2009, the Company awarded stock options of 142,512 shares to a director and an advisor to the Board in exchange for services to be rendered, with an exercise price of \$0.01 per share. The options awarded in 2009 vest over three years. The options expire ten years from the date of grant. The options contain a provision, which permits issuance of early exercise options, at the discretion of the Company that allows the option holder the ability to exercise the option irrespective of vesting status. However, the common stock issued is subject to repurchase rights, which lapse according to the same vesting schedule as the stock options granted. The board advisor, upon his exit, exercised his right to purchase 23,752 vested options for \$0.01 per share. His 47,504 unvested options lapsed.

There are 1,881,921 shares authorized under the Plan as of December 31, 2011.

**FITNESS TOGETHER HOLDINGS, INC.**

**Notes to Consolidated Financial Statements**

**Note 8 - Stockholders' Equity (continued)**

**Equity Incentive Plan (continued)**

The Company has computed the fair value of options granted under the Plan using the Black-Scholes option pricing model. In order to calculate the fair value of the options, assumptions were made regarding the estimated fair value of the underlying common stock, risk-free interest rate, volatility, expected dividend yield, and expected option life. Changes to the assumptions could cause significant adjustments to valuation. The fair value of the options was \$0 based upon the Black-Scholes option pricing model.

The following table presents the activity for options outstanding:

	<u>Non-Qualified Stock Options</u>	<u>Weighted Average Exercise Price</u>
Outstanding - December 31, 2008	214,801	\$ -
Granted	142,512	0.01
Forfeited/canceled	(200,601)	0.31
Exercised	<u>-</u>	<u>-</u>
Outstanding - December 31, 2009	156,712	0.04
Granted	-	-
Forfeited/canceled	-	-
Exercised	<u>-</u>	<u>-</u>
Outstanding - December 31, 2010	156,712	0.04
Granted	-	-
Forfeited/canceled	(47,504)	0.01
Exercised	<u>(23,752)</u>	<u>0.01</u>
Outstanding - December 31, 2011	<u><u>85,456</u></u>	<u><u>\$ 0.06</u></u>

The following table presents the composition of options outstanding and exercisable:

<u>Range of Exercise Prices</u>	<u>Options Outstanding</u>			<u>Options Exercisable</u>	
	<u>Number</u>	<u>Price*</u>	<u>Life*</u>	<u>Number</u>	<u>Price*</u>
\$0.31	14,200	\$ 0.31	6.64	14,200	\$ 0.31
\$0.01	<u>71,256</u>	<u>0.01</u>	<u>7.60</u>	<u>47,504</u>	<u>0.01</u>
Total - December 31, 2011	<u><u>85,456</u></u>	<u><u>\$ 0.06</u></u>	<u><u>7.44</u></u>	<u><u>61,704</u></u>	<u><u>\$ 0.08</u></u>

\* Price and Life reflect the weighted average exercise price and weighted average remaining contractual life, respectively.

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 8 - Stockholders' Equity (continued)

#### Equity Incentive Plan (continued)

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions used for the year ended December 31, 2009:

Approximate risk-free rate	2.62-3.80%
Average expected life	10 years
Dividend yield	0%
Volatility	50%
Estimated fair value of total options granted	\$0

### Note 9 - Income Taxes

The Company recognizes deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the consolidated financial statements or consolidated tax returns. Deferred tax liabilities and assets are determined based on the differences between the financial statements and tax basis of assets and liabilities using the enacted tax rates in effect for the year in which the differences are expected to reverse. The measurement of deferred tax assets is reduced, if necessary, by the amount of any tax benefits that are not expected to be realized based on available evidence.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the relative impact of negative and positive evidence, including historical losses and projections of future taxable income. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are deductible, the Company concluded that it no longer meets the accounting criteria for recognizing a portion of its deferred tax assets; that is, estimated future taxable income no longer constitutes sufficient positive evidence to conclude that it is more likely than not that its net deferred tax assets would be realizable in the foreseeable future. Therefore, during the years ended December 31, 2011 and 2010, the Company increased to 100% its valuation allowance against its deferred tax asset. The effect of the valuation allowance adjustment was to increase the Company's provision for income taxes by approximately \$1,860,000 for the year ended December 31, 2010.



**FITNESS TOGETHER HOLDINGS, INC.**

**Notes to Consolidated Financial Statements**

**Note 9 - Income Taxes (continued)**

The net current and long-term deferred tax assets and liabilities in the accompanying consolidated balance sheets include the following:

	<u>December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Net long-term deferred taxes			
Deferred tax asset - net operating loss	2,541,000	1,235,000	\$ 510,000
Deferred tax asset - deferred franchise fees	733,000	1,139,000	1,506,000
Deferred tax asset - reacquired rights	227,000	123,000	-
Deferred tax asset - allowance for doubtful accounts	27,000	79,000	73,000
Deferred tax liability - amortization of franchise agreements	<u>(599,000)</u>	<u>(716,000)</u>	<u>(838,000)</u>
Net deferred tax asset	2,929,000	1,860,000	1,251,000
Less valuation allowance	<u>(2,929,000)</u>	<u>(1,860,000)</u>	<u>-</u>
Net long-term deferred tax asset (liability)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 1,251,000</u>

At December 31, 2011, the Company had net operating losses of approximately \$6,812,000 related to U.S. federal, foreign, and state jurisdictions. Utilization of the net operating loss may be subject to certain limitations under Section 382 of the Internal Revenue Code of 1986, as amended, and other limitations under state and foreign tax laws and expire in years through 2031.

Components reflected in the consolidated statements of operations are as follows:

	<u>December 31,</u>		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Current tax expense (benefit)	\$ 7,608	\$ (108,087)	\$ -
Deferred tax expense (benefit)	<u>-</u>	<u>1,251,147</u>	<u>(1,323,373)</u>
	<u>\$ 7,608</u>	<u>\$ 1,143,060</u>	<u>\$ (1,323,373)</u>

**FITNESS TOGETHER HOLDINGS, INC.**

Notes to Consolidated Financial Statements

**Note 9 - Income Taxes (continued)**

The following is a reconciliation of the statutory federal income tax rate applied to pre-tax accounting net (loss) compared to the income taxes in the consolidated statements of operations:

	For the Years Ended		
	December 31,		
	<u>2011</u>	<u>2010</u>	<u>2009</u>
Income tax benefit at the statutory rate	\$ (982,615)	\$ (683,625)	\$ (4,107,345)
Change resulting from			
State and local income taxes, net of federal income tax	(95,622)	(66,033)	(393,151)
Permanent differences	16,221	14,460	3,177,123
Change in valuation allowance	1,068,755	1,859,952	-
Other	<u>869</u>	<u>18,306</u>	<u>-</u>
	<u>\$ 7,608</u>	<u>\$ 1,143,060</u>	<u>\$ (1,323,373)</u>

**Note 10 - Discontinued Operations**

FT-Two and FT-Three were formerly operated as corporate-owned studios and consolidated into the accompanying consolidated financial statements. During 2010, the Company fully liquidated and ceased the operations of the two subsidiaries. Accordingly, the consolidated financial statements reflect the results of operations and financial position of FT-Two and FT-Three as discontinued operations. Operating results of the discontinued operations are as follows:

The condensed balance sheets of FT-Two and FT-Three prior to intercompany eliminations, are as follows for the year ended December 31, 2009:

Current assets	\$ 6,831
Non-current assets	<u>122,427</u>
Total assets	<u>\$ 129,258</u>
Liabilities	\$ 258
Equity	<u>129,000</u>
Total liabilities and deficit	<u>\$ 129,258</u>

# FITNESS TOGETHER HOLDINGS, INC.

## Notes to Consolidated Financial Statements

### Note 10 - Discontinued Operations (continued)

Details of condensed discontinued operations of FT-Two and FT-Three prior to intercompany eliminations, are as follows:

	For the Years Ended	
	December 31,	
	2010	2009
Revenue	\$ -	\$ 116,404
Operating expenses	(7,048)	(195,524)
Other expense	22,861	(17,591)
Net income (loss)	<u>\$ 15,813</u>	<u>\$ (96,711)</u>

### Note 11 - Commitments and Contingencies

#### Operating Leases

The Company leases facilities, equipment, and vehicles under non-cancelable operating leases primarily from a related party. Rent expense for the years ended December 31, 2011, 2010, and 2009 was \$199,538, \$194,838, and \$350,682, respectively.

Future minimum lease payments under these leases are approximately as follows:

#### Year Ending December 31,

2012	\$ 205,000
2013	211,000
2014	<u>216,000</u>
	<u>\$ 632,000</u>

#### Litigation

In the normal course of business, the Company is party to litigation from time to time. The Company maintains insurance to cover certain actions and believes that resolution of such litigation will not have a material adverse effect on the Company.

ETMI is the defendant in litigation involving an Area Director's claims against ETMI's decision to exercise its contractual right to terminate the master franchise agreement. The Area Director is claiming repayment of the initial master franchise fee of \$150,000 and punitive and exemplary damages of \$150,000, which ETMI has rejected. Arbitration is set for February 2012 and ETMI has estimated a probable liability ranging from \$25,000 to \$75,000. ETMI has accrued its best estimate of the liability of \$50,000 at December 31, 2011. Additionally, unearned revenue of approximately \$64,000 related to this master franchise agreement exists at December 31, 2011 and will be recognized as revenue upon settlement of the suit.

## FITNESS TOGETHER HOLDINGS, INC.

### Notes to Consolidated Financial Statements

#### Note 11 - Commitments and Contingencies (continued)

##### Letter-of-Credit

The Company maintains an irrevocable standby letter-of-credit with a bank to support the studio lease of its majority-owned subsidiary, FT-One, LLC. The letter-of-credit is supported by a certificate of deposit and subject to annual reductions of \$10,000 until the letter matures in June 2012. As of December 31, 2011, the outstanding balance on the letter-of-credit is \$10,000.

##### Consulting Agreement

The Company entered into a consulting agreement dated May 16, 2006 for a period of ten years ending in 2016 with the original founder/owner of the predecessor company to Elements. This agreement stipulates that the former owner will perform certain consulting services for the Company in exchange for compensation based upon franchise units sold and opened for business, including Company-owned or affiliate-owned units opened for business anywhere in the world. During 2011, the agreement was amended to include compensation and reimbursement for additional consulting services and defined a cap for the number of studios the consultant will be compensated for through the term of the agreement. Consulting fees for the years ended December 31, 2011, 2010, and 2009 were \$88,250, \$30,000, and \$38,000, respectively.

##### Termination of Master Franchise Agreement

During 2009, FTFC entered into a mutual termination agreement of the master franchise agreement held by an Area Director. Under the terms of the termination agreement, the FTFC agreed to pay an aggregate amount of \$45,000, payable only upon consummation of new franchise sales in the Area Director's former territory. The termination fee will be paid from the proceeds of initial franchise fees received from franchise sales. During 2011 \$5,000 was paid under this agreement. No amounts were paid under this agreement in 2010 or 2009.

#### Note 12 - Subsequent Events

The Company has evaluated events subsequent to December 31, 2011 through February 20, 2012, which is the date the consolidated financial statements were available to be issued.

Subsequent to the close of the year, ETMI entered into an agreement to terminate one of the Arizona master franchise agreements. ETMI recognized unearned revenue of \$37,500 of the master franchise fee as a result of the termination.

**ACCOMPANYING INFORMATION**

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidating Balance Sheet  
December 31, 2011**

	<u>FTHI</u>	<u>FTFCCO</u>	<u>ETMI</u>	<u>FTHC</u>	<u>Eliminations</u>	<u>Consolidated</u>
<b>Assets</b>						
<b>Current assets</b>						
Cash and cash equivalents	\$ 872,944	\$ 1,511,693	\$ 1,013,910	\$ 52,223	\$ -	\$ 3,450,770
Accounts receivable, net	-	292,991	253,043	-	-	546,034
Notes receivable, current	-	29,583	28,911	-	-	58,494
Deferred franchise costs, current	-	60,648	753,257	-	-	813,905
Other current assets	<u>87,852</u>	<u>73,077</u>	<u>41,742</u>	<u>-</u>	<u>-</u>	<u>202,671</u>
Total current assets	<u>960,796</u>	<u>1,967,992</u>	<u>2,090,863</u>	<u>52,223</u>	<u>-</u>	<u>5,071,874</u>
<b>Non-current assets</b>						
Intercompany receivables	-	-	61,212	-	(61,212)	-
Investment in subsidiaries	20,688,018	-	-	-	(20,688,018)	-
Restricted cash	-	10,268	-	-	-	10,268
Property and equipment, net	188,350	86,456	84,022	-	-	358,828
Notes receivable, less current portion	-	330,958	48,202	-	-	379,160
Deferred franchise costs, less current portion	-	151,962	970,050	-	-	1,122,012
Deferred taxes, net	-	-	1,042,077	1,021	(1,043,098)	-
Deferred financing costs, net	-	184,623	-	-	-	184,623
Intangible assets, net	-	2,115,171	565,196	-	-	2,680,367
Goodwill	<u>3,072,300</u>	<u>13,071,106</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>16,143,406</u>
Total non-current assets	<u>23,948,668</u>	<u>15,950,544</u>	<u>2,770,759</u>	<u>1,021</u>	<u>(21,792,328)</u>	<u>20,878,664</u>
<b>Total assets</b>	<u>\$ 24,909,464</u>	<u>\$ 17,918,536</u>	<u>\$ 4,861,622</u>	<u>\$ 53,244</u>	<u>\$ (21,792,328)</u>	<u>\$ 25,950,538</u>

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidating Balance Sheet  
December 31, 2011**

	<u>FTHI</u>	<u>FTFCCO</u>	<u>ETMI</u>	<u>FTHC</u>	<u>Eliminations</u>	<u>Consolidated</u>
<b>Liabilities and Equity</b>						
<b>Current liabilities</b>						
Accounts payable	\$ 7,331	\$ 33,879	\$ 15,479	\$ -	\$ -	\$ 56,689
Accrued expenses	182,458	1,106,198	446,000	54,733	-	1,789,389
Deferred revenue, current	-	271,129	1,322,798	-	-	1,593,927
Current portion of long-term debt	-	1,121,095	136,109	-	-	1,257,204
Total current liabilities	<u>189,789</u>	<u>2,532,301</u>	<u>1,920,386</u>	<u>54,733</u>	<u>-</u>	<u>4,697,209</u>
<b>Non-current liabilities</b>						
Intercompany payables	59,666	1,546	-	-	(61,212)	-
Deferred franchise fees, less current portion	-	929,516	2,155,316	-	-	3,084,832
Long-term debt, less current portion	-	6,601,896	266,161	-	-	6,868,057
Total non-current liabilities	<u>59,666</u>	<u>7,532,958</u>	<u>2,421,477</u>	<u>-</u>	<u>(61,212)</u>	<u>9,952,889</u>
Total liabilities	<u>249,455</u>	<u>10,065,259</u>	<u>4,341,863</u>	<u>54,733</u>	<u>(61,212)</u>	<u>14,650,098</u>
<b>Commitments and contingencies</b>						
<b>Equity</b>						
FTHI stockholders' equity						
Series A preferred stock, \$0.001 par value, 6,000,000 authorized and 3,500,000 issued and outstanding at December 31, 2011	3,500	-	-	-	-	3,500
Series A-1 preferred stock, \$0.001 par value, 1,024,316 authorized, issued, and outstanding at December 31, 2011	1,024	-	-	-	-	1,024
Series B preferred stock, \$0.001 par value, 36,998,252 authorized, issued, and outstanding at December 31, 2011	36,998	-	-	-	-	36,998
Common stock, \$0.001 par value, 50,471,204 shares authorized, 2,796,012 issued and outstanding as of December 31, 2011	2,768	5,000	1	-	(5,001)	2,768
Class A common stock, \$0.001 par value, 4,504,196 shares authorized, issued, and outstanding as of December 31, 2011	4,504	-	-	-	-	4,504
Additional paid-in capital	27,791,138	24,462,252	1,374,999	-	(25,837,251)	27,791,138
Accumulated deficit	(3,179,923)	(16,627,178)	(855,241)	(1,489)	4,111,136	(16,552,695)
Total FTHI stockholders' equity	<u>24,660,009</u>	<u>7,840,074</u>	<u>519,759</u>	<u>(1,489)</u>	<u>(21,731,116)</u>	<u>11,287,237</u>
Non-controlling interests	-	13,203	-	-	-	13,203
Total equity	<u>24,660,009</u>	<u>7,853,277</u>	<u>519,759</u>	<u>(1,489)</u>	<u>(21,731,116)</u>	<u>11,300,440</u>
<b>Total liabilities and equity</b>	<u>\$ 24,909,464</u>	<u>\$ 17,918,536</u>	<u>\$ 4,861,622</u>	<u>\$ 53,244</u>	<u>\$ (21,792,328)</u>	<u>\$ 25,950,538</u>

**FITNESS TOGETHER HOLDINGS, INC.**

**Consolidating Statement of Operations  
For the Year Ended December 31, 2011**

	<u>FTHI</u>	<u>FTFCCO</u>	<u>ETMI</u>	<u>FTHC</u>	<u>Eliminations</u>	<u>Consolidated</u>
<b>Revenues</b>						
Royalties	\$ -	\$ 3,738,417	\$ 1,887,182	\$ -	\$ -	\$ 5,625,599
Franchise fees	-	1,011,087	1,153,333	-	-	2,164,420
Equipment revenue	-	204,404	75,547	-	-	279,951
Other revenues	-	524,905	174,760	-	-	699,665
Total revenues	-	5,478,813	3,290,822	-	-	8,769,635
<b>Expenses</b>						
Franchise related costs	-	1,957,058	1,299,680	-	-	3,256,738
Payroll	3,098,592	313,983	298,117	-	-	3,710,692
Advertising and promotion	15,926	138,176	208,183	-	-	362,285
General and administrative	947,013	558,560	669,852	(2,999)	-	2,172,426
Rent and occupancy	258,205	-	-	-	-	258,205
Depreciation and amortization	63,818	792,523	109,904	-	-	966,245
Management fee	(2,949,266)	1,619,204	1,330,062	-	-	-
Total expenses	1,434,288	5,379,504	3,915,798	(2,999)	-	10,726,591
(Loss) income from operations	(1,434,288)	99,309	(624,976)	2,999	-	(1,956,956)
<b>Other (expense) income</b>						
Interest expense	-	(933,980)	-	-	-	(933,980)
Interest income	-	891	-	-	-	891
Other (expense) income	-	(933,089)	-	-	-	(933,089)
Net (loss) income from continuing operations before income taxes	(1,434,288)	(833,780)	(624,976)	2,999	-	(2,890,045)
Income tax (expense) benefit	(1,100)	(6,509)	227,102	(1,119)	(225,982)	(7,608)
Net (loss) income from continuing operations	(1,435,388)	(840,289)	(397,874)	1,880	(225,982)	(2,897,653)
Discontinued operations	-	-	-	-	-	-
Net (loss) income	(1,435,388)	(840,289)	(397,874)	1,880	(225,982)	(2,897,653)
Less net loss attributable to non-controlling interests, net of tax	-	2,133	-	-	-	2,133
Net (loss) income attributable to FTHI	\$ (1,435,388)	\$ (838,156)	\$ (397,874)	\$ 1,880	\$ (225,982)	\$ (2,895,520)



25



AMY CHENG  
[amy.cheng@chengcohen.com](mailto:amy.cheng@chengcohen.com)  
P|312.243.1716  
F|312.277.3961  
C|312.351.5237

March 29, 2012

VIA FEDERAL EXPRESS

Mr. Daniel Sexton  
Commerce Analyst Supervisor  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, Minnesota 55101

Re: Fitness Together Franchise Corporation (the "Company")  
File No. F-4017 Unit Franchise Program

Dear Mr. Sexton:

In connection with the Company's existing franchise registration for its Unit Franchise Program, I have enclosed an Annual Report/Amendment Application consisting of the following materials:

1. Annual Report/Amendment Application (including Franchise Seller Disclosure Forms and a Franchisor's Costs and Sources of Funds form);
2. One (1) redlined copy of the Company's revised Franchise Disclosure Document;
3. A CD-ROM which contains a complete redlined copy of the revised Franchise Disclosure Document along with a copy of the executed Annual Report/Amendment Application, auditors' consent form, franchise seller disclosure forms and franchisor's costs and sources of funds form, which are identical to the paper copies submitted;
4. An auditors' consent form; and
5. A check in the amount of \$300.00 to cover the applicable filing fee.



Mr. Daniel Sexton  
March 29, 2012  
Page 2

If you should have any questions or comments, please do not hesitate to contact me.

Very truly yours,

CHENG COHEN LLC

  
Amy Cheng

cc: Fitness Together Franchise Corporation  
Lacey D. Cordero, Esq.

# EKS&H

EHRHARDT • KEEFE  
STEINER • HOTTMAN PC

CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS

---

7979 E. Tufts Avenue, Suite 400

Denver, Colorado 80237-2843

P: 303-740-9400 F: 303-740-9009

## CONSENT OF INDEPENDENT AUDITOR

Ehrhardt Keefe Steiner & Hottman PC consents to the use in the Franchise Disclosure Document issued by Fitness Together Franchise Corporation ("Franchisor") on March 30, 2012, as it may be amended, of our report dated February 20, 2012, relating to the audited financial statements of Fitness Together Franchise Corporation for the three years ending December 31, 2011.



Ehrhardt Keefe Steiner & Hottman PC

March 30, 2012  
Denver, Colorado

**Minnesota  
Annual Report/Amendment Application**

**UNIFORM CONSENT TO SERVICE OF PROCESS**

Fitness Together Franchise Corporation, a corporation organized under the laws of the State of Arizona (the "Franchisor"), irrevocably appoints the officers of the States designated below and their successors in those offices, its attorney in those States for service of notice, process or pleading in an action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of that State, and consents that an action or proceeding against it may be commenced in a court of competent jurisdiction and proper venue within that State by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of that State and had lawfully been served with process in that State. We have checked below each state in which this application is or will be shortly on file, and provided a duplicate original bearing an original signature to each state.

- |  |  |
|--|--|
| <u>      </u> California: Commissioner of Corporations | <u>      </u> North Dakota: Securities Commissioner  |
| <u>  XX  </u> Hawaii: Commissioner of Securities       | <u>  XX  </u> Rhode Island: Director, Department of Business Regulation                              |
| <u>  XX  </u> Illinois: Attorney General               | <u>      </u> South Dakota: Director of the Division of Securities                                   |
| <u>  XX  </u> Indiana: Secretary of State              | <u>      </u> Virginia: Clerk, Virginia State Corporation Commission                                 |
| <u>  XX  </u> Maryland: Securities Commissioner        | <u>      </u> Washington: Director of Financial Institutions   |
| <u>  XX  </u> Minnesota: Commissioner of Commerce      | <u>  XX  </u> Wisconsin: Administrator, Division of Securities, Department of Financial Institutions |
| <u>      </u> New York: Secretary of State             |  |

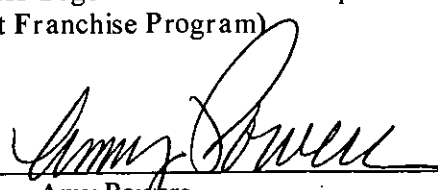
Please mail or send a copy of any notice, process or pleading served under this consent to:

Amy Powers  
Executive Vice President and General Counsel  
Fitness Together Franchise Corporation  
9092 South Ridgeline Boulevard  
Suite A  
Highlands Ranch, Colorado 80129

Dated: March 28, 2012.

Franchisor:

Fitness Together Franchise Corporation  
(Unit Franchise Program)

By:   
Amy Powers  
Executive Vice President  
and General Counsel

**CORPORATE ACKNOWLEDGMENT**

STATE OF COLORADO    )  
  ) SS.  
COUNTY OF DOUGLAS    )

On this 28<sup>th</sup> day of March, 2012, before me Jessica Surd

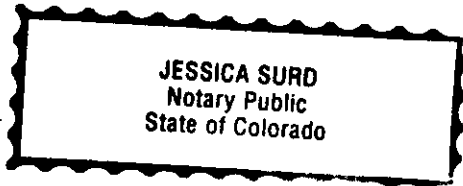
\_\_\_\_\_ (Notary Public), the undersigned officer, personally appeared Amy Powers, known personally to me to be the Executive Vice President and General Counsel of the above-named corporation, and that she, as such officer, being authorized to do so, executed the foregoing instrument for purposes therein contained, by signing the name of the corporation by herself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jessica Surd  
\_\_\_\_\_  
Notary Public

(NOTARIAL SEAL)

My Commission Expires:  
September 12, 2015



**FITNESS TOGETHER FRANCHISE CORPORATION**  
**Unit Program**

**FRANCHISOR'S COSTS AND SOURCE OF FUNDS**

1. Disclose the Franchisor's total costs for performing its pre-opening obligations to provide goods or services in connection with establishing each franchised business, including real estate, improvements, equipment, inventory, training and other items stated in the offering:

<u>Category</u>	<u>Costs</u>
Real Estate	\$1,400.00
Improvements	\$1,400.00
Equipment	\$200.00
Inventory	--
Training	\$1,600.00
Other (describe):	
<u>Opening Assistance (HQ)</u> _____	\$1,800.00
<u>Opening Assistance (on-site)</u> _____	\$1,800.00
<b>Total:</b>	<b>\$8,200.00</b>

2. State separately the sources of all required funds:

Internally generated funds.

## FRANCHISE DISCLOSURE DOCUMENT

### FITNESS TOGETHER FRANCHISE CORPORATION

(an Arizona corporation)

9092 South Ridgeline Boulevard, Suite A

Highlands Ranch, Colorado 80129

(877) 663-0880

[www.fitnessstogether.com](http://www.fitnessstogether.com)

[info@fitnessstogether.com](mailto:info@fitnessstogether.com)



Fitness Together Franchise Corporation offers franchises for the operation of personal fitness training studios under the name Fitness Together,<sup>®</sup> which provide individualized one-on-one and small group personal fitness training, a nutrition program and other related services and products. The total investment necessary to begin operation of a Fitness Together studio ranges from ~~\$136,800~~ 169,650 to ~~\$230,850~~ 299,750. This includes the ~~\$57,000 to \$69,000~~ \$39,836 that you must pay to us or our affiliates.

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

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact the Fitness Together Franchise Corporation Development Department at 9092 S. Ridgeline Blvd., Suite A, Highlands Ranch, CO, (877) 663-0880, Extension 14.

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

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

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

Issuance date: ~~March 24, 2011, as amended November 5, 2011~~ 30, 2012

FT Studie (Unit) ~~November 2011~~ March 2012 FDD - Amendment Renewal v13  
~~November 5, 2011~~  
1076.001.001/13298  
March 30, 2012  
1076.001.003/37835



## STATE COVER PAGE

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

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

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

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

1. THE FRANCHISE AGREEMENT REQUIRES THAT ALL DISAGREEMENTS AND DISPUTES BE SETTLED BY BINDING ARBITRATION OR LITIGATION IN THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED, WHICH IS CURRENTLY DENVER, COLORADO. OUT OF STATE ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN OUR HOME STATE RATHER THAN IN YOUR HOME STATE.
2. COLORADO LAW GOVERNS THE FRANCHISE AGREEMENT AND THE RELATIONSHIP BETWEEN US AND YOU. THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. PLEASE NOTE THAT ~~80.784.8~~80.784.8% OF OUR ASSETS ARE INTANGIBLE. YOU MAY WANT TO TAKE THIS INTO CONSIDERATION WHEN MAKING A DECISION TO PURCHASE THIS FRANCHISE OPPORTUNITY.
4. IF YOU ARE A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY, YOUR OWNERS WILL HAVE TO GUARANTY YOUR OBLIGATIONS AND BE BOUND BY THE PROVISIONS OF OUR FRANCHISE AGREEMENT. IF THE OWNER IS A RESIDENT OF A STATE WHICH REQUIRES SPOUSAL CONSENT TO ENCUMBER THE ASSETS OF A MARITAL ESTATE, THEN THE OWNER'S SPOUSE MUST CONSENT TO THE GUARANTY, WHICH PLACES THE SPOUSE'S MARITAL ASSETS AT RISK.
5. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

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

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

## STATE EFFECTIVE DATES

The following states require that the disclosure document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

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

California effective date: Exemption Filed

Hawaii effective date: ~~April 1, 2011, as amended November 14, 2011~~, 2012

Illinois effective date: Exemption Filed

Indiana effective date: ~~March 25, 2011, as amended November 5, 2011~~, 30, 2012

Maryland effective date: ~~May 0, 2011, as amended November 22, 2011~~, 2012

Michigan effective date: ~~March 21, 2011, as amended November 5, 2011~~, 30, 2012

Minnesota effective date: ~~March 29, 2011, as amended November 17, 2011~~, 2012

New York effective date: Exemption Filed

North Dakota effective date: *Not Registered*

Rhode Island effective date: ~~April 5, 2011, as amended November 30, 2011~~, 2012

South Dakota effective date: *Not Registered*

Virginia effective date: ~~April 4, 2011, as amended November 7, 2011~~, 2012

Washington effective date: Exemption Filed

Wisconsin effective date: ~~March 25, 2011, as amended November 7, 2011~~, 30, 2012

In all other states that do not require registration, the effective date of this Disclosure Document is the issuance date of ~~March 21, 2011, as amended November 5, 2011~~, 30, 2012.

## STATE OF MICHIGAN DISCLOSURE NOTICE

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

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in the Michigan Franchise Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise before the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on the terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

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

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

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

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

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

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

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

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

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

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

## Table of Contents

ITEM 1	THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES..	1
ITEM 2	BUSINESS EXPERIENCE .....	<u>43</u>
ITEM 3	LITIGATION.....	5
ITEM 4	BANKRUPTCY .....	<u>87</u>
ITEM 5	INITIAL FEES .....	<u>87</u>
ITEM 6	OTHER FEES.....	<u>98</u>
ITEM 7	ESTIMATED INITIAL INVESTMENT .....	<u>4615</u>
ITEM 8	RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES .....	<u>2019</u>
ITEM 9	FRANCHISEE'S OBLIGATIONS .....	<u>2423</u>
ITEM 10	FINANCING .....	<u>2624</u>
ITEM 11	FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING .....	<u>2624</u>
ITEM 12	TERRITORY .....	<u>3534</u>
ITEM 13	TRADEMARKS .....	36
ITEM 14	PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION .....	<u>3837</u>
ITEM 15	OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISED BUSINESS .....	39
ITEM 16	RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL .....	40
ITEM 17	RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION .....	41
ITEM 18	PUBLIC FIGURES.....	44
ITEM 19	FINANCIAL PERFORMANCE REPRESENTATIONS .....	44
ITEM 20	OUTLETS AND FRANCHISEE INFORMATION.....	<u>4546</u>
ITEM 21	FINANCIAL STATEMENTS .....	54
ITEM 22	CONTRACTS.....	54
ITEM 23	RECEIPTS.....	<u>5554</u>

### Exhibits

A	State Addenda
B	Franchise Agreement
C1	Franchisees as of December 31, <del>2010</del> <u>2011</u>
C2	Franchisees Who Left Fitness Together During the Last Fiscal Year
C3	Franchises Sold But Not Yet Opened as of December 31, <del>2010</del> <u>2011</u>
D	Audited Financial Statements of Fitness Together Franchise Corporation for the years ended <del>2008, 2009, 2010,</del> and <u>2010</u> <u>2011</u>
E	State Agencies and Agents for Service of Process
F	Area Directors
G	<del>Representations and Acknowledgment Statement</del> Consent to Transfer
<del>H</del>	<del>Form of Conversion Program Addendum to Franchise Agreement</del>
<u>I</u>	<u>Form of Renewal Addendum</u>
J	Form of General Release
K	Operations Manual Table of Contents
L	Receipts

**APPLICABLE STATE LAW MIGHT REQUIRE ADDITIONAL DISCLOSURES RELATED TO THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT, AND MIGHT REQUIRE A RIDER TO THE FRANCHISE AGREEMENT. THESE ADDITIONAL DISCLOSURES AND RIDERS, IF ANY, APPEAR IN EXHIBIT A.**

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

### The Franchisor

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

We were incorporated in the State of Arizona on January 25, 1996 under the name Fitness For Life Franchise Corporation. In 2005, we changed our name to Fitness Together Franchise Corporation. Our principal business address is 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129. We conduct business under our corporate name and no others.

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

### Our Business Activities

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

We will enter into the franchise agreement attached as Exhibit B (the “Franchise Agreement”), which will grant to you a license to use the service marks “Fitness Together<sup>®</sup>” and “Nutrition Together<sup>®</sup>” as well as other service marks (including those disclosed in Item 13 of this Disclosure Document), for the purpose of owning and operating a Studio.

We do not currently own or operate any Studios. We have offered franchises in the line of business disclosed in this Disclosure Document since 1996, and we have not offered franchises in any other line of business or conducted any other business. As of December 31, 2010, 2011, we had 318279 Fitness Together franchises. See Item 20 for more information.

### Our Parent, Predecessors and Affiliates

Our parent company is Fitness Together Holdings, Inc. (“Parent Company”). Our Parent Company was incorporated in the State of Delaware in 2006 and conducts business under its corporate name only at its principal business location of 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129. We do not have any predecessors.

In addition to owning us, our Parent Company wholly owns Elements Therapeutic Massage, Inc. (“Elements”), which is the franchisor of the Elements therapeutic massage system. Elements was

incorporated in Delaware in 2006, which is when it began offering and selling Elements franchises. Elements has its principal place of business at the same address as ours. Elements offers and sells franchises to operate therapeutic massage studios. As of December 31, 2010, 2011, there were 7683 Elements franchises.

FT-One LLC, a Colorado limited liability company ("FT-One"), was formed in February 2007 to own and operate an FT studio in Lone Tree, Colorado. We have a 75% ownership interest in FT-One. In May 2008, FT-One sold the studio to a Fitness Together franchisee and currently sublets the premises to the franchisee. FT-One remains primarily liable as tenant under the lease. FT-One has the same principal business location as ours.

Other than as described above, neither us, our Parent Company, nor any affiliates required to be disclosed in this Item I has operated any other businesses or sold or operated the franchises being offered by the Franchisor and described in this Disclosure Document.

### Area Directors

From December 2002 to May 2009, we offered to qualified individuals master franchise agreements for the operation of area director businesses in specific territories ("Area Directors"). Each Area Director acts as our representative, with the right to solicit and identify prospective franchisees on our behalf and provide support services to the franchisees in his or her territory. When a franchise is sold, the franchise agreement is signed by the franchisee and us. To the extent the Area Directors provide sales and support services, they are compensated with a portion of the franchise and royalty fees paid to us by franchisees in the Area Director's territory. As the Franchisor, we are contractually responsible to you if the services are not performed as required under the Franchise Agreement. Currently we only intend to offer additional area director businesses to existing area directors who qualify for a renewal franchise.

A list of Area Directors and their respective territories is provided in Exhibit F to this Disclosure Document.

### Description of the Franchised Business

We grant to each franchisee a license to use the "Fitness Together<sup>®</sup>," "1 Client 1 Trainer 1 Goal<sup>®</sup>" and "Nutrition Together<sup>®</sup>" trademarks, together with other trademarks, service marks, trade names, symbols, emblems, slogans, insignias, designs and logos, existing now or which may exist in the future (together, the "Marks") for use in operating the Studio. You will sell and provide personal one-on-one and small group personal fitness training services and offer and sell a nutrition program, as well as related services and products. You will operate the Studio according to our standards, specifications, methods, techniques, and operating and other procedures ("System Standards") that constitute the Franchise System. The distinguishing characteristics of the Franchise System include the Marks, the interior layout and design, color scheme, signage and equipment, copyrights, titles, symbols, emblems, slogans, insignia, designs, diagrams, artworks, worksheets, originals, techniques, rules, ideas, philosophies, illustrations, course materials, the operations manual, any other manuals or materials loaned to you, and any additional manuals and

materials periodically provided to you regarding the operations of your Studio (collectively, the "Operations Manual"), the System Standards, advertising and promotional materials, the Nutrition Together™ guide, the fitness program, other audio, video and written materials, and other aspects of the Franchise System we have developed and designated for use within the Franchise System, or may acquire or develop and designate for use within the Franchise System in the future, all of which we may enhance and further develop (the "Proprietary Assets"). Our Proprietary Assets also include the client lists and other client information of each Studio. Fitness Together Studios offer a membership program under which members may purchase multiple training sessions at one time.

We also offer to operators of other personal training businesses who meet our criteria a franchise for the conversion of their business to a Studio. If you qualify for such a franchise, you will sign the Conversion Addendum attached as Exhibit IH (the "Conversion Addendum"), together with the Franchise Agreement.

### The Market and Competition

The Studio will offer its services and products to the general public. You will compete with nationally recognized trade names in the physical fitness industry, the nutrition industry, and with other local and regional businesses offering similar services and products. ~~As of the date of this Disclosure Document, the economies of the United States and other countries worldwide are being negatively affected by a number of factors, and we cannot predict what impact these negative economic conditions will have on our industry or our franchisees. There may be additional unforeseen changes in the economy and in the industry.~~

### Licenses, Permits, and Industry Regulations

Federal, state, and local labor regulations, including minimum age and wage laws, Americans with Disabilities Act and USA Patriot Act, and other laws and regulations apply to businesses generally. It is your sole and absolute obligation to research all applicable federal, state and local laws and regulations governing the operation of your Studio. You must comply with such laws and with all other laws that apply generally to all businesses. Currently there are no specific federal regulations governing the personal training industry or nutrition programs such as Nutrition Together. However, the state or other locality in which you operate your Studio may have codes, ordinances, statutes, or laws which license or regulate personal trainers, Nutrition Together coaches, fitness centers, health clubs or businesses such as the one being offered in this Disclosure Document, and such regulations could affect the operations of your Studio. Other regulations may apply to site location and building construction. You must know the laws and regulations applicable to your Studio and ensure that you and your employees comply with all such laws and regulations. You are also responsible for obtaining any licenses or permits required for operating your Studio and you and your employees must obtain national certification as a personal trainer. You should consult with your own professional advisors, such as an attorney and accountant, regarding applicable laws and regulations. In addition, it is your responsibility to implement and conform to the Health Insurance Portability and Accountability Act of 1996 (HIPPA) privacy laws.



## ITEM 2 BUSINESS EXPERIENCE

### Jeffrey L. Jervik, President and Chief Executive Officer, Director

Mr. Jervik has been our Chief Executive Officer, President and director since May 2008. Mr. Jervik has also been the Chief Executive Officer, President and a director of our Parent Company and Elements since that time. Mr. Jervik took a professional sabbatical from October 2007 to May 2008 after serving as Executive Vice President of Operations of Krispy Kreme Doughnuts, Inc., in Winston-Salem, North Carolina from October 2005 to October 2007. Prior to that date, Mr. Jervik was the Operating Partner of Papa John's Hawaii, in Honolulu, Hawaii, from October 1998 through August 2005.

### Daniel M. Colbourne, Executive Vice President and Chief Financial Officer

Mr. Colbourne joined us in September 2009 as our Executive Vice President and Chief Financial Officer and has held the same position at our Parent Company and Elements since that time. From August 2000 to May 2008, Mr. Colbourne was the Senior Vice President and Chief Financial Officer of Comex Group, Inc., located in Denver, Colorado. From May 2008 to September 2009, Mr. Colbourne was on sabbatical.

### Robert S. Haimos, Executive Vice President and Chief Growth Officer

~~Mr. Haimos joined us in July 2009 as our Executive Vice President and Chief Growth Officer and has held the same position at our Parent Company and Elements since that time. Previously, Mr. Haimos served as the Executive Vice President of Efficient Forms, LLC in Littleton, Colorado from February 2009 to July 2009, and continues to serve as a Director of that company. From December 2007 through February 2009, Mr. Haimos was the principal of Growthtrao Consulting, LLC, located in Conifer, Colorado. From July 2007 to December 2007, Mr. Haimos took a professional sabbatical, after serving as Executive Vice President of eCollogo-owned Datamark located in Salt Lake City, Utah, from April 2005 through July 2007. Prior to its purchase of Datamark, Mr. Haimos served as Senior Vice President of eCollege in Denver, Colorado from November 1999 through November 2005.~~

### Amy Powers, Executive Vice President and General Counsel

Ms. Powers joined us in July 2009 as our Executive Vice President and General Counsel and has held the same position at our Parent Company and Elements since that time. From May 2009 to July 2009, Ms. Powers was the Acting General Counsel of QFA Royalties LLC ("QFA"), the franchisor of the Quiznos Sub franchise system, and other Quiznos affiliated entities (collectively "Quiznos"). From October 2006 to May 2009, Ms. Powers was Senior Vice President and Assistant General Counsel of QFA in Denver, Colorado. From May 2002 until October 2006, Ms. Powers held various senior legal positions at Quiznos, all in Denver, Colorado.

Kevin P. BettsKristine Fisher, Senior Vice President and Chief Operating Officer

~~Mr. Ms. Betts Fisher~~ has been our Senior Vice President since ~~August 2009~~ and our Chief Operating Officer since ~~September 2008~~. ~~He~~ was our President from ~~August 2007 to August 2008~~. ~~Mr. Betts served as our Vice President from June 1999 through August 2007.~~ February 2012. She was our Parent Company's Senior Vice President, Human Resources and Franchise Support Services from August 2009 to February 2012, Vice President of Human Resources from March 2009 to August 2009 and Senior Director, Human Resources from October 2008 to March 2009. Before that, Ms. Fisher was the Senior Human Resources Business Partner at QCE, LLC (Quiznos), located in Denver, Colorado, from March 2000 to October 2008.

Scott Wendrych, Senior Vice President and Chief Sales Officer

Mr. Wendrych has been our Senior Vice President and Chief Sales Officer since September 2008 and has held the same positions at Elements since that time. From August 2006 to September 2008, Mr. Wendrych was President of Elements. Before that time, Mr. Wendrych was our Director of Sales from July 2004 to July 2006.

Kristofer Nieb, Senior Vice President Development

Mr. Nieb has been our Senior Vice President Development since November 2010 and has held the same position at our Parent Company and Elements since that time. Before joining us, he was the Director of Franchise for House of Speed Franchising in Sugar Grove, Illinois from May 2007 to August 2010 and was a consultant for FranChoice, located in Denver, Colorado from April 2005 through March 2007. Since April 2005, Mr. Nieb provided and continues to provide business consulting services through his company, Kris Nieb & Associates, Inc. located in Arvada, Colorado. In addition, Mr. Nieb has owned K & A Services, Inc., located in Arvada, Colorado from June 2000 through the present time.

### ITEM 3 LITIGATION

Pending Actions

~~W2D Corporation and Dborah A. Greene ("Claimant") v. Elements Therapeutic Massage, Inc., Jeffrey Jervik and Scott Wondrych ("Respondents"), American Arbitration Association (No. 73-114-00331-11-LGB). On October 7, 2011, Claimants filed a demand for arbitration with the American Arbitration Association in Fresno, California, which was amended October 25, 2011. Claimants and Elements were parties to a master franchise agreement dated January 17, 2008 ("MFA"), pursuant to which, among other things, Claimants paid Elements and agreed to develop Claimants' territory and support franchisees in the territory. The amended arbitration demand alleges that Claimants signed sales contractor agreements in January 2009 and October 2010 granting Respondents the right to perform Claimants' obligations to sell franchises in their territory, and that such agreements constituted an unlawful material modification of the MFA under the California Franchise Investment Law. The amended demand further alleges that in~~

~~September 2011, Respondents exercised their right under the MFA to purchase Claimants' rights under the MFA from Claimants. Claimants assert that Respondents' exercise of such purchase right constituted a bad faith enforcement of provisions of the MFA, a violation of the implied covenant of good faith and fair dealing, and a breach of the MFA. (The amended arbitration demand does not separately specify the actions of each of the three Respondents.) Claimants seek rescission of the MFA, a complete reimbursement of the Claimants' investment and/or monetary damages in an amount not to exceed \$150,000, and attorneys' fees and costs. Respondents intend to defend this arbitration.~~

~~Paul D. McKinnis and Dalriada Enterprises LLC ("Plaintiffs") v. Fitness Together Franchise Corporation ("Defendant"), (Case No. 10-CV-0230-KPM-KLM, United States District Court for the District of Colorado). Plaintiffs, the principal of an area director of Defendant and an area director of Defendant, respectively, filed a complaint on September 20, 2010 (a) seeking declaratory judgment and alleging breach of contract and breach of implied covenant of good faith and fair dealing with regard to Defendant's alleged failure to offer Plaintiffs a right of first refusal with respect to the purchase of the territory of Virginia, (b) alleging breach of contract, breach of implied covenant of good faith and fair dealing and negligent misrepresentation relating to the territorial protection in certain franchise agreements in the Washington, D.C. territory resulting in Plaintiffs incurring certain legal fees related to a franchisee complaint against Plaintiffs, and (c) alleging fraud in the inducement and violation of the Georgia Fair Business Practices Act ("GFBPA") with respect to Plaintiffs' purchase of the Georgia territory. Plaintiffs seek a declaratory judgment that Plaintiffs are entitled to be offered a right of first refusal, rescission of its Georgia Master Franchise Agreement, unspecified damages and an award in the amount of the legal fees expended by Plaintiffs in connection with the franchisee complaint against Plaintiffs and attorneys' fees and expenses in connection with this action. On October 12, 2010, Defendant filed a motion to dismiss the complaint or, in the alternative, for summary judgment with respect to all of Plaintiffs' claims. Plaintiffs responded by voluntarily moving to dismiss, without prejudice, certain of Plaintiffs' claims. On December 6, 2010, the court dismissed all of Plaintiffs' claims except for its claim for fraud in the inducement. On December 16, 2010, Plaintiffs filed a motion seeking leave to file an interlocutory appeal with respect to the court's order dismissing Plaintiffs' claims for declaratory judgment and breach of contract and implied covenant of good faith and fair dealing. On December 17, 2010, the court denied Plaintiffs' motion seeking leave to file its interlocutory appeal. Defendant intends to vigorously defend the remaining claim in this action.~~

~~Julie Willett d/b/a Fitness Together v. Fitness Together Franchise Corporation, an Arizona Corporation; Russell and Berwald Enterprises, LLC f/d/b/a Fitness Together ("Defendants"), (Case No. 35918, Chancery Court of Williamson County, Tennessee). Plaintiff Julie Willett is the sole member and owner of Julie Willett, LLC, a former franchisee. Plaintiff filed a complaint on May 7, 2009 alleging breach of contract, fraud, and fraudulent inducement claims against us and co-defendant Russell and Berwald Enterprises, LLC ("RBE"), a former franchisee who sold its Fitness Together Studio to Julie Willett, LLC in August 2007. Julie Willett, LLC is not a party to the lawsuit. Plaintiff's breach of contract claims are based on our alleged failure to provide her with adequate support and training and our alleged misappropriation of her client list to set up another studio close in proximity to Plaintiff's Studio. Plaintiff also alleged that we made fraudulent representations before, during and after the execution of the franchise and related~~

~~agreements. Plaintiff also asserted fraud and fraudulent inducement claims against RBE. The complaint seeks \$250,000 in damages. On June 18, 2009, Plaintiff filed for bankruptcy protection. On August 14, 2009, the case was removed to federal Bankruptcy Court. On November 5, 2009, the Bankruptcy Court ordered the plaintiff to arbitrate this dispute in Colorado. To date, plaintiff has not commenced any arbitration. Should arbitration be filed, defendants intend to vigorously defend this lawsuit.~~

### Prior Actions

Genesis Development Worldwide, LLC, and Lifelong Health and Fitness, LLC, d/b/a Tri-Cities Fitness Together (“Plaintiffs”) v. Fitness Together Franchise Corporation f/k/a Fitness For Life Franchise Corporation and Richard F. Sikorski (“Defendants”), (Case No. CV-07-5049-EFS, United States District Court, Eastern District of Washington, located at 920 West Riverside Avenue, Spokane, WA 99201). On August 21, 2007, plaintiffs filed a complaint alleging that defendants violated the Washington Franchise Investment Protection Act and the Washington Consumer Protection Act through misrepresentation, deceptive trade practices, and allegedly making unlawful earnings claims. Plaintiffs had purchased five franchises in 2002 and, at the time the complaint was filed, operated one Fitness Together business. The other four franchised businesses never opened. Plaintiffs sought to rescind all of their franchise agreements and obtain monetary damages in excess of \$500,000, treble damages, attorneys’ fees and costs. The parties mediated the case on December 17, 2007 and a settlement was reached whereby defendants agreed, without admitting any wrongdoing, to repurchase four of plaintiffs’ franchises for \$230,000. The case was subsequently dismissed with prejudice on March 24, 2008.

R.B.B.G., LLC, an Oklahoma Limited Liability Co. and Chenal FT, LLC, an Arkansas Limited Liability Co., Plaintiffs, v. Fitness Together Franchise Corporation, an Arizona corporation; Fitness For Life Franchise Corporation, an Arizona corporation; Kendell McGowen, an individual; and Rick Sikorski, an individual, Defendants (Case No. CIV.-07-1270-R, United States District Court, Western District of Oklahoma). On September 15, 2005, R.B.B.G., LLC (owned by lawyer Benjamin E. Russ), and Fitness For Life Franchise Corporation (our predecessor) entered into a franchise agreement under which R.B.B.G., LLC was granted the right to open a franchise in Chenal, Arkansas. On November 9, 2007, plaintiffs filed a complaint alleging that defendants violated the Securities Exchange Act of 1934 by willfully concealing from them, through false and fraudulent representations, the terms of the written franchise agreement. Plaintiffs sought to rescind the franchise agreement and obtain unspecified damages plus attorneys’ fees. On December 4, 2007, defendants, without admitting any wrongdoing, paid \$60,000.00 to plaintiffs and the franchise agreement was terminated. On December 11, 2007, the case and all claims between the parties were dismissed with prejudice.

Anthony Kim, an individual; Blue Pearl Ventures, Inc., a California corporation; Richard Muscio, an individual; Play Shortstop, LLC, a California limited liability company; Christine Burke, an individual; and San Diego Fitness Venture Corp., a California corporation (“Plaintiffs”) v. Fitness For Life Franchise Corp., an Arizona Corporation; Richard Sikorski, an individual; and Lance Freeman, an individual (“Defendants”), (Case No. 37-2009-00081782-CU-BC-CTL, Superior Court of California, County of San Diego). Plaintiffs, three former California franchisees filed a

complaint on January 22, 2009 alleging breach of contract, fraud and deceit, negligent misrepresentation, and violation of the California Franchise Investment law. Richard Sikorski is our founder and former CEO. Lance Freeman is a former Area Director, and current employee, of ours. Plaintiffs contended that defendants made representations at the time that the plaintiffs entered into their respective franchise agreements to the effect that the franchise could be run as a "turn-key" operation, that we had a comprehensive marketing system that would lead to client acquisition, and that no past experience, knowledge or additional maintenance other than general data input were required to operate the franchised business. Plaintiffs further alleged that defendants provided inadequate support and training. Plaintiffs sought damages in excess of \$1,000,000. On January 20, 2010, the parties entered into an agreement, under which, without admission of any wrongdoing, defendants paid plaintiffs an aggregate amount of \$100,000 to settle the case. The case was subsequently dismissed with prejudice on February 25, 2010.

W2D Corporation and Deborah A. Greene v. Elements Therapeutic Massage, Inc., Jeffrey Jervik and Scott Wendrych, American Arbitration Association (No. 73 114 00334 11). On October 7, 2011, Claimants filed a demand for arbitration with the American Arbitration Association in Fresno, California, which was amended October 25, 2011, November 17, 2011 and December 8, 2011. Claimants and Elements were parties to a master franchise agreement dated January 17, 2008 ("MFA"), pursuant to which, among other things, claimants paid Elements and agreed to develop claimants' territory and support franchisees in the territory. The amended arbitration demand alleges that claimants signed sales contractor agreements in January 2009 and October 2010 granting respondents the right to perform claimants' obligations to sell franchises in their territory, and that such agreements constituted an unlawful material modification of the MFA under the California Franchise Investment Law. The amended demand further alleges that in September 2011, respondents exercised their right under the MFA to purchase claimants' rights under the MFA from claimants. Claimants assert that respondents' exercise of such purchase right constituted a bad faith enforcement of provisions of the MFA, a violation of the implied covenant of good faith and fair dealing, a breach of the MFA, and a violation of the California Franchise Relations Act. (The amended arbitration demand does not separately specify the actions of each of the three respondents.) Claimants sought rescission of the MFA, a complete reimbursement of the claimants' investment and/or monetary damages and punitive and exemplary damages in an aggregate amount not to exceed \$300,000, and attorneys' fees and costs. On March 14, 2012, the parties entered into a settlement agreement under which, without admission of wrong-doing, respondents will pay claimants \$75,000.

Paul D. McKinnis and Dalriada Enterprises LLC v. Fitness Together Franchise Corporation, (Case No. 10-CV-0230-KPM-KLM, United States District Court for the District of Colorado). Plaintiffs, the principal of an area director of defendant and an area director of defendant, respectively, filed a complaint on September 20, 2010 (a) seeking declaratory judgment and alleging breach of contract and breach of implied covenant of good faith and fair dealing with regard to defendant's alleged failure to offer plaintiffs a right of first refusal with respect to the purchase of the territory of Virginia, (b) alleging breach of contract, breach of implied covenant of good faith and fair dealing and negligent misrepresentation relating to the territorial protection in certain franchise agreements in the Washington, D.C. territory resulting in plaintiffs incurring certain legal fees related to a franchisee complaint against plaintiffs, and (c) alleging fraud in the

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

Other than the 6 items listed above, no litigation is required to be disclosed in this Item.

#### ITEM 4 BANKRUPTCY

No bankruptcy is required to be disclosed in this Item.

#### ITEM 5 INITIAL FEES

Initial Franchise Fees. When you sign the Franchise Agreement, you must pay us an initial franchise fee as stated below:

##### *Standard Program*

The initial franchise fee for 1 franchise purchased by you from us is \$39,000. The initial franchise fee for each additional franchise you purchase is \$35,000.

~~If you are approved to purchase 3 franchises from us, the franchise fee for the first Franchise Agreement will be \$39,000, the franchise fee for the second Franchise Agreement will be \$34,000 and the franchise fee for the third Franchise Agreement will be \$29,000. All three franchise agreements must be purchased, and all three franchise fees must be paid, at the same time.~~

##### *Veteran's Discount*

We offer a veteran's discount of ~~\$5,000~~ 10,000 for the 1<sup>st</sup> franchise you purchase if you are a veteran.

##### *Conversion Program*

If you are signing the Conversion Addendum described in Item I, you must pay us 50% of the then-existing initial franchise fee (currently \$19,500) when you sign the Franchise Agreement. At

the time you convert your existing business to a Studio, you must pay us the balance of the initial franchise fee. You will have 180 days to convert your existing business into a Studio; however, you shall will pay royalties on your gross receipts that accrue beginning on the date on which your Franchise Agreement is fully executed by you and us. If you fail to convert your business into a Studio within such this time period, we will have the right to terminate your Franchise Agreement and retain the non-refundable initial franchise fee.

**Payment of Fees.** The initial franchise fees must be paid to us as a lump sum in the form of a cashier's check or wire transfer at the time the Franchise Agreement is signed.

All initial franchise fees are fully earned by us when paid by you and are not refundable under any circumstances.

We reserve the right to waive or reduce the initial franchise fee for other franchisees. The initial franchise fee in fiscal year 2010 ~~2011~~ ranged from \$25,500 ~~to \$34,000~~ 39,000.

**Other Initial Payments.** Before you open your Studio, you must purchase certain equipment, furniture and fixtures, products and materials as disclosed in Item 8 of this Disclosure Document, some of which must be purchased from us. You must pay for these initial purchases in a lump sum in the form of a cashier's check or wire transfer prior to opening your Studio. These payments are non-refundable. We estimate that the aggregate amount payable to us for the equipment, furniture and fixtures, products and materials will range from \$18,000 to \$30,000. You are also are required to pay us a \$515.50 516 set up fee for certain initial computer hardware components and required software programs and the technology fee for the 2 months before opening (\$160 per month). These payments are non-refundable.

**ITEM 6 OTHER FEES**

Type of Fee*	Amount	Due Date	Remarks
Royalty	6% of gross receipts	5 <sup>th</sup> day of each month	See Note 1
Default Fee	\$250	Upon receipt of statement	See Note 2
Late Payment Fee	Greater of 10% of the amount due or \$150	Upon receipt of statement	See Note 3
Dishonored Check or Insufficient Funds Fee	\$150	Upon receipt of statement	See Note 4
Defense or Enforcement Costs	All costs including attorneys' fees (variable)	Upon settlement or conclusion of a claim or other legal action	See Note 5

Type of Fee*	Amount	Due Date	Remarks
Indemnification	All costs including attorneys' fees (variable)	Upon settlement or conclusion of a claim or other legal action	See Note 6
Collection Costs	Actual costs to collect past due or other amounts	Upon settlement or conclusion	See Note 7
Default Operation Costs (in event of your default)	Up to \$5,000 per month	1 <sup>st</sup> day of each month upon occurrence	See Note 8
Royalty Underpayments (audit)	Varies; difference between amount reported and correct amount, plus 12% of such amount (and if understated amount is more than 2%, plus our costs (including attorneys' and accountants' fees))	Time of audit	See Note 9
Equipment, Inventory, Products and Materials (in addition to initial requirements)	Varies based on items and quantity ordered.	At time of purchase	See Note 10
Supplies or Supplier Approval	\$100 per hour	Upon request	See Note 11
Computer-Software <u>Technology Fee</u>	<del>\$78,160</del> per month; <u>additional \$7.50 per month per email user in excess of 3</u>	1 <sup>st</sup> day of each calendar month	See Note 12
<u>Social Media Program Fee</u>	<u>\$59 per month</u>	<u>1<sup>st</sup> day of each calendar month</u>	<u>See Note 13</u>
Computer Hardware and Software Upgrades	Varies depending on requirements	At time of upgrade	See Note <del>13</del> <u>14</u>
Changed Requirements	Varies depending on changes	Upon occurrence	See Note <del>14</del> <u>15</u>
Marketing and Production Fund	As established; up to 1% of gross receipts	As established	See Note <del>15</del> <u>16</u>
<u>Ongoing</u> Marketing Spend Requirement	At least the required minimum <u>Ongoing</u> Marketing Spend Requirement	As established	See Note <del>16</del> <u>17</u>
Marketing Cooperatives	As established	As established	See Note <del>17</del> <u>18</u>
Studio-Website	\$60-per-month (\$45-per-month-if you own more than one open and operating-Studio)	Upon-receipt-of invoice	See-Note- <del>18</del>



Type of Fee*	Amount	Due Date	Remarks
Training (refresher)	We may require a \$2,500 fee and you must pay all costs for travel, meals, lodging and other expenses	If a fee is payable, <del>prior to</del> <u>before</u> attendance at training program; costs and expenses as incurred	See Note 19
Insurance	Varies by coverage and provider	If you fail to obtain insurance, we may obtain it for you and you will be required to reimburse us for any premiums and other costs we incur	See Note 20
Transfer Fee	50% of the then-current initial franchise fee (currently \$19,500)	Upon transfer	See Note 21
Arbitration and Proceeding Costs	Our arbitration or other proceeding fees and costs plus attorneys' fees and costs if we prevail in the arbitration or proceeding	Upon conclusion of arbitration or proceeding	See Note 22
Renewal Fee	25% of the then-current initial franchise fee (currently \$9,750)	Upon renewal	See Note 23
Termination Fee	An amount equal to the net present value of the Royalties and other fees that would have become due and payable following termination of your Franchise Agreement for the period your Franchise Agreement would have remained in effect but for your default or your termination without cause	Upon termination of the Franchise Agreement	See Note 24

\*Except as otherwise noted, all fees are uniformly imposed on all franchisees and collected by, and payable to, us (or our designated affiliate). No other fees or payments will be paid to us, and we do not impose or collect any other fees for third parties. We may also pay an Area Director a portion of the Royalty you pay us if your Studio is located in an Area Director's territory. Any fees paid to us are non-refundable unless otherwise noted. Your costs for certain items listed above may differ depending on the suppliers used, local costs, and other factors.

1. Royalty. You must pay us the monthly royalty on the 5<sup>th</sup> day of the first<sup>1<sup>st</sup></sup> full calendar month after opening the Studio (or if you are converting an existing business to a Studio, the first<sup>1<sup>st</sup></sup> full calendar month after the date you sign the Franchise Agreement), and on the

5<sup>th</sup> day of each month after that date during the term of the Franchise Agreement. We reserve the right, but not the obligation, to collect royalties on a weekly, rather than monthly, basis upon notification to you. We will auto-debit your bank account (known as "ACH") for the amounts due based on your gross monthly receipts from the previous month. The, as reported by you or obtained by us from our approved computer system used by you to record receipts. Your ACH will remain in effect throughout the term of the Franchise Agreement. You must ensure that funds are available in your bank account to cover our withdrawals. Some banks charge fees for us to ACH your account; you must pay those fees. Gross receipts include: (a) all of your revenue and receipts, including those taken by cash, credit card, debit card, check, trade, barter or exchange, electronic funds transfer, or any other means of credit which are derived from the operations of your Studio, including the sales of physical fitness training services, merchandise, products, or any other products or services which are sold by you, whether sold at your Studio location or from an off-site location, excluding sales, use or privilege taxes paid to the appropriate taxing authority, refunds that are made to customers, and tips received by physical trainers. ~~Gross receipts also include; and (b)~~ the gross amount of redemptions for national gift cards (which may be redeemed at your Studio). However, the face value of Studio-specific gift cards and gift certificates (which are intended to be redeemed only at your Studio) will be included as gross receipts at the time of the sale of the Studio-specific gift card or gift certificate and not upon redemption. In addition, should your business be interrupted for any reason and you are receiving business interruption insurance payments, the gross amount of these payments will be considered to be gross receipts and will be subject to the monthly Royalty. If you fail to report your gross receipts (or we are unable to obtain your gross receipts directly from our approved computer system used by you to record receipts), we may debit your account for an estimated monthly royalty equal to the greater of ~~(a) 6~~110% of the average of your last 3 prior months of reported gross receipts for your Studio, or ~~(b) 6~~% of the average of the gross receipts for all Studios for the immediately prior month ("Estimated Monthly Royalty"). If the Estimated Monthly Royalty we debit from your account is less than the amount you actually owe us (once we have determined your Studio's true and correct gross receipts), we will debit your account for the balance on the day we specify. If the Estimated Monthly Royalty we debit from your account is greater than the amount you actually owe us, we will credit the excess against the amounts we otherwise would debit from your account during the following month.

Despite any designation you make, we may apply any of your payments to any of your past due indebtedness to us.

We may require you to pay any amounts due under the Franchise Agreement or otherwise by means other than ACH (e.g., by check or credit card) whenever we deem appropriate, and you must comply with our payment instructions. If you fail to comply with our payment instructions, we reserve the right to exclude you from participating in certain programs. In addition, your failure to comply with our payment instructions will be considered a default under the Franchise Agreement.

2. **Default Fee.** If you are in default of the Franchise Agreement and we send you a default notice, you must pay us a default fee.
3. **Late Payment Fee.** For all past due sums you owe us, you must pay us a late fee for each month or portion of a month that the amount is past due. This applies to all amounts owed to us, our Parent Company, and our affiliates, including-but-not-limited-to advertising fees (if any), royalties, transfer and renewal fees, default, late, and insufficient funds fees, and amounts due for purchases from us, our Parent Company or our affiliates.
4. **Dishonored Checks or Insufficient Funds Fee.** If you write us a check that is returned, cancelled or dishonored, or if we ACH your bank account (in accordance with the terms of the Franchise Agreement) and your account has insufficient funds or is inaccessible, you must pay us an insufficient funds fee.
5. **Defense or Enforcement Costs.** If we employ legal counsel or incur other expenses to (a) enforce any of your obligations under, or requirements of, the Franchise Agreement, (b) enforce you, your owners' or your or their spouses' personal guarantees of your obligations under the Franchise Agreement, or (c) defend ourselves against any claim, demand, action or proceeding initiated by you against us or because you contest the validity, ownership, distinctiveness or enforceability of the Proprietary Assets and the goodwill associated with the Proprietary Assets, or because you and we litigate, we will be entitled to seek temporary, preliminary or permanent injunctive relief from a court of competent jurisdiction or take such other legal action as may be available to us. If we are successful in any such action, we will be entitled to have you pay our reasonable attorneys' fees, court costs, expenses of litigation and all other costs associated with any other appropriate remedies.
6. **Indemnification.** You must indemnify, defend and hold us, our affiliates, and our and their respective stockholders, members, owners, principals, directors, officers, employees, representatives and agents, harmless from any and all losses, expenses, judgments, claims, reasonable attorneys' fees and damages related to the Studio or from your breach of the Franchise Agreement. You must notify us in writing within five~~5~~ calendar days of any lawsuit, complaint or proceeding filed by or against you regarding the operation of the Studio and, upon request, must furnish us with copies of all documents related to the lawsuit, complaint or proceeding.
7. **Collection Costs.** If you withhold monies owed to us in the absence of a court order permitting you to do so, you must pay us all reasonable costs, including court costs, attorneys' fees, reasonable value for our employees' time, witness fees and travel expenses incurred in pursuing the collection of the withheld monies.
8. **Default Operation Costs (in the event of your default).** If you are in default of the Franchise Agreement and have not cured the default within the applicable cure period, we have the right to enter your Studio, to make modifications necessary to protect the Proprietary Assets, to cure any default under the Franchise Agreement or under the lease for the premises, and assume all of your rights under the lease (including making lease

payments), including the right to assign or sub-lease. We shall also have the right to remove your equipment and signage. If we choose to enter and manage your business in the case of your breach of the Franchise Agreement, you must pay us a monthly fee. We have these rights whether or not your Franchise Agreement is terminated.

9. **Royalty Underpayments (audit).** If an inspection or audit of your books and records reveals that any payments due or made to us were based upon understated amounts, then, upon our demand, you must immediately pay us an amount equal to the payment that would have been due or paid in the absence of understated amounts, minus the payment actually due or made, plus 12% interest, calculated on an annual basis, from the date the disputed amount was originally due until the correct amount is paid. If the understatement is 2% or more, then you will also reimburse us for any costs and expenses, including accounting and attorneys' fees, in connection with the inspection or audit.
10. **Equipment, Inventory, Products and Materials (in addition to initial requirements).** As ~~Periodically and as~~ needed to restock and maintain the required equipment and inventory, you must ~~periodically~~ purchase for your Studio certain inventory, equipment, products, furniture, fixtures, signs, stationery, supplies, and other items or services required or recommended by us from manufacturers, suppliers and distributors required or recommended by us, which shall include us and our affiliates. Item 8 of this Disclosure Document contains additional information about required or designated preferred providers, products and services.
11. **Supplies or Supplier Approval.** If you wish to purchase supplies that are not Approved Supplies, or purchase supplies from a supplier that is not an Approved Supplier (defined in Item 8), you must first submit your request to us for approval. We will charge you a fee to evaluate the supplies or supplier, payable upon receipt of our invoice. We may withhold approval of any supplies or suppliers for any reason.
12. **Computer-SoftwareTechnology Fee.** We require you to use: (a) the scheduling software program designated and described in the Operations Manual—Currently, you must pay us a set-up fee and a monthly fee, which we ACH from your bank account on the first day of each month beginning with the first full month following the date on which you complete software training; (b) our proprietary software to maintain a website for your Studio hosted by our Approved Supplier; (c) our key performance indicator program accessible through the franchisee-only portal of our website; and (d) the email platform we designate. (See Item 11 of this Disclosure Document for information about the required computer software) and your Studio website). The technology fee is payable monthly, which we will ACH from your bank account on the 1<sup>st</sup> day of each month beginning 60 days before your Studio opens. The email portion of the technology fee includes 3 users; you will be required to pay an additional \$7.50 per month for each email user in excess of 3. If you want access to technologies other than email before opening, then the technology fee will accrue at the monthly rate from such time.

- 13. Social Media Program Fee.** We require you to use our social media program for management of social media including Facebook, Google, mapping management and other social technologies that we periodically integrate. We will ACH the social media program fee on the 1<sup>st</sup> day of each month.
- 14. 43. Computer Hardware and Software Upgrades.** During the term of the Franchise Agreement, you must upgrade any hardware component or software program at any time to be compatible with the software package required by us. The cost for any upgrade will vary depending upon the upgrades required. (See Item 11 of this Disclosure Document for information about computer hardware and software upgrades.)
- 15. 44. Changed Requirements.** We may revise our System Standards and Operations Manual to implement new or different operating requirements and fees. You must comply with any new or changed requirements and fees.
- 16. 45. Marketing and Production Fund.** We do not require you to contribute to any marketing or advertising funds at this time, but may in the future. If a Marketing and Production Fund is established, you will be required to make contributions to the Fund of up to 1% of the gross receipts of your Studio, which we will spend on preparing advertising and promotional materials and advertising, marketing and promotional programs for your Studio. You must meet the Initial Marketing Spend Requirement and the Ongoing Marketing Spend Requirement described in Item 11 of this Disclosure Document. The Ongoing Marketing Spend Requirement may include any contributions you make to a Marketing and Production Fund (if established), and any contributions you make to a Marketing Cooperative (see below). If established, we may vary your Marketing and Production Fund contributions and if you contribute to a Marketing Cooperative, the Cooperative may vary your Marketing Cooperative contribution. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Ongoing Marketing Spend Requirement does not drop below the minimum amount you are required to spend to meet your Ongoing Marketing Spend Requirement. Your required Marketing and Production Fund and Marketing Cooperative contributions could, by themselves, exceed the minimum Ongoing Marketing Spend Requirement. (See Item 11 of this Disclosure Document for more information on advertising and marketing costs.)
- 17. 46. Ongoing Marketing Spend Requirement.** We may, but do not currently, collect any funds constituting the minimum Ongoing Marketing Spend Requirement that are not otherwise being contributed to the contributions to a Marketing and Production Fund or Marketing Cooperatives and for use those funds for local, regional or national advertising or promotional programs that reach your Studio's local trade area. The minimum “(See Item 11 of the Disclosure Document for more details on the Ongoing Marketing Spend Requirement” is: 1) during the first 120 days after your Studio opens; \$18,000 to advertise, market and promote your Studio; 2) after the first 120 days your Studio is open until the one-year anniversary of your Studio opening, \$2,000 per month; and 3) beginning in the second year after your Studio opens and continuing through the

~~term of the Franchise Agreement, 5% of your gross receipts. If you are converting your existing business to a Studio, your Marketing Spend Requirement is 5% of your gross receipts after conversion and continuing during the term of your Franchise Agreement. (See Item 14.)~~

18. ~~17.~~ **Marketing Cooperatives.** We may designate a geographic area in which three~~3~~ or more Studios are located as an area in which to establish a marketing cooperative (“Marketing Cooperative”). The Marketing Cooperative’s members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. All material decisions of the Marketing Cooperative, including contribution levels, will require the affirmative vote of 51% of all Studios operating within the Marketing Cooperative’s area (including those that we and our affiliates operate, if any), with each Studio receiving one vote. We may collect Marketing Cooperative fees and transfer those fees to the Marketing Cooperative, or the Marketing Cooperative may collect the fees directly, as we determine. We may form, modify, change, dissolve, or merge Marketing Cooperatives. (See Item 11 of this Disclosure Document for more detail on Marketing Cooperatives.)
- ~~18.~~ **Studio Website.** ~~You are required to use our proprietary software to maintain a website for your Studio that is hosted by our Approved Supplier. You must pay us a monthly fee for your website, which will be reduced if you have more than one open and operating Studio. (See Item 11 of this Disclosure Document for more detail on websites).~~
19. **Training (refresher).** In the event we periodically provide refresher training courses or programs to our franchisees, we may require you to pay a \$2,500 fee per individual you designate to attend such training, and you must pay all costs for travel, meals, lodging and other expenses related to attendance at any refresher training course or program.
20. **Insurance.** You must obtain from our Approved Supplier, and retain, the required insurance coverage as outlined in the Franchise Agreement or as may be otherwise periodically required by us. If you fail to obtain or retain such insurance, we may, but are not obligated to, obtain such insurance for you and charge the costs of the premiums, plus our reasonable costs in obtaining such insurance, to you.
21. **Transfer Fee.** You must pay us a transfer fee if you sell or transfer ownership of your Studio, or if you assign or sell your controlling interest in the Studio to another party. This transfer fee must be paid to us in a lump sum in the form of a cashier’s check or wire transfer at the time of the transfer. You do not have to pay a transfer fee if, within 90 days from the date you sign your Franchise Agreement, you transfer your individual interest in the Franchise Agreement to a corporation, limited liability company, partnership or similar entity in which you are a majority owner.
22. **Arbitration and Proceeding Costs.** The prevailing party of any arbitration or other proceeding shall be entitled to its reasonable attorneys’ fees and costs.
23. **Renewal Fee.** If you are approved to renew your Franchise Agreement, you will sign the Renewal Addendum attached as Exhibit I together with the Franchise Agreement

attached as Exhibit B. You must pay us a renewal fee in order to renew your Franchise Agreement in addition to executing the Renewal Addendum. The renewal fee is due upon renewal of the Franchise Agreement and is payable by cashier's check or wire transfer.

~~24. Termination Fee.~~ You are required to pay us the termination fee if we terminate your Franchise Agreement because you defaulted under the agreement and failed to cure the default within the applicable cure period. Royalties and other fees included in the termination fee will be calculated based on your Studio's average monthly gross receipts for the 12 months preceding the termination date. If you have not opened your Studio for business for at least 12 months preceding the termination date, Royalties and other fees will be calculated based on the average monthly gross receipts of all Studios in the Franchise System during the fiscal year prior to the termination date.

**ITEM 7 ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

Type of Expenditure	Amount*	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee <sup>1</sup>	\$39,000	Lump sum	Upon signing Franchise Agreement	Us
Real Property and Utility Security Deposits <sup>2</sup>	\$2,900-\$4,900 <u>5,200</u>	As arranged	As arranged, generally two months before opening or when lease is executed	Landlord and utility providers
Leasehold Improvements (net of landlord tenant allowances) <sup>3</sup>	\$25,000 <u>31,250</u> -\$50,500 <u>96,250</u>	As arranged	As arranged	Landlord and Approved Suppliers and contractors
Equipment <sup>4</sup>	\$18,000 <u>22,800</u> -\$30,000 <u>38,100</u>	Lump sum	8 weeks before opening	Us or our Approved Suppliers
Furniture and Decor <sup>5</sup>	\$4,000 <u>4,500</u> - \$3,000 <u>4,600</u>	Lump sum	2-3 weeks before opening	Approved Suppliers
Computer Hardware and Software <sup>6</sup>	\$3,700 <u>5,100</u> (including a \$45,505 <u>16</u> software set-up fee)	As arranged	4-6 weeks before opening	Us and Approved Suppliers or other third party suppliers

Type of Expenditure	Amount*	Method of Payment	When Due	To Whom Payment is to be Made
Initial Training <sup>7</sup>	<del>\$1,750</del> <u>1,800</u> - <del>\$3,500</del> <u>3,200</u> (travel, meal <u>meals</u> , lodging and other expenses); \$2,500 fee per person plus expenses for additional Initial Training in excess of two persons per franchise agreement)	As incurred	Within 60 days after signing a lease	Third party providers <u>and Us</u>
Pre-Opening-Advertising <sup>8</sup>	\$3,000-\$6,000	As-arranged	4-6-weeks- <del>bofo</del> opening	Approved Suppliers
<u>Initial</u> Marketing Spend Requirement <sup>9a</sup>	<del>\$18,000</del> <u>25,000</u>	As arranged	<del>During the first 120</del> <u>Up to 60 days before Studio opening and 1<sup>st</sup> 90 days after year Studio epen</u> opening	<del>Us,</del> Approved Suppliers or other third parties
Signs <sup>10g</sup>	<del>\$5,000</del> -\$7,000 <del>-</del> <u>\$9,000</u>	Lump sum	6-8 weeks before opening	Approved Suppliers
Business Licenses and Permits <sup>11a</sup>	\$100- <del>\$750</del> <u>1,000</u>	As arranged	6-8 weeks before opening	Government agencies or other licensing authorities
Insurance <sup>11b</sup>	<del>\$2,000</del> <u>1,800</u> - <del>\$3,000</del> <u>2,200</u>	As arranged	At signing of lease	Approved insurance provider <u>Supplier</u>
Miscellaneous Opening Costs <sup>11c</sup>	<del>\$2,350</del> <u>800</u> - <del>\$3,500</del> <u>1,500</u>	As incurred	As incurred	Suppliers
Additional Funds (three months) <sup>11d</sup>	<del>\$15,000</del> <u>27,800</u> -\$ <del>28,000</del> <u>62,600</u>	As arranged	First 3 months of operation	Landlord, utilities providers, suppliers, other operating expenses



Type of Expenditure	Amount*	Method of Payment	When Due	To Whom Payment is to be Made
TOTAL ESTIMATED INITIAL INVESTMENT <sup>15</sup>	\$136,800 <u>169,650</u> - \$230,850 <u>299,750</u>			

\*Unless otherwise stated, the estimated amounts and ranges are based on our business experience.

**NOTES:**

1. **Initial Franchise Fee.** The standard initial franchise fee for one Fitness Together Studio is \$39,000. ~~If~~ The initial franchise fee for each additional franchise you purchase more than one franchise agreement, is \$35,000. If you convert an existing business to a Studio, your initial franchise fee may be discounted. (See Item 5)
2. **Real Property Deposits and Utility Deposits.** If you do not own retail space adequate to open your Studio, you must lease or rent the retail space from a third party. Studios are typically located in light industrial and commercial areas, and require approximately 1,250 to 1,750 square feet. Estimated monthly lease payments range from \$2,300 to ~~\$4,100~~ \$4,400 (including common area maintenance payments) depending on the size, condition, and location of the leased premises. Your landlord may require a security deposit before leasing the premises to you, which is typically equal to one month's rent. Some utility companies also may require a security deposit before commencing services. We estimate the total amount of utility security deposits to range from approximately \$600 to \$800.
3. **Leasehold Improvements (net of landlord tenant allowances).** The cost of construction build-out ~~prior to~~ before occupying the leased premises for your Studio (including the cost of architectural services) depends on the size, of your Studio, the state, city or area in which your Studio is located, the specific location and condition of the premises, the demand for the premises among prospective lessees, the site's previous use, and the nature and extent of improvements required, ~~less any amounts contributed by the landlord.~~ Typically, costs are higher in large metropolitan areas or if you choose premises with square footage in excess of the high range of 1,750 square feet. The range disclosed in the chart is the range of costs after deducting any landlord allowances (tenant improvements, rent deduction and the like) which may or may not be granted by your landlord. Your construction costs may be higher depending on all of the factors described in this note.
4. **Equipment.** You must purchase from us specific fitness training equipment for the operation of the Studio as detailed by us in the Operations Manual. The range of estimated costs represents the equipment recommended for a two room Studio, with the maximum shown for new equipment and the minimum for previously owned equipment (estimated).

5. **Furniture and Decor.** You must purchase from our Approved Supplier furniture and fixtures for your Studio as specified by us in the Operations Manual or otherwise. The cost will depend on supplier financing terms (if available), the brands purchased, the quality of the items purchased and other factors.
6. **Computer Hardware and Software.** Before opening your Studio, we typically require you to purchase two computer workstations and related equipment and our designated and other software programs. Your minimum requirements for these items are designated in the Operations Manual and in Items 8 and 11 of this Disclosure Document. You must pay us a set-up fee for the set-up of the designated software.
7. **Initial Training Expenses.** You must pay your own transportation, meals, lodging and any other living expenses for you and any other persons attending the Initial Training outlined in Item 11 of this Disclosure Document. The amount you spend per individual will depend on the distance traveled and the type of accommodations you choose. The estimate contemplates attendance by you and one other person traveling to our support center office in Colorado for approximately five days. For each additional person designated by you to attend Initial Training, you must pay us a \$2,500 fee, and pay for the additional person's transportation, meals, lodging and other living expenses. You must pay the \$2,500 fee ~~prior to~~before any additional person attending attends Initial Training and the fee is not refundable under any circumstances. The estimates do not include any wages or salary you may choose to pay yourself or others while attending Initial Training.
- ~~8. **Pre-Opening Advertising.**—Your pre-opening advertising will generally begin 4-6 weeks before you open your Studio, or if you are converting your existing business to a Studio, right after you sign the Franchise Agreement.—Your actual costs may vary depending on the methods of advertising used, supplier costs, local costs, and other factors. (See Item 11 of this Disclosure Document for more details on pre-opening advertising.)~~
- ~~8. **9-Initial Marketing Spend Requirement.** During the first 120 period beginning at least 60 days after~~before~~ your Studio opens, and continuing through the first 90 days of your Studio operations, you must spend at least \$18,00025,000 to advertise, market and promote your Studio. ~~The~~(See Item 11 of this Disclosure Document for more details on the Initial Marketing Spend Requirement will initially consist of the amounts you spend to advertise, market and promote your Studio in accordance with an advertising and marketing plan we approve prior to the opening of your Studio and each following quarter during the term of the Franchise Agreement. If you are converting your existing business to a Studio, the \$18,000 Marketing Spend Requirement will not apply and your Marketing Spend Requirement will be 5% of your gross receipts upon conversion and continuing during the term of your Franchise Agreement.)~~
- ~~9. **10-Signs.** The estimate includes our required interior signs and 1 exterior sign sign which bear the Marks. The cost of the signs varies depending on the type, size and location of the sign, and may also be affected by shipping costs, as well as local zoning and other~~

ordinances and regulations and landlord restrictions. If you want additional exterior signs, your cost will be higher.

~~10.~~ ~~11.~~ **Business Licenses and Permits.** The cost includes the licenses and permits required to operate a Studio in your location. The license and permit requirements are specific to the state and city/town in which your Studio is located. Certain states may require that you file and post a bond, the estimated cost of which is not included in the table.

~~11.~~ ~~12.~~ **Insurance.** You must obtain insurance coverage from our Approved Supplier with the limits required by us as described in Item 8 of this Disclosure Document. Your landlord may require additional insurance. The estimate is the annual premium amount.

~~12.~~ ~~13.~~ **Miscellaneous Opening Costs.** This cost includes other start-up costs and expenses (including reasonable pre-opening salary costs for your employees) but does not include any attorneys<sup>2</sup>-or-other-professional-fees advisor fees or bank financing costs you may incur.

~~13.~~ ~~14.~~ **Additional Funds (first three3 months of operations).** The range of estimated costs represents your estimated initial start up expenses (other than the amounts separately identified in the table), which include payroll costs (but-excluding a draw or salary or draw for you or your manager if you are not the manager), lease payments, uniform expenses, the costs of supplies, and other operating expenses. We cannot guarantee that this amount will be sufficient. The 3-month period is not intended, and should not be interpreted, to identify a point at which your Studio will break even. We cannot guarantee when or if your Studio will break even. This estimated amount may vary based on a number of factors, including the extent to which you follow our methods and procedures, local economic conditions, the local market for your services, competition, sales levels, local wage rates, owner's salary, the extent of your actual participation in the Studio, your business acumen, your partners or shareholders (if applicable), and any other persons involved in the Studio.

~~14.~~ ~~15.~~ **Total Estimated Initial Investment.** We relied on our and our affiliates' many years of business experience in selling and supporting Fitness Together franchises to compile these estimates. You should review these figures carefully with your professional advisors, including financial and legal advisors, before making any decision to purchase a Studio. ~~The above amounts are stated in United States currency.~~ The amounts may vary based on your geographic location. You should consider the costs of each of the items described in this Disclosure Document in your city, state, and/or country. If you are converting your existing business to a Studio, your actual investment may vary depending on the size of your Studio premises, the scope of the leasehold improvements required by us, and whether we approve your existing equipment and supplies for use in your Studio after the conversion. All fees paid to us are not refundable under any circumstances, unless otherwise stated in the Franchise Agreement. Fees or costs due to any other entity are subject to the terms set under their agreements. Inflation, discretionary expenditures, fluctuating interest rates and other factors may affect your actual costs to open your Studio.

You are responsible for all costs and variances from the estimated costs in this Item 7, or variances from any other estimates we may provide during any phase of the development of your Studio. The availability and terms of financing depend on the availability of financing generally, your creditworthiness, your available collateral, and lending policies of financial institutions. The estimate does not include any finance charge, interest, or debt service obligation.

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

### General

To maintain the quality, consistency, and goodwill of the Franchise System, you must comply with and maintain our System Standards. We can modify, amend and change our System Standards, the Operations Manual or any other standards and specifications at any time, and will notify you in writing of any such modifications. Notifications may be made by various means, including written or electronic correspondence, verbal or telephone communication, amendments or updates to the Operations Manual, bulletins and similar means of communications.

We may designate specific products or services that you must purchase, and You may be permitted to purchase a product or service from a vendor of your choice and, in those cases, we may, but are not obligated to, provide you with a list of preferred vendors. However, we may require that you purchase the products and/or services only from suppliers and vendors we approve. To the extent we have approved certain manufacturers, vendors, distributors, suppliers and producers we approve, which may be us or our affiliates (collectively, "Approved Suppliers"), and you are will be required to purchase those products or services only from the Approved Suppliers and no other supplier or vendor. You may also be required to participate in certain mandatory service programs. ~~You~~

To the extent we have designated Approved Suppliers for products or services, you must purchase all goods and those products (or services required for the operation of your Studio only from the Approved Suppliers (which may be one supplier for any given product or service) under terms, in the manner, and from the source designated by Franchisor or any of its affiliates. We currently have designated Approved Suppliers for advertising and promotional materials and other stationery supplies, design, architecture and construction services, furniture and fixtures, fitness equipment, music services, software, uniforms and apparel, signs, and hotel accommodations. During the term of the Franchise Agreement, we may require you to purchase other items or services only from Approved Suppliers (which might include us or our affiliates). Except as stated below, neither we nor our affiliates are currently an Approved Supplier of any goods and services, though we reserve the right to become an Approved Supplier for additional goods and services in the future.

With respect to products or services for which we have designated one or more Approved Supplier(s), you may request that we permit you to purchase from an alternative supplier other than an Approved Supplier by submitting a written request for our approval. Our fee for evaluating the requested supplies or supplier is ~~\$100.00~~ 100 per hour, which you must pay to us

when billed. We will typically provide a response to the written request within 30 days from our receipt of the request. We may require that samples of the product produced by the proposed alternative supplier be delivered to us for review and testing. We do not make available to our franchisees our criteria for approving suppliers. We may withhold approval of a supplier for any reason. We will not approve a new supplier or continue to approve any supplier unless the supplier has agreed that we have a right to inspect the supplier's premises and products. If any inspection discloses a supplier's failure to maintain our specified criteria for products or services, we may revoke our approval by providing you written notice of the revocation. If an exclusive supplier already has been designated for the equipment, products, services, supplies, or materials proposed to be offered by a new vendor, your request for a new vendor likely will be rejected without further review or investigation.

### Advertising

All advertising and promotional materials, signs, and other items we designate for use in your Studio must bear the Marks in the form, color, location and manner we specify, and you must obtain all such materials from Approved Suppliers. Your advertising and promotional materials must meet our standards and specifications as described in our Operations Manual. You may prepare and use your own advertising and promotional materials only with our prior advance written approval. We will provide a written response to your request for approval within 30 days after we receive it. As described below, we receive compensation from our Approved Suppliers of advertising and promotional materials.

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

### Insurance

Throughout the term of the Franchise Agreement (including any renewal periods) you are required to maintain certain minimum amounts and types of insurance coverage as we periodically specify in the Operations Manual or otherwise in writing. You must purchase insurance from a carrier our Approved Supplier, which represents insurance carriers with a performance rating of A+ or higher as rated in the most recent edition of Best Insurance Reports ~~(or comparable criteria as we may specify)~~. Currently we require, at a minimum, the following types of insurance and minimum coverage limits: 1) at least \$1,000,000 per occurrence comprehensive general liability insurance; 2) \$60,000 business interruption insurance; 3) worker's compensation insurance (in compliance with state and local laws); (4) property insurance in amounts that protect your business personal property, fixtures, and improvements; (5) at least \$1,000,000 per occurrence professional liability coverage due to errors or omissions in the performance of services at your Studio, including a minimum limit of \$50,000 for abuse and molestation coverage; and (6) at least \$1,000,000 per occurrence hired and non-owned auto insurance. The types of coverage and minimum coverage limits we specify are for our benefit and are not intended to be relied upon by you as a recommendation as to the types of coverage and coverage limits which are or might be appropriate

for your particular Studio. Additional types of coverage and higher coverage limits might be appropriate based upon, for example, the location of your Studio, and we recommend that you consult with your insurance advisor regarding the appropriate types of coverage and coverage limits sufficient to protect your Studio.

Before you open your Studio (or convert your existing business to a Studio), and then a minimum of annually or at our request, you must provide us or our designee with copies of each certificate of insurance (including those of each of your employees, if then required) together with evidence of payment of premiums. The certificates must show the minimum limits of coverage required by us and must provide that the insurance cannot be canceled, terminated, materially amended or modified without providing us and any other additional insureds 30 days ~~prior~~advanced written notice. If you fail to obtain or retain the insurance that we require, we may, but are not obligated to, obtain insurance for you, and you must reimburse us for all related premiums, plus our reasonable costs in obtaining the insurance. Each insurance policy for your Studio must designate as additional insured parties us, our senior secured lender, and, if requested by us, any of our affiliates or Area Directors or other parties we may periodically designate.

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

You will at all times maintain sufficient products, equipment, furniture and fixtures and supplies to permit your Studio to operate at maximum capacity. Some of these items may only be available from one source, and we or our affiliates may be that source. Items that you are not required to purchase from an Approved Supplier can be purchased from any supplier, so long as the suppliers and supplies you purchase meet our System Standards and other specifications and quality standards.

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

The Approved Suppliers from whom we receive rebates, cash payments, discounts, or other consideration as a result of your purchase of certain equipment, supplies, products and services are listed below (based on our audited financial statements for the fiscal year ended December 31, ~~2010~~2011).

### Real-Estate-Services

~~We collected a real-estate-services-fee in 2010. The total amount received was \$4,000, which was 0.1% of our total revenues of \$6,576,327. We no longer collect this fee.~~

### Fitness and Other Equipment

~~We are currently the only~~During fiscal year 2011, we designated a third party Approved Supplier of the fitness and other equipment required for your Studio; ~~however, and~~ we may designate other or additional Approved Suppliers in the future. You must order the equipment through us and we place your order with the manufacturer Before designating the third party Approved Supplier, we were the only Approved Supplier of fitness equipment. In fiscal year ended December 31, ~~2010, 2011,~~ we received revenues of \$130,033 ~~186,802~~ from our franchisees' purchases of the required fitness and other equipment, which was ~~23.4%~~ 23.4% of total revenues of \$6,576,327 ~~5,478,813.~~

### Management-Software;-Wobsiie

#### Technology Fee

We are the only Approved Supplier of the point ~~of~~ of sale and other management information software programs required to operate your Studio. You must pay us a set ~~up~~ up fee and a monthly fee to use the required software. The monthly fee is included in the technology fee payable to us. A portion of the monthly technology fee is remitted to the licensor licensors of the software program programs and we retain a portion of the monthly fee. ~~We are also the only approved supplier of website set-up and hosting services, for which you pay us a monthly fee. In fiscal year ended December 31, 2010, 2011, we received revenues of \$482,388 453,811 from our franchisees' use of the required software programs and websites, which was 7.38.3% of our total revenues of \$6,576,327 5,478,813.~~

### Stationery and Advertising Materials

You must purchase all of your stationery supplies (including envelopes, business cards, brochures and gift certificates) and all of your advertising and promotional materials, from our Approved Suppliers. Our Approved Suppliers pay us 12% of each franchisee order. In fiscal year ended December 31, ~~2010, 2011,~~ we received payments of \$21,743 ~~14,509~~ from our Approved Suppliers for stationery and advertising and promotional materials, which represents less than 0.3% of our total revenues of \$6,576,327 ~~5,478,813.~~

### Apparel and Uniforms

You must purchase certain apparel and uniforms from our Approved Supplier at the prices negotiated between us and the Approved Supplier. ~~Our~~ Although our Approved Supplier ~~pay~~ has agreed to pay us 10% of every franchisee order. ~~In fiscal year ended December 31, 2010, we received, we did not receive any payments from our~~ this Approved Supplier of \$5,609 for

~~purchases made by our and Elements' franchisees, which was 0.1% of our total revenues of \$6,576,327.~~ apparel and uniforms in fiscal year ended December 31, 2011.

### Customer Relationships Software

#### Signs

In fiscal year ended December 31, ~~2010,~~ 2011, we received payments of ~~\$1,524~~ \$6,658 from our Approved Supplier for ~~signs which is less than~~ customer relationships management software, which represents 0.1% of our total revenues of \$6,576,327. ~~We no longer collect this rebate.~~ 5,478,813.

#### Hotels

If you elect to use our Approved Suppliers for accommodations during ~~Discovery~~ Meet the Team Day and ~~Initial Training~~ initial training, our Approved Suppliers will pay us a 7% commission. In fiscal year ended December 31, ~~2010,~~ 2011, we received payments from our Approved Suppliers of ~~\$1,454~~ accommodations of \$400 for purchases made by our and Elements' franchisees, which was less than 0.1% of our total revenues of \$6,576,327. 5,478,813.

#### Rent Payments

In fiscal year ended December 31, ~~2010,~~ 2011, our affiliate, FT-One, received ~~\$39,065~~ 43,335 in rent payments for Studio premises it sublets to one of our franchisees.

Except as described above, neither we nor any of our affiliates are currently an Approved Supplier of any other product or service.

### Total Revenue and Revenue from Required Franchisee Purchases

In fiscal year ended December 31, ~~2010,~~ our total revenues were \$6,576,327. ~~Our~~ 2011, our total revenues from required purchases by our franchisees were ~~\$685,813,~~ 681,095, which represents ~~10.412.4%~~ of our total revenues. of \$5,478,813.

We estimate that the cost of your purchases from designated or approved suppliers, or according to our standards and specifications will range from approximately ~~84.70%~~ 84.76% of the total cost of establishing your Studio, and approximately ~~44.12%~~ 45.16% of the total cost of operating your Studio.

None of our officers owns an interest in any of our Approved Suppliers. Currently, there are no purchasing or distribution cooperatives in the Franchise System.



**ITEM 9 FRANCHISEE'S OBLIGATIONS**

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

**FRANCHISEE'S OBLIGATIONS**

Obligation	Section in Franchise Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	1.1, 2.1, 2.2, 2.4, 7.2 (Conversion Addendum Sections 2 and 402)	5, 7, 8, 11, 12
b. Pre-opening purchase/leases	4.4, 4.7, 5.4, 5.5, 7.5(e), 7.5(g), 7.6(i), 8.7 (Conversion Addendum Section 98)	5, 7, 8, 11
c. Site development and other pre-opening requirements	5.4, 5.5, 7.3, 7.6(i) (Conversion Addendum Sections 4+11i and +211)	5, 7, 8, 11
d. Initial and ongoing training	5.2, 5.3, 7.5(d), 7.6(a)	6, 7, 11
e. Opening	7.3(b) (Conversion Addendum Section 4211)	5, 7, 11
f. Fees	4, 7.5(h), 7.6(m), 10.3 (Conversion Addendum Sections 4, 5 and 4716)	5, 6, 7, 8, 11
g. Compliance with standards and policies/ Operations Manual	7.5(a), 7.5(b), 7.6(g), 7.6(jk), 7.6(l), 7.6(r) 7.6(u), 7.6(v), 7.6(y)	1, 8, 11, 13, 14, 15, 16
h. Trademarks and proprietary information	6, 7.6(d), 7.6(e), 7.6(p), 12.5	8, 11, 13, 14, 16
i. Restrictions on products/services offered	7.5(c), 7.5(jk), 7.6(f), 7.6(g), 7.6(k), 7.6(s), 8.7	8, 11, 16
j. Warranty and customer service requirements	7.5(a), 7.6(q), 7.6(y)	8, 11, 16
k. Territorial development and sales quotas	2.3, 5.7	12
l. Ongoing product/service purchases	4.4, 4.7, 5.4, 7.5(e), 7.5(f), 7.5(g), 7.6(i), 8.7 (Conversion Addendum Section 478)	6, 8, 11
m. Maintenance, appearance and remodeling requirements	7.5(e), 7.6(i), 7.6(v), 7.6(w)	8, 11, 17
n. Insurance	7.4, 7.6(c)	6, 7, 8
o. Advertising	4.11, 4.12, 4.13, 7.6(h), 8.1, 8.2, 8.3, 8.4, 8.5 (Conversion Addendum Sections 4514 and 4615)	6, 8, 11

Obligation	Section in Franchise Agreement	Disclosure Document Item
p. Indemnification	9.1	6
q. Owner's participation/management/staffing	7.1, 7.5, 7.5(d), 7.6(b)	15
r. Records and reports	7.5(g), 7.6(n), 7.6(o), 7.6(x)	N/A
s. Inspections and audits	7.5(h)	6
t. Transfer	11	6, 17
u. Renewal	3.2	6, 17
v. Post-termination obligations	10.4, 12.2, 12.4	6, 17
w. Non-competition covenants	7.6(t), 12.1, 12.2, 12.3, 12.4	17
x. Dispute resolution	14	17
y. Other: Licenses	7.5	1, 7
z. Other: Pricing	7.5(c)	16

#### ITEM 10 FINANCING

Neither we nor any of our affiliates provide financing to our franchisees, nor do we guarantee franchisee loans, promissory notes, leases or other obligations.

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

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

Pre-Opening Assistance. Before you open your Studio, we or our authorized representative will assist you with the following:

1. Site Selection Assistance. We may provide real estate services to assist you in choosing a location for your Studio or, at our option, we may designate a third party to provide these services. We do not represent that we or any of our affiliates, or any of our or our affiliates' owners and employees have special expertise in selecting Studio sites. While we or a third party may provide assistance to you in finding a site, it is your sole responsibility to locate a suitable premises for your Studio. ~~You must select a location within the Territory (defined in Item 12) designated in the Franchise Agreement.~~ We will make the final determination to approve or not approve any site that you propose to us. We must review and approve any lease for your Studio premises. Our review of your lease is for our benefit and the benefit of the franchise system. We make no guaranty or assurance that any particular site or area in which you have expressed an interest will be available, and your obligations under the Franchise Agreement are not conditioned upon securing any particular site or a site in a particular area. Our review and approval is conditioned on a variety of factors including the site's demographics, location, and proximity to other businesses, the character of the neighborhood, the size and appearance of the premises to be leased, and other characteristics and criteria that may change. Our approval of your site is not a guarantee or assurance of success at that location. It simply means that the site meets the location

criteria we periodically utilize. Upon executing the Franchise Agreement, you must begin searching for a site for your Studio, making diligent efforts to work with us (or a third party we may designate) to review site information, view locations and review letters of intent, so that you can locate a site and sign a lease in a timely manner. Although there is no deadline by which you are required to select a site, you must open your Studio within 180 days after you sign the Franchise Agreement or we may terminate the Franchise Agreement. If you are converting your existing business to a Studio, you must complete the conversion within 180 days after you sign the Franchise Agreement (Sections 2.2, 7.2 and 7.3(b) of the Franchise Agreement and Section 4211 of the Conversion Addendum)

You and your legal and other advisors are solely responsible for negotiating the terms of the lease for your Studio premises, including negotiating the terms of our required Letter of Intent and Lease Addendum attached as Exhibit 6 to the Franchise Agreement. You (and not any of your affiliates or owners) must be the tenant on the lease for your Studio's premises. Any review of your lease by us or our legal counsel is for our benefit and not for your benefit. (Section 7.2 of the Franchise Agreement)

We do not typically own or lease any Studio sites.

2. Site Design and Layout Specifications. We, or at our option, our Approved Supplier will provide you with specifications and guidelines for the design and layout of a typical Studio, as well as the typical leasehold improvements necessary to complete the build-out of your Studio premises. You must obtain our prior written approval before making any alterations to the design and layout of the Studio or make replacements or alterations to the equipment, furniture and fixtures or signs we require that you use in opening and operating (or converting) your Studio. (Sections 5.5, 7.3(a) and 7.6 of the Franchise Agreement and Sections 98 and 4110 of the Conversion Addendum)

3. Equipment, Furniture and Fixtures, Inventory and Supplies. We will provide you with specifications and guidelines for the equipment, furniture and fixtures, inventory and supplies necessary to open your Studio, a portion of which currently must be purchased from us and our Approved Suppliers (but may in the future be required to be purchased from us), as described in Item 8 of this Disclosure Document. These specifications and guidelines are contained in the Operations Manual or elsewhere as we may designate. Other required equipment, furniture and fixtures, inventory and supplies may be purchased from any supplier, so long as the supplier and the items purchased meet our specifications. We do not deliver or install any items. Some Approved Suppliers may perform installation services; in other cases you will be responsible for installation or obtaining installation services from a third party. (Sections 4.4 and 5.4 of the Franchise Agreement)

4. Operations Manual. We will loan you or make available on-line, one copy of our Operations Manual to assist you in the operation of your Studio (as more fully described below). (Section 7.5 of the Franchise Agreement)

5. Training. We will provide Initial Training to you and one other person you designate. If you want any additional individuals to attend Initial Training, you must pay us a fee of \$2,500 per

person. Only you, your co-owner(s) your manager(s), and other employees are eligible to attend Initial Training. At least one of you, your co-owners or manager(s) must complete Initial Training to our satisfaction according to our specifications at least five weeks before opening your Studio and another designated representative must successfully complete Initial Training within 180 days after your Studio opens (or if you are converting your existing business to a Studio, both individuals must complete Initial Training within 180 days after you sign the Franchise Agreement). In addition to fees for eligible individuals in excess of the first two who attend Initial Training, you are responsible for all travel, living, and miscellaneous expenses for all individuals who attend Initial Training. (Section 5.2 of the Franchise Agreement)

~~Pre-Opening Advertising. We6. Initial Advertising. In addition to the Initial Marketing Spend Requirement and the requirement that we approve your initial marketing plan described in this Disclosure Document, we will provide you with recommendations and guidelines for the initial advertising and promoting of your Studio prior to opening. You are required to purchase a stationery start-up kit and we recommend that you also purchase a press kit and other advertising and promotional materials. If you choose to create your own pre-opening advertising and promotional materials, you must obtain our written approval of the materials before using them. You are required to spend at least \$3,000 to \$6,000 on your pre-opening or pre-conversion activities. (Section 8.2 of the Franchise Agreement and Section 4514 of the Conversion Addendum)~~

~~7. Opening Requirements. Our franchisees typically open their Studios within 150-180 days after they sign their franchise agreement. The actual and Support. The amount of time it will take you to open your Studio will depend on factors such as the location of the business, condition of the leased space, contractor and construction schedules, the time it takes to obtain required licenses and permits, zoning requirements, weather, availability of equipment and supplies, the economy and other factors. The Franchise Agreement requires that your Studio be open and operating within 180 days after the effective date of the Franchise Agreement, unless otherwise approved by us in writing. If you convert your existing business to a Studio, you must complete the conversion within 180 days after the effective date of the Franchise Agreement. If you do not open by such the required date, we may terminate the Franchise Agreement. If you purchase more than 1 Franchise Agreement at the same time, you must open each additional Studios must open Studio within such the period after the effective date of the Franchise Agreement as we may designate, typically within 2418 months after the effective date of the 2<sup>nd</sup> Franchise Agreement and 3630 months after the effective date of the 3<sup>rd</sup> Franchise Agreement. You must sign a lease for each additional Studio at least 120 days before the date on which you must open each additional Studio. However, we have the right to designate such other periods of time as we may determine. (Section 7.3(b) of the Franchise Agreement and Section 4211 of the Conversion Addendum)~~

You may not open your Studio for business until (a) we notify you that you have properly equipped your Studio, (b) you and your employees and other personnel have successfully completed the applicable training to our satisfaction, (c) you have paid all amounts due to us and our Approved Suppliers and other vendors, (d) you have obtained all required licenses and permits to operate your Studio, and (e) you have obtained our required minimum

insurance coverage for your Studio and have provided us with a certificate of insurance and evidence that you have paid your insurance premium.

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

1. Equipment, Products and Materials. We, or our Approved Supplier, will make equipment, products and materials available to you at the prices disclosed in the Operations Manual, or other prices we designate, as may be periodically amended. (Sections 4.4 and 5.4 of the Franchise Agreement)
2. Operational Advice and Support. Periodically, we will provide you with operational support, assistance and consultation in person, by telephone, or otherwise, as we determine is appropriate. This advice may be based on periodic inspections of your Studio we or our authorized representatives perform. (Section 5.6 of the Franchise Agreement)
3. Marketing and Advertising Support. Periodically, we will provide you with recommendations and guidelines for advertising and promoting your Studio (as more fully described below). (Section 5.6 of the Franchise Agreement)
4. Computer Software. We will provide you the computer software required for conducting point of sale transactions, management information processes and activities and other business activities for a fee. (Section 4.7 of the Franchise Agreement)
5. Operations Manual. We will loan you one copy of our Operations Manual or other manuals or written materials we have or may designate for use in the Franchise System (and appropriate updates and revisions) (as more fully described below). (Section 7.5(b) of the Franchise Agreement).

### Advertising

Marketing and Production Fund. (Section 8.3 of the Franchise Agreement) We do not currently, but may at a later time, establish and administer a Marketing and Production Fund. If a Marketing and Production Fund is established, you will be required to contribute up to 1% of your Studio's gross receipts to the Fund, which may be stated as a percentage of your gross receipts or as a flat fee, subject to a maximum of 1% of gross receipts. We would have the right to collect for deposit into the Marketing and Production Fund any advertising, marketing, or similar allowances paid to us by suppliers to the Franchise System who instruct us to use the allowances for advertising or marketing purposes. We may incorporate the Marketing and Production Fund or operate it through a separate entity as we deem appropriate. We will have no fiduciary obligations to you in connection with our administration of the Marketing and Production Fund. We will not use any of the funds contributed to the Fund principally to solicit new franchise sales. If we or our affiliates own any Studios, those Studios will make contributions to the Marketing and Production Fund on the same basis as you and our other franchisees.

We will designate all programs to be financed by the Marketing and Production Fund and will have sole control over the creative concepts, materials, and endorsements prepared and used and their geographic, market, and media placement and allocation. The Marketing and Production Fund may pay for (i) preparing and producing video, audio, and written materials (including marketing and promotional materials and local store marketing advertisements we prepare) and electronic media, (ii) administering regional and multi-regional marketing and advertising programs, including purchasing space in print publications, direct mail, radio and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance, and (iii) supporting public relations, market research, and other advertising, promotion, and marketing activities, and (iv) developing and maintaining websites for the Franchise System. A "website" is any interactive electronic document, mobile media, social media tool or page or other Internet presence, contained in or utilizing a network of computers linked by communication software, including the Internet, Worldwide Web and any successor technology, including texting, social media promotions, posting or sites such as Facebook, Twitter and MySpace, and including any other electronic, mobile or digital device, method or system enabling the transmission of information.

The Marketing and Production Fund will advertise in printed materials or on radio or television for local, regional or national circulation. We and/or our regional or national advertising agency will produce all advertising and marketing. We will determine the use of the funds contributed to the Marketing and Production Fund, including allocating a portion of any Fund contributions to any regional advertising programs we may establish in the future. We will not be required to spend any particular amount on marketing, advertising or promotion in the area in which your Studio will be located. In addition, we will not be required to ensure that Marketing and Production Fund expenditures for or affecting any geographic area be proportionate or equivalent to Marketing Fund contributions by Studios operating in that area, or that any Studio benefits from the development or placement of advertising and marketing materials directly or in proportion to its Marketing Fund contributions. We may use collection agents and institute legal proceedings to collect Marketing and Production Fund contributions at the Fund's expense. We also may forgive, waive, settle, and compromise all claims by or against the Marketing and Production Fund. Except as specifically described in the Franchise Agreement, we assume no other direct or indirect liability or obligation to you for collecting amounts due, or maintaining, directing, or administering the Marketing and Production Fund.

We have established and receive input and feedback regarding advertising and marketing from the Franchisee Leadership Council Subcommittee on Growth Initiatives (the "Advisory Committee"). The Franchisee Leadership Council consists of 4 franchisees and Area Directors, each of whom represents the region in which his or her Studio or Area Director territory is located and are elected by the franchisees and Area Directors in their respective regions, and members of our management. The Franchisee Leadership Council provides us feedback and input on operational, marketing and other matters related to the Franchise System. Elected members of the Franchisee Leadership Council serve two 2-year terms. The Advisory Committee consists of a self-appointed chairperson, who is a member of the Franchisee Leadership Council, and franchisees and/or Area Directors who agree to serve on the Advisory Committee at the request of the chairperson. The Franchisee Leadership Council and the Advisory Committee serves in an advisory capacity only

and does not have operational or decision-making power. We may alter the function and/or composition of the Franchisee Leadership Council and Advisory Committee at any time, and may otherwise form, change or dissolve the Franchisee Leadership Council or the Advisory Committee.

We will account for the Marketing and Production Fund separately from our other funds and will not use the Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Marketing and Production Fund and its programs, including conducting market research, preparing advertising, promotion, and marketing materials, and collecting and accounting for Marketing and Production Fund contributions. The Marketing and Production Fund will not be our asset and we would not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing and Production Fund or for any other reason. The Marketing and Production Fund may spend in any fiscal year more or less than the total Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will use interest earned on Marketing and Production Fund contributions to pay costs before spending the Marketing and Production Fund's other assets.

If a Marketing and Production Fund is established, we will prepare annual unaudited financial statements that will be available to you upon written request 120 days after the end of the Marketing and Production Fund's fiscal year. We are not required to audit the Marketing and Production Fund but may do so at our discretion.

Marketing Cooperatives. (Section 8.4 of the Franchise Agreement). We may designate a geographic area in which ~~three~~<sup>3</sup> or more Studios are located as an area in which to establish a Marketing Cooperative. The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We will determine how any Marketing Cooperative is organized and governed, but the Marketing Cooperative's members are responsible for its administration and determination of contribution levels. All Marketing Cooperatives will be governed by written documentation generated and/or designated by us. Such documentation is available for Marketing Cooperative member review. All material decisions of the Marketing Cooperative, including contribution levels, will require the affirmative vote of 51% of all Studios operating within the Marketing Cooperative's area (including those that we and our affiliates operate, if any), with each Studio receiving ~~one~~<sup>1</sup> vote. We may form, modify, change, dissolve, or merge Marketing Cooperatives. Funds contributed to a Marketing Cooperative will not be utilized to solicit new franchise sales.

Initial Marketing Spend Requirement. During the first ~~120 days after period beginning up to 60 days before you open your Studio and continuing through the first 90 days of your Studio operations,~~ you must spend at least ~~\$48,000~~<sup>\$25,000</sup> to advertise, market and promote your Studio. ~~Beginning 120 days after your Studio has opened and continuing until the first anniversary of your Studio opening, you must spend a minimum of \$2,000 per month on advertising, marketing and promotional programs for your Studio. Beginning in the second year after your Studio opens and continuing through the term of your Franchise Agreement, you must spend a~~

~~minimum of 5% of your gross receipts on advertising, marketing and promotional programs for your Studio (the \$18,000 first 120 days minimum spend, the \$2,000 per month spend and the 5% of gross receipts spend are referred to together as the “The Initial Marketing Spend Requirement”). However, if is in addition to your Ongoing Marketing Spend Requirement described below. If you are converting your existing business to a Studio, your or if you purchase an existing Studio, the Initial Marketing Spend Requirement shall be 5% of your gross receipts after conversion and continuing during will not apply and you will pay the Ongoing Marketing Spend Requirement throughout the term of your Franchise Agreement. The Initial Marketing Spend Requirement shall initially consist of the amounts you spend will be used to advertise, market and promote your Studio in accordance with an advertising and marketing plan we approve prior to before the opening of your Studio and each following quarter during the term of the Franchise Agreement. We have the right to obtain from you information with respect to the results achieved from meeting your Initial Marketing Spend Requirement and implementing your approved advertising and marketing plan. (Section 8.2 of the Franchise Agreement)~~

Ongoing Marketing Spend Requirement. The minimum Ongoing Marketing Spend Requirement is an amount equal to the greater of 5% of your Studio’s gross receipts and \$3,000, beginning on the date your Studio opens and continuing throughout the term of the Franchise Agreement. If you are converting your existing business to a Studio, or if you purchase an existing Studio, you must spend the Ongoing Marketing Spend Requirement throughout the term of the Franchise Agreement. The Ongoing Marketing Spend Requirement will be used to advertise, market and promote your Studio in accordance with your quarterly advertising and marketing plans we have pre-approved. We do not currently collect any of the funds constituting the minimum Ongoing Marketing Spend Requirement as contributions to a Marketing and Production Fund or Marketing Cooperatives for use in local, regional or national advertising or promotional programs that reach your Studio’s local trade area.

Your Ongoing Marketing Spend Requirement includes the social media program fee and may in the future include any contributions you make to a Marketing and Production Fund (if we establish a Marketing and Production Fund) and any contributions you make to a Marketing Cooperative. If established, we may vary your Marketing Fund contribution and any Marketing Cooperative to which you contribute may vary your Marketing Cooperative contribution. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Ongoing Marketing Spend Requirement does not drop below the minimum requirement of the greater of 5% of your Studio’s gross receipts and \$3,000 per month. Your Marketing Fund and Marketing Cooperative contributions could, by themselves, exceed the Ongoing Marketing Spend Requirement. In addition, we have the right to collect any funds constituting the minimum Ongoing Marketing Spend Requirement that are not otherwise being contributed to the Marketing and Production Fund or Marketing Cooperatives and use those funds for local, regional or national advertising or promotional programs that reach your Studio’s local trade area. (Section 4.13 of the Franchise Agreement). We require you to use our social media program for the management of social media including Facebook, Google, mapping management and other social technologies that we periodically integrate.



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

At least 90 days before you open your Studio (or if you are converting your existing business to a Studio, within 90 days prior to before the conversion of your existing business to a Studio), you must submit to us for approval an advertising and marketing plan describing your pre-opening or pre-conversion advertising plan and your plan for the first three months after the opening or conversion. You will not be permitted to open your Studio until we approve this advertising and marketing plan. Subsequent to such period, and during the term of your Franchise Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Marketing Spend Requirement. (Section 8.5(b) of the Franchise Agreement and Section ~~4~~615 of the Conversion Addendum)

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

You are required to maintain a website for your location that is compliant with our standards and utilizes a website hosted by our Approved Supplier. ~~You must pay us a pr suppliers. The monthly technology fee includes a fee for your website, which will be reduced if you have more than one open and operating Studio.~~ You may not maintain a website for your Studio without our approval. At our option, you must discontinue any previously approved website and/or sign any documents, submit any information and do any other things we reasonably require to participate in any website we administer. We also may require you to obtain your own website for your Studio. (Section 8.1 of the Franchise Agreement).

### Computer Systems

General. Our required computer systems (including the hardware and software programs described below) will allow you to generate and store a variety of information, including the amount of sales generated by your Studio, client profiles, client scheduling information, and payroll information. In order to operate your computer, you will need a high speed internet connection and a keyboard, mouse, color monitor and laser or ink-jet color printer. You must keep your computer in good working order and must provide any upgrades necessary at your cost. We and our affiliates and authorized representatives will have direct access to your computer and other systems, and the information and data generated by your computer systems.

Computer Hardware. The minimum computer hardware requirements are specified in the Operations Manual or otherwise in writing by us. We typically require you to have three~~2~~

computer workstations. Some of the minimum requirements include a Core 2-1.0Ghz 15 Intel processor, 48 GB random access memory, and a 500 GB hard drive. You may use any brand of computer hardware that meets these specifications and may acquire your computer hardware from any source. We also require you to have certain peripherals, such as printers. We estimate that the cost to purchase the minimum computer hardware, software and peripherals will be approximately \$3,700-5,100, which includes the required software and software set-up fee described below.

Computer Software. We require you to use the designated software program described in the Operations Manual or otherwise in writing by us. Currently, ~~prior-to-opening~~before you open your Studio (or if you are converting your existing business to a Studio, within 30 days after you sign the Franchise Agreement or on another date we may approve), you must pay us a ~~\$515.50~~516 set-up fee to ~~order and purchase certain initial hardware components and~~configure the required software programs, ~~which includes a one-month hosting fee.~~ You must also pay us a monthly software fee, ~~which is currently \$78.~~technology fee. (See Item 6). Although not currently applicable, you may be required to enter into a license, lease or similar agreement in order to obtain the right to use designated software programs. (Section 7.5(e) of the Franchise Agreement and Section 6 of the Conversion Addendum)

Computer Hardware and Software Upgrades. During the term of your Franchise Agreement, you must ~~periodically~~-maintain, repair and upgrade any hardware component or software program periodically in order to maintain compatibility with the components and programs we require, including upgrading your software based on periodic releases provided by the licensor of the computer systems and programs. The costs will vary depending on the required upgrades. We have no obligation to provide ongoing maintenance, repairs, upgrades or updates to your hardware components or software programs. (Section 7.5(f) of the Franchise Agreement)

PCI Compliance. The Payment Card Industry ("PCI") Data Security Standard represents a common set of industry tools and measurements to help ensure the safe handling of sensitive information. You must follow PCI Standards and are solely responsible for all costs related to PCI data issues, such as security threats, breaches and malware. It is also your responsibility to notify us if a data breach has occurred to appropriate action can be taken to protect consumer data.

### Operations Manual

We will make available to you a copy of our Operations Manual and other manuals or written materials for your use in operating your Studio. These manual(s) and materials contain mandatory and suggested specifications, standards and procedures, rules and other criteria related to the operation and marketing of your Studio. The manuals and materials may consist of audio tapes, video tapes, compact discs, DVD's, webinars and/or other written and intangible materials, all of which constitute our proprietary and confidential information. You may not copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or make them available to any unauthorized person. The Operations Manual and such other manuals and materials will remain our sole property and must be kept in a secure place on the Studio premises. We may provide the confidential manuals in any manner we choose, including by electronic or hard copy. We may

update the Operations Manual and other manuals to implement new or different operating requirements and fees applicable to you. You must comply with all requirements, terms and conditions of the Franchise Agreement, Operations Manual and other written policies supplied to you by us. (Section 7.5(b) of the Franchise Agreement)

The table of contents of our Operations Manual is included as Exhibit K to this Disclosure Document. Our current Operations Manual has a total of 284 pages.

### Training

Initial Training. Before you open your Studio, we or our designee will provide initial training to you or one of your co-owners, and one of your managers and/or employees. Initial training consists of a comprehensive program that provides you with the methods, procedures and techniques you need to operate your Studio ("Initial Training"). One designated individual must complete Initial Training to our satisfaction before your Studio opens (generally 5 to 6 weeks prior to ~~before~~ opening) and the second designated individual must complete the Initial Training to our satisfaction within 6 months after your Studio opens. At least 1 owner must attend and complete Initial Training, to our satisfaction and if you intend to have a manager perform the day to day operations of your Studio, your manager will be required to attend and complete the Initial Training to our satisfaction before your Studio opens. Any replacement manager must also attend and complete the Initial Training to our satisfaction. We have the discretion to determine whether or not any individual has successfully completed initial training. If you are converting your existing business to a Studio, the ~~two~~ 2 individuals must complete Initial Training within 180 days after you sign the Franchise Agreement. You must ensure that 1 individual who has successfully completed the Initial Training is on-site at your Studio at all times. If you own and operate more than 1 Studio, each Studio must have an individual on site at all times who has completed Initial Training to our satisfaction. You must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training.

Initial training will be conducted at a location we designate, currently at our Support Center in Colorado. Classes are typically scheduled to be conducted 64 times each calendar year and generally last 5 business days. Although we do not currently do so, we reserve the right to conduct additional training in a Studio. The primary instructional material is the Operations Manual. The topics covered, instructional materials, hours of classroom and/or hands-on training, and the training program instructors are subject to change. (Section 5.2 of the Franchise Agreement and Section 87 of the Conversion Addendum)

If you purchase additional franchise agreements, you will designate up to 2 individuals per franchise agreement to attend Initial Training; however, neither you nor your co-owners will not be required to attend Initial Training if you have already done so.

If you want more than 2 individuals (per franchise agreement) to attend Initial Training (such as new or additional managers or employees), you must pay us a fee of \$2,500 per person and you must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training. Initial Training for additional individuals will be offered during our regularly scheduled Initial Training programs.

Initial Training currently consists of the following:

**TRAINING PROGRAM**

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Introductions; Class Overview	1.0	0	Our Colorado Support Center
Systems and Facilities overview <u>Client Relations</u>	<del>1.0</del> <u>1.5</u>	0	<del>Our Colorado Support Center</del> <u>Our Colorado Support Center</u>
Most-Important-Details <u>The FT Experience</u>	1.5	0	<u>Our Colorado Support Center</u>
Employees <u>Client Onboarding</u>	<del>2.5</del> <u>3.0</u>	0	Our Colorado Support Center
Software	3.0	0	Our-Colorado Support-Center
In-House-Training-Program	1.0	0	Our-Colorado Support-Center
Managing Employees	2.0	0	Our Colorado Support Center
<u>Sales</u>	<u>2.0</u>	<u>0</u>	<u>Our Colorado Support Center</u>
<u>Marketing</u>	<u>3.0</u>	<u>0</u>	<u>Our Colorado Support Center</u>
Sales <u>Fitness Consultations</u>	<del>5.5</del> <u>4.0</u>	0	Our Colorado Support Center
Marketing	2.5	0	Our-Colorado Support-Center
Employee-Orientation; SOPs	1.5	0	Our-Colorado Support-Center
Software and Reports	<del>3.5</del> <u>4.5</u>	0	Our Colorado Support Center
Key Performance Indicators	<del>3.5</del> <u>1.0</u>	0	Our Colorado Support Center
Structuring and Financing	<del>2.5</del> <u>1.5</u>	0	Our Colorado Support Center
Advanced-Programming-PTs	1.0	0	Our-Colorado Support-Center

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Basic-PT/Programming-Non PT <u>Workout Experience</u>	<del>1.0</del> <u>2.0</u>	0	Our Colorado Support Center
Goal-Achievoment <u>Nutrition</u>	1.0	0	Our Colorado Support Center
Corporate <u>Fitness</u> Support <u>Programming</u>	<del>1.0</del> <u>2.0</u>	0	Our Colorado Support Center
Total Hours	<del>38.0</del> <u>30.0</u>	0	

Additional Training and Conferences. We may require that you pay a fee of up to \$2,500 per individual you designate to attend any refresher training we make available to our franchisees or for any optional training programs we may periodically conduct. You must attend any annual conferences or seminars that we may require at a location we designate. You shall pay all costs to attend any refresher training, conferences or seminars.

Training Staff. Mr. Eric Goetsch, who has a B.S. degree in Exercise Science, is currently our training supervisor. He is a certified Strength and Conditioning Specialist with the National Strength and Conditioning Association. Mr. Goetsch joined us in July 2006, was the Educational Director and Manager of America's Back, Inc. for 3 years, and has more than 78 years of experience as a personal trainer. Mr. Goetsch has over 5 years experience with us and more than 8 years of experience in the subjects taught.

## ITEM 12 TERRITORY

You will select a specific defined territory we approve from our available inventory ("Territory") within which you will search for and select a site for your Studio that we must approve. There is no minimum Territory size. The Territory is the area in which you will focus your efforts to find a location we approve for your Studio. We identify the Territory in order to facilitate the orderly development of the market, ~~and not for purposes of granting you any exclusivity or protection within the Territory.~~ You will not receive any exclusive rights to the Territory. The Territory is not your Protected Area (described below). Your Protected Area is the area around your Studio with which we agree we will not locate another Studio during the term of your Franchise Agreement as long as you are not in default under the Franchise Agreement. Typically, your Protected Area will be substantially smaller than the Territory.

You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control within the Territory. Our approval of your Studio site is conditioned on a variety of factors, including site demographics, location (including proximity to other businesses), neighborhood character, the size and appearance of the premises to be leased, and other characteristics and criteria that may periodically change. We confirm demographic data about territories and locations utilizing a mapping software we license

from a third party. Our approval of your site is not a guarantee or assurance of success at that location. It simply means that the site meets the location criteria we periodically utilize.

During the term of the Franchise Agreement (so long as you are not in default of the Franchise Agreement) we will not, and we will not grant to any other person the right to, establish or operate a Studio within a one-mile radius of your Studio (the "Protected Area"). You will receive exclusivity only with respect to other Studios within the Protected Area.

Unless we otherwise agree in writing, you must operate your Studio only at the location approved by us, and you must provide all authorized one-on-one and personal small group physical training services and products only at your Studio location. Once it is open, you may not relocate the Studio without our prior advance written consent. If we approve a relocation of your Studio, you will be responsible for paying any associated costs, including our reasonable costs incurred in connection with approving the relocation. You will also be required to sign a relocation addendum which will include our form of general release. If you cease to operate your Studio for more than 30 days before relocation, we may terminate the Franchise Agreement and require you to sign our then-current franchise agreement for the new location.

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

So long as you are not in default under your Franchise Agreement, you have the one-mile-radius protection Protected Area described above. We reserve all other rights with respect to the Studio and related Territory and Protected Area. Those rights include the right to offer, sell or distribute in your Territory and Protected Area, through alternative distribution channels (including in retail stores, on the internet or via similar future information technology, or otherwise) any proprietary products or other products that are part of, or which become part of, the Franchise System, such as fitness equipment, small wares and other products. Any such activities in which we engage will be without compensation to you. The alternative distribution channels may be available to us as the result of being the Franchisor of the Franchise System or as the result of other brands we may control, which may compete with your Studio. You may also face competition from other Studios operated by us or by other franchisees. Though we do not currently do so, we and our affiliates reserve the right to, without compensation to you, franchise and/or operate other types of businesses and businesses that are the same or similar to the Franchise System.

You may advertise your Studio and solicit clients from any area, so long as you provide services only at the Studio location we have approved. You are not required to compensate any individual or entity in connection with this advertising and solicitation. We and our other franchisees reserve

the same right to solicit, accept and provide personal training and nutrition program services to clients who live or work within your Protected Area, without compensating you.

You have the right to use other channels of distribution, such as direct mail, email and internet (but only through the website you maintain through us) to make sales within and outside of your Protected Area, provided that we have approved any marketing materials you use.

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

### ITEM 13 TRADEMARKS

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

Mark	Registration Number	Registration Date
Fitness Together	2373930	August 1, 2000
1 Client, 1 Trainer, 1 Goal	2478909	August 21, 2001
FT Fitness Together and Design	3760855	March 16, 2010
FT Fitness Together 1 Client, 1 Trainer, 1 Goal and Design	3761267	March 16, 2010
Nutrition Together	3804781	June 15, 2010

We have applied to register the following Mark on the Principal Register of the USPTO:

Mark	Application Number	Application Date
PACK	85/428,672	September 21, 2011

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

Your use of the Marks and any goodwill associated with the Marks are solely for our benefit. You have no ownership or other interest in the Marks. You may not at any time contest the validity, ownership, distinctiveness or enforceability of the Marks. You must follow our rules when you use the Marks and the Marks are the only marks you may use to identify your Studio. You may not use any Mark or any part of any Mark as part of any corporate or trade name; with any prefix,

suffix, or other modifying words, terms, designs, or symbols; as part of a domain name or electronic address you maintain on the internet, the worldwide web, or any other similar proprietary or common carrier electronic delivery system; to advertise or sell any unauthorized service; or in any other manner unless authorized by us in writing.

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

You must modify or discontinue using any Mark, at your expense, if we require you to do so. We need not reimburse you for your direct expenses related to changing your Studio's signs or replacing proprietary supplies, for your lost revenue, or for your promotion of the modified or newly required Marks.

You must notify us immediately of any apparent infringement of, or challenge to, your use of any Mark and may not communicate information about such an infringement or challenge with any person other than us, our affiliates or our counsel. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and exclusively control any litigation or USPTO or other administrative proceeding arising out of any infringement, challenge or claim related to the Marks. We are not contractually obligated to protect you against infringement or unfair competition claims arising out of your use of the Marks, nor are we required to participate in your defense or indemnify you. However, we might choose to do so if, in the opinion of our legal counsel, such action is necessary or appropriate under the circumstances. In that case, we will pay all costs, including attorneys' fees and court costs, associated with any litigation required to defend or protect your authorized use of the Marks. We will not pay any of your attorneys' fees if you hire your own attorney. You must cooperate with us in any litigation.

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

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

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



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

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

You must modify or discontinue using any of the copyrighted materials or other items or processes that may be covered by a claim of copyright, or covered by a registered copyright or patent in the future, at your expense, if we require you to do so. We need not reimburse you for your direct expenses related to such modification or discontinuance of use or for your lost revenue.

We possess certain proprietary confidential information consisting of the methods, techniques, formats, specifications, procedures, information, systems, business management methods, sales, and promotion techniques and knowledge and experience in the operation of Studios. We will disclose this information to you during Initial Training, other training programs we may periodically offer, in the Operations Manual and otherwise during the term of your Franchise Agreement. You will have no right or interest in or to the confidential information, other than to use it in the operation of your Studio, and you acknowledge that to use it in any other business venture would constitute unfair competition. The confidential information is proprietary, includes our trade secrets, and is disclosed to you solely on the condition that you agree: (a) not to use the confidential information in any other business; (b) to use the confidential information solely for the purpose of operating your Studio; (c) to maintain the absolute confidentiality of the confidential information during and after the term of your Franchise Agreement; (c) not to make unauthorized copies of any confidential information disclosed in writing or other tangible form; and (d) to adopt and implement all reasonable procedures we periodically prescribe to prevent unauthorized use or disclosure of the confidential information.

You must take reasonable steps to protect us, the Franchise System, the Proprietary Assets, the Marks and any other confidential and proprietary information we possess against any misappropriation or other action by any third party that could damage us, the Franchise System,

the Proprietary Assets, the Marks and any other confidential and proprietary information we possess, and immediately notify us of any misappropriation or other such action. We are not obligated to take any action against any unauthorized use of our Proprietary Assets, Marks or confidential information. We are not obligated to indemnify you for claims brought by a third party arising from your use of our Proprietary Assets, Marks and confidential and proprietary information.

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

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

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

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

Your employees, agents and independent contractors must enter into a form of non-compete and confidentiality agreement.

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

If you are an individual, you must sign, and if you are an entity, each of your owners, must sign, a Guaranty and Assumption of Obligations in the form attached as Exhibit 4 to the Franchise Agreement. The persons signing the Guaranty and Assumption of Obligations agree to personally assume and perform all of the Franchisee's obligations under the Franchise Agreement. In addition, the spouse of the person signing may be required to consent to the Guaranty and Assumption of Obligations. Your landlord might also require you, or if you are an entity, your owners, to personally guaranty the tenant obligations under your lease.

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

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

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

We retain the right to establish both minimum and maximum prices, subject to applicable law. You must offer to customers any membership program that we require.

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

**ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

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

Provision		Section Franchise Agreement	Summary
a.	Length of the franchise term	3.1	10 years
b.	Renewal or extension of the term	3.2	Additional terms of 5 years each
c.	Requirements for franchisee to renew or extend	3.2	You must: 1) provide written notice of your election to renew; 2) not be in default; 3) pay all monies due; 4) sign the then-current form of our franchise agreement (which may contain terms and conditions materially different from those in the Franchise Agreement); 5) sign <u>our then-current form of</u> general release; 6) attend refresher training programs (if any); 7) pay the renewal fee; and 8) update/remodel the Studio to our then-current standards.
d.	Termination by you	Not applicable	Not applicable.
e.	Termination by us without cause	Not applicable	Not applicable.
f.	Termination by us with cause	10.1, 10.2	We can terminate the Franchise Agreement after providing you notice.
g.	“Cause” defined – curable defaults	10.1, 10.2	Curable defaults include: 1) ten days to cure a failure to pay or a misuse/unauthorized use of Marks or Proprietary Assets; 2) 30 days to cure any breach of the Franchise Agreement other than those provided in “h” below; and 3) cure period for a failure to cure loan default, as determined by us or a third-party lender.

Provision	Section Franchise Agreement	Summary
h. "Cause" defined – non-curable defaults	10.1 (Conversion Addendum Section 18)	Non-curable defaults include: 1) unauthorized disclosure of confidential information; 2) fraud conviction or engagement in conduct which may harm the Marks, the goodwill associate with the Marks, or the Franchise System; 3) abandonment for two consecutive days or expressing an intent to abandon; 4) insolvency or similar proceeding of you, your owner or an affiliate; 5) failure to satisfy a final judgment of \$5,000 or more or similar events; 6) felony or other criminal conviction that is likely to harm the Marks, the Proprietary Assets or the Franchise System and any related reputation or goodwill; 7) failure to commence operations within 180 days (or convert existing business to a Studio within 180 days); 8) failure to satisfactorily complete Initial Training or cheating at Initial Training; 9) underreporting gross receipts; 10) 3 default notices from us within a 12-month period; 11) unauthorized transfer; 12) loss of right to occupy Studio premises; 13) termination of other agreement between you (or one of your owners) and us; 14) default on loan or lease; and 15) you create or allow to exist a health or safety concern.
i. Your obligations on termination/non-renewal	10.4, 12.2	Obligations include: de-identifying, pay all sums due; return all manuals and other confidential materials; assign the business telephone and fax numbers to us or our designee; notify clients; direct clients to another Studio; transfer client list to us or our designee; pay all damages and costs incurred by us in enforcing the termination provisions of the Franchise Agreement; and comply with the restrictive covenants, including the covenants not to compete.
j. Assignment of contract by us	5.7(f), 11.9	No restriction on our right to transfer or assign. We may transfer or assign without your approval
k. "Transfer" by you-definition	11	Includes transfer of the interests or rights in the Franchise Agreement or the Studio or if you are an entity, the transfer of a controlling ownership interest in you.
l. Our approval of your transfer	11.1	We have the right to approve all transfers but will not unreasonably withhold our consent. You cannot transfer without our written consent.

Provision	Section Franchise Agreement	Summary
m. Conditions for our approval of transfer	11.1	All of your obligations have been discharged or assumed by the transferee; all fees owed to us have been paid; transferee qualifies and signs our then-current form of franchise agreement, and; <u>transferee (or any other person we require under then-current franchise agreement)</u> completes our Initial Training <u>before taking possession</u> ; transfer fee is paid; new franchisee is not operating a Competitive Business; we approve the terms and conditions of the transfer; you are not in default of any agreement with us; transferee agrees to renovate Studio to our then-current standards; you sign-a( <u>or your owners or any other guarantor under the Franchise Agreement</u> ) <u>sign our then-current form of</u> general release-and-non-disparagement agreement; you obtain landlord consent (if required by lease); you comply with all post-termination obligations (see “i” and “r”); and you transfer possession of Studio only after transfer process completed. The term “Competitive Business” means any business operating or granting franchises or licenses to others to operate one-on-one <u>and personal small group</u> physical fitness studios or any other physical fitness or nutrition service business, or any business offering or selling products or educational materials, or conducting workshops for services that are the same as, similar to, or competitive with the Franchise System or other Studios.
n. Our right of first refusal to acquire your business	11.6	We have a right of first refusal to acquire your Studio
o. Our option to purchase your business	11.6	If you decide to sell your business, we have the right to purchase your business within 60 days from the date of delivery of a written offer.
p. Your death or disability	11.3	The Franchise Agreement or ownership interest in the business entity may be assigned to an approved party.
q. Non-competition covenants during the term of the franchise	12.1, 12.3	No involvement in any Competitive Business; no interference with our or any other affiliate’s or franchisee’s employees; no unauthorized use of Proprietary Assets or Franchise System format; and no operation of another branded business within ¼ mile of the Studio.
r. Non-competition covenants after the franchise terminates or expires	12.2	No involvement (direct or indirect), provision of services in Competitive Business for 2 years within a 3- <del>miles</del> <u>mile</u> radius of your Studio or within 3 miles of another Studio. (Same terms apply after transfer.)

Provision		Section Franchise Agreement	Summary
s.	Modification of the agreement	15.2	The Franchise Agreement can be modified only by written agreement between you and us. We can modify or change the Franchise System through changes in the confidential Operations Manual, other manuals and System Specifications and standards.
t.	Integration/merger clause	15.4, 15.5	Only the terms of the Franchise Agreement, including the Operations manuals and other manuals we provide, are binding (subject to federal and state law) and may only be modified if required by an appropriate court to make the Franchise Agreement enforceable. Any representations outside of the Disclosure Document and Franchise Agreement may not be enforceable.
u.	Dispute resolution by arbitration or mediation	14.5	All disputes relating to the Franchise Agreement or our relationship must be arbitrated in-the-location-where <u>within 50 miles of our then-current</u> principal place of business-is located (currently Denver, Colorado).
v.	Choice of forum	14.2	The place where our principal place of business is located (currently Denver, Colorado) (subject to state law).
w.	Choice of law	14.1	The law of the state where our principal place of business is located, currently Colorado, governs (subject to state law), except that disputes regarding the Marks will be governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) and any arbitration matter will be governed by the United States Federal Arbitration Act (9 U.S.C. Sections 1 et seq.).

Applicable state law might require additional disclosures related to the information in this Item 17. These additional disclosures, if any, appear in Exhibit A.

#### ITEM 18 PUBLIC FIGURES

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

#### ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

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

franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

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

The average monthly revenue for Studios in the Franchise System open as of December 31, ~~2010~~2011 and open for at least 12 months as of January 1, 2010 ~~(a total of 292 Studios) was \$19,851. The Massachusetts market contains the largest number of Studios meeting this designated criteria with 48 studios generating average monthly revenue of \$23,556. The results of the Studios open for over 12 months may differ materially from the results of a new Studio.~~2011 (a total of 269 Studios) was \$20,002.

42% of the ~~292~~269 Studios in the Franchise System meeting the designated criteria performed better than the average and 58% performed below the average. ~~In Massachusetts, 38% of the 48 Studios performed better than the average and 62% performed below the average.~~

Written substantiation for the financial performance representation will be made available to prospective franchisees upon reasonable request. There is no guarantee that you, as a new franchisee, will attain the same level of sales, costs or profits that have been attained by our existing franchisees. Your results will likely differ.

The above representations are the only financial performance representations we make and our employees, agents and representatives are not authorized to make any additional financial representations about the Franchise System, either orally or in writing. If you are purchasing an existing Studio, however, we may be able to provide you with the Studio's financial performance information. If you receive any other financial performance information or projections of what your financial results might be if you purchase a Studio, you should report it to our management by contacting our Chief Financial Officer, 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, (877) 663-0880, the Federal Trade Commission, and appropriate state regulatory agencies.



**ITEM 20 OUTLETS AND FRANCHISEE INFORMATION**

**Table 1  
System-wide Outlet Summary  
For Years 20082009 to 20102011<sup>1</sup>**

Outlet Type	Year	Outlets at the Start of the year	Outlets at the End of the Year	Net Change
Franchised Outlets	<u>2008</u> <u>2009</u>	<u>375</u> <u>408</u>	<u>408</u> <u>354</u>	<u>+33</u> <u>-54</u>
	2009	408	354	-54
	2010	354	318	-36
	<u>2011</u>	<u>318</u>	<u>279</u>	<u>-39</u>
Company Owned Outlets	<u>2008</u> <u>2009</u>	<u>21</u>	<u>11</u>	<u>-1</u>
	<u>2009</u> <u>2011</u>	<u>11</u>	<u>0</u>	<u>-11</u>
	<u>2010</u> <u>2011</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Outlets	<u>2008</u> <u>2009</u>	<u>377</u> <u>409</u>	<u>409</u> <u>354</u>	<u>+32</u> <u>-55</u>
	2009	409	354	-55
	2010	354	318	-36
	<u>2011</u>	<u>318</u>	<u>279</u>	<u>-39</u>

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

**Table 2  
Transfers of Outlets from Franchisees to New Owners (other than Franchisor)  
For Years 20082009 to 20102011<sup>1</sup>**

State	Year	Number of Transfers
Alabama	<u>2008</u> <u>2010</u>	<u>1</u>
	2009	1
	2010	3
	<u>2011</u>	<u>11</u>
California	<u>2008</u> <u>2009</u>	<u>42</u>
	2009	2
	2010	0
Colorado	2008	2
	2009	0
	2010	0
	<u>2011</u>	<u>11</u>

State	Year	Number of Transfers
Connecticut	<del>2008</del> 2009	<del>0</del> 2
	2009	2
	2010	1
	2011	0
Florida	<del>2008</del> 2009	<del>0</del> 1
	2009	1
	2010	0
	<del>2008</del> 2011	<del>1</del> 3
	2009	0
2010	0	
Idaho	<del>2008</del> 2009	<del>0</del> 0
	2009	0
	2010	1
	2010	1
	2011	0
Illinois	<del>2008</del> 2009	<del>2</del> 0
	<del>2009</del> 2010	<del>0</del> 1
	<del>2010</del> 2011	<del>1</del> 0
Kansas	<del>2008</del> 2009	<del>1</del> 0
	2010	0
	2009	1
	<del>2010</del> 2011	<del>0</del> 0
Maryland	<del>2008</del> 2009	<del>1</del> 0
	2009	0
	2010	1
	2010	1
	2011	0
Massachusetts	<del>2008</del> 2009	<del>8</del> 7
	2009	7
	2010	5
	2011	7
Michigan	<del>2008</del> 2009	<del>0</del> 2
	2010	0
	2009	2
	<del>2010</del> 2011	<del>0</del> 0
Minnesota	<del>2008</del> 2009	<del>1</del> 0
	2009	0
	2010	1
	2010	1
	2011	0
Missouri	<del>2008</del> 2009	<del>3</del> 0
	2009	0
	2010	1
	2011	0

State	Year	Number of Transfers
New Hampshire	<del>2009</del>	<del>0</del>
	<del>2010</del>	<del>1</del>
	<del>20082011</del>	<del>0</del>
	<del>2009</del>	<del>0</del>
	<del>2010</del>	<del>1</del>
New Jersey	<del>2008</del>	<del>1</del>
	<del>2009</del>	<del>0</del>
	<del>2010</del>	<del>0</del>
New York	<del>20082009</del>	<del>1</del>
	<del>20092010</del>	<del>1</del>
	<del>20102011</del>	<del>1</del>
North Carolina	<del>20082009</del>	<del>21</del>
	<del>20092010</del>	<del>10</del>
	<del>20102011</del>	<del>02</del>
Ohio	<del>20082009</del>	<del>0</del>
	<del>20092010</del>	<del>02</del>
	<del>20102011</del>	<del>20</del>
Oklahoma	<del>20082009</del>	<del>24</del>
	<del>2009</del>	<del>1</del>
	<del>2010</del>	<del>1</del>
	<del>2011</del>	<del>0</del>
Oregon	<del>20082009</del>	<del>02</del>
	<del>2009</del>	<del>2</del>
	<del>2010</del>	<del>0</del>
	<del>2011</del>	<del>0</del>
Pennsylvania	<del>20082009</del>	<del>1</del>
	<del>2010</del>	<del>0</del>
	<del>20092011</del>	<del>10</del>
Rhode Island	<del>2009</del>	<del>0</del>
	<del>2010</del>	<del>0</del>
	<del>20082011</del>	<del>1</del>
	<del>2009</del>	<del>0</del>
	<del>2010</del>	<del>0</del>
Tennessee	<del>20082009</del>	<del>1</del>
	<del>20092010</del>	<del>1</del>
	<del>20102011</del>	<del>10</del>
Texas	<del>20082009</del>	<del>31</del>
	<del>2009</del>	<del>1</del>
	<del>2010</del>	<del>1</del>
	<del>2011</del>	<del>1</del>
Virginia	<del>20082009</del>	<del>20</del>
	<del>2009</del>	<del>0</del>
	<del>2010</del>	<del>3</del>
	<del>2011</del>	<del>0</del>

State	Year	Number of Transfers
Washington	<del>2008</del> <u>2009</u>	<del>0</del> <u>1</u>
	<del>2009</del>	<del>4</del>
	<del>2010</del>	<del>1</del>
	<del>2011</del>	<del>2</del>
Wisconsin	<del>2008</del> <u>2009</u>	<del>1</del>
	<del>2009</del>	<del>+</del>
	<del>2010</del>	<del>1</del>
	<del>2011</del>	<del>0</del>
Total	<del>2008</del> <u>2009</u>	<del>4</del> <u>0</u> <del>29</del>
	<del>2009</del>	<del>29</del>
	<del>2010</del>	<del>26</del>
	<del>2011</del>	<del>18</del>

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

**Table 3**  
**Status of Franchise Outlets**  
**For Years ~~2008~~2009 to ~~2010~~2011**<sup>1</sup>

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
AL	<del>2008</del> <u>2009</u>	14	1	<del>0</del> <u>1</u>	0	0	<del>+</del> <u>2</u>	<del>14</del> <u>12</u>
	<del>2009</del> <u>2010</u>	<del>14</del> <u>12</u>	<del>+</del> <u>0</u>	<del>+</del> <u>3</u>	0	0	<del>2</del> <u>0</u>	<del>12</del> <u>9</u>
	<del>2010</del> <u>2011</u>	<del>4</del> <u>2</u>	0	<del>3</del> <u>1</u>	0	0	0	<del>9</del> <u>8</u>
AZ	<del>2008</del> <u>2009</u>	<del>9</del> <u>3</u>	0	<del>0</del> <u>1</u>	0	0	<del>6</del> <u>1</u>	<del>3</del> <u>1</u>
	<del>2009</del> <u>2010</u>	<del>3</del> <u>1</u>	0	<del>4</del> <u>0</u>	0	0	1	<del>1</del> <u>0</u>
	<del>2010</del> <u>2011</u>	<del>+</del> <u>0</u>	0	0	0	0	<del>+</del> <u>0</u>	0
AR	<del>2008</del> <u>2009</u>	2	<del>4</del> <u>0</u>	<del>0</del> <u>1</u>	0	0	<del>+</del> <u>0</u>	<del>2</del> <u>1</u>
	<del>2009</del> <u>2010</u>	<del>2</del> <u>1</u>	0	<del>+</del> <u>0</u>	0	0	0	1
	<del>2010</del> <u>2011</u>	1	0	<del>0</del> <u>1</u>	0	0	0	<del>1</del> <u>0</u>
CA	2008	43	42	0	0	0	42	43
	2009	43	4	11	0	0	10	26
	2010	26	1	4	0	0	0	23
	<u>2011</u>	<u>23</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>18</u>

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
CO	<del>2008</del> <u>2009</u>	13	0	0	0	0	<del>0</del> <u>3</u>	<del>13</del> <u>10</u>
	<del>2009</del> <u>2010</u>	<del>13</del> <u>10</u>	0	<del>0</del> <u>2</u>	0	0	<del>3</del> <u>0</u>	<del>10</del> <u>8</u>
	<del>2010</del> <u>2011</u>	<del>10</del> <u>8</u>	0	<del>2</del> <u>0</u>	0	0	0	8
CT	<del>2008</del> <u>2009</u>	<del>4</del> <u>4</u>	<del>0</del> <u>0</u>	0	0	0	0	4
	<del>2009</del> <u>2010</u>	4	0	0	0	0	0	4
	<del>2010</del> <u>2011</u>	4	0	0	0	0	0	4
DC	<del>2008</del> <u>2009</u>	<del>0</del> <u>3</u>	<del>3</del> <u>1</u>	0	0	0	0	<del>3</del> <u>4</u>
	<del>2009</del> <u>2010</u>	<del>3</del> <u>4</u>	<del>1</del> <u>0</u>	<del>0</del> <u>1</u>	0	0	0	<del>4</del> <u>3</u>
	<del>2010</del> <u>2011</u>	<del>4</del> <u>3</u>	0	<del>1</del> <u>0</u>	0	0	0	3
FL	<del>2008</del> <u>2009</u>	<del>15</del> <u>19</u>	<del>6</del> <u>0</u>	0	0	0	<del>2</del> <u>0</u>	19
	<del>2009</del> <u>2010</u>	19	0	0	0	0	0	19
	<del>2010</del> <u>2011</u>	19	1	1	0	0	1	18
	<del>2011</del> <u>2011</u>	<del>18</del> <u>18</u>	<del>0</del> <u>0</u>	<del>2</del> <u>2</u>	<del>0</del> <u>0</u>	<del>0</del> <u>0</u>	<del>2</del> <u>2</u>	<del>14</del> <u>14</u>
GA	<del>2008</del> <u>2009</u>	10	0	<del>0</del> <u>2</u>	0	0	<del>0</del> <u>1</u>	<del>10</del> <u>7</u>
	<del>2009</del> <u>2010</u>	10	0	2	0	0	1	7
	<del>2010</del> <u>2011</u>	7	0	0	0	0	0	7
	<del>2011</del> <u>2011</u>	<del>7</del> <u>7</u>	<del>0</del> <u>0</u>	<del>2</del> <u>2</u>	<del>0</del> <u>0</u>	<del>0</del> <u>0</u>	<del>1</del> <u>1</u>	<del>4</del> <u>4</u>
HI	<del>2008</del> <u>2009</u>	1	0	0	0	0	0	1
	<del>2009</del> <u>2010</u>	1	0	<del>0</del> <u>1</u>	0	0	0	<del>1</del> <u>0</u>
	<del>2010</del> <u>2011</u>	<del>1</del> <u>0</u>	0	<del>1</del> <u>0</u>	0	0	0	0
ID	<del>2008</del> <u>2009</u>	3	0	0	0	0	0	3
	<del>2009</del> <u>2010</u>	3	0	<del>0</del> <u>1</u>	0	0	0	<del>3</del> <u>2</u>
	<del>2010</del> <u>2011</u>	<del>3</del> <u>2</u>	0	<del>1</del> <u>0</u>	0	0	0	2
IL	<del>2008</del> <u>2009</u>	<del>15</del> <u>16</u>	<del>2</del> <u>0</u>	0	0	0	<del>2</del> <u>1</u>	<del>16</del> <u>15</u>
	<del>2009</del> <u>2010</u>	16	0	0	0	0	1	15
	<del>2010</del> <u>2011</u>	15	0	2	0	0	0	13
	<del>2008</del> <u>2011</u>	<del>15</del> <u>13</u>	0	<del>0</del> <u>1</u>	0	0	<del>1</del> <u>0</u>	<del>12</del> <u>12</u>
INIA	<del>2009</del> <u>2009</u>	<del>1</del> <u>1</u>	<del>0</del> <u>0</u>	<del>0</del> <u>0</u>	<del>0</del> <u>0</u>	<del>0</del> <u>0</u>	<del>0</del> <u>0</u>	<del>1</del> <u>1</u>
	<del>2009</del> <u>2010</u>	<del>1</del> <u>1</u>	0	0	0	0	0	<del>1</del> <u>1</u>
	<del>2010</del> <u>2011</u>	<del>1</del> <u>1</u>	0	0	0	0	0	<del>1</del> <u>1</u>
IAKS	<del>2008</del> <u>2009</u>	<del>1</del> <u>8</u>	0	<del>0</del> <u>1</u>	0	0	<del>0</del> <u>1</u>	<del>1</del> <u>6</u>
	<del>2009</del> <u>2010</u>	<del>1</del> <u>6</u>	0	0	0	0	0	<del>1</del> <u>6</u>
	<del>2010</del> <u>2011</u>	<del>1</del> <u>6</u>	0	<del>0</del> <u>1</u>	0	0	<del>0</del> <u>2</u>	<del>1</del> <u>2</u>

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
<b>KSLA</b>	<del>2008</del> <u>2009</u>	<del>0</del> <u>1</u>	0	0	0	0	<del>+</del> <u>0</u>	<del>8</del> <u>1</u>
	<del>2009</del> <u>2010</u>	<del>1</del> <u>8</u>	0	<del>0</del> <u>1</u>	0	0	<del>0</del> <u>+</u>	<del>6</del> <u>1</u>
	<del>2010</del> <u>2011</u>	<del>8</del> <u>6</u>	0	0	0	0	0	<del>6</del> <u>1</u>
<b>LA</b>	2008	+	0	0	0	0	0	+
	2009	+	0	0	0	0	0	+
	2010	+	0	0	0	0	0	+
<b>MD</b>	<del>2008</del> <u>2009</u>	<del>3</del> <u>8</u>	<del>3</del> <u>0</u>	0	0	0	0	8
	2009	8	0	0	0	0	0	8
	2010	8	0	0	0	0	0	8
	<del>2008</del> <u>2011</u>	<del>5</del> <u>2</u>	<del>5</del> <u>1</u>	0	0	0	<del>2</del> <u>0</u>	<del>5</del> <u>9</u>
<b>MA</b>	2009	55	1	2	0	0	+	50
	2010	50	1	0	0	0	0	51
	<u>2011</u>	<u>5</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>5</u>
<b>MI</b>	<del>2008</del> <u>2009</u>	<del>1</del> <u>1</u>	1	0	0	0	<del>0</del> <u>3</u>	<del>1</del> <u>3</u>
	2009	15	+	0	0	0	3	13
	2010	13	2	+	0	0	1	10
	<u>2011</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>7</u>
<b>MN</b>	<del>2008</del> <u>2009</u>	<del>8</del> <u>9</u>	<del>+</del> <u>0</u>	0	0	0	<del>0</del> <u>1</u>	<del>9</del> <u>0</u>
	<u>2010</u>	<u>8</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>5</u>
	<u>2011</u>	<u>5</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>6</u>
<b>MS</b>	<u>2009</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
	<del>2009</del> <u>2010</u>	<del>9</del> <u>2</u>	0	<del>0</del> <u>1</u>	0	0	<del>+</del> <u>0</u>	<del>8</del> <u>1</u>
	<del>2010</del> <u>2011</u>	<del>8</del> <u>1</u>	0	<del>3</del> <u>0</u>	0	0	0	<del>5</del> <u>1</u>
<b>MSMO</b>	<del>2008</del> <u>2009</u>	<del>2</del> <u>1</u>	0	0	0	0	<del>0</del> <u>1</u>	<del>2</del> <u>1</u>
	<u>2010</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>9</u>
	<u>2011</u>	<u>9</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>8</u>
<b>MONE</b>	2009	2	0	0	0	0	0	2
	2010	2	0	<del>+</del> <u>0</u>	0	0	0	<del>1</del> <u>2</u>
	2008	9	3	0	0	0	+	11
	2009	11	0	0	0	0	+	10
	<del>2010</del> <u>2011</u>	<del>1</del> <u>0</u>	0	1	0	0	0	<del>9</del> <u>1</u>
	<b>NENH</b>	<del>2008</del> <u>2009</u>	<del>2</del> <u>0</u>	0	0	0	0	0
<del>2009</del> <u>2010</u>		<del>2</del> <u>0</u>	0	0	0	0	0	2
<del>2010</del> <u>2011</u>		<del>2</del> <u>0</u>	<del>0</del> <u>1</u>	<del>0</del> <u>1</u>	0	0	0	2

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
NVNJ	2008	2	0	0	0	0	2	0
	2009	<u>012</u>	<u>02</u>	<u>03</u>	0	0	<u>01</u>	<u>010</u>
	2010	<u>010</u>	0	<u>02</u>	0	0	0	<u>08</u>
NH	2008	2	0	0	0	0	0	2
	<del>2009</del> 2011	<u>28</u>	<u>01</u>	<u>02</u>	0	0	0	<u>27</u>
	2010	2	0	0	0	0	0	2
NI	2008	12	4	0	0	0	4	12
	2009	12	2	3	0	0	4	10
	2010	10	0	2	0	0	0	8
NY	<del>2008</del> 2009	<u>1518</u>	<u>61</u>	<u>05</u>	0	0	3	<u>1811</u>
	2009	18	4	5	0	0	3	14
	2010	11	0	3	0	0	0	8
	<del>2008</del> 2011	<u>128</u>	<u>10</u>	<u>02</u>	0	0	0	<u>166</u>
NC	2009	16	2	0	0	0	1	17
	2010	17	0	0	0	0	0	17
	<del>2008</del> 2011	<u>517</u>	<u>50</u>	0	0	0	1	<u>916</u>
OH	2009	9	1	0	0	0	0	10
	2010	10	2	0	0	0	1	11
	<u>2011</u>	<u>11</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>9</u>
OK	<del>2008</del> 2009	<u>1020</u>	<u>20</u>	0	0	0	1	<u>2019</u>
	2009	20	0	0	0	0	4	19
	2010	19	0	2	0	0	0	17
	<u>2011</u>	<u>17</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>16</u>
OR	<del>2008</del> 2009	<u>59</u>	<u>10</u>	0	0	0	<u>01</u>	<u>98</u>
	<del>2009</del> 2010	<u>98</u>	0	<u>01</u>	0	0	<u>10</u>	<u>87</u>
	<del>2010</del> 2011	<u>87</u>	<u>01</u>	<u>12</u>	0	0	<u>03</u>	<u>73</u>
PA	<del>2008</del> 2009	8	<u>10</u>	0	0	0	1	<u>87</u>
	2009	8	0	0	0	0	4	7
	2010	7	1	1	0	0	0	7
	<u>2011</u>	<u>7</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>6</u>
RI	<del>2008</del> 2009	4	0	0	0	0	0	4
	2009	4	0	0	0	0	0	4
	2010	4	0	0	0	0	0	4
	<u>2011</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>4</u>

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
SC	<del>2008</del> <u>2009</u>	<u>23</u>	<u>+0</u>	0	0	0	0	3
	2009	3	0	0	0	0	0	3
	2010	3	0	0	0	0	0	3
	<u>2011</u>	<u>3</u>	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
TN	<del>2008</del> <u>2009</u>	<u>+0</u> <u>13</u>	<u>30</u>	<u>0</u> <u>1</u>	0	0	1	<u>+2</u> <u>10</u>
	<del>2009</del> <u>2010</u>	<u>+2</u> <u>10</u>	0	1	0	0	<u>+0</u>	<u>+0</u> <u>9</u>
	<del>2010</del> <u>2011</u>	<u>+0</u> <u>9</u>	0	<u>+0</u>	0	0	<u>0</u> <u>1</u>	<u>9</u> <u>8</u>
TX	<del>2008</del> <u>2009</u>	<u>+1</u> <u>13</u>	<u>2</u> <u>1</u>	<u>0</u> <u>1</u>	0	0	<u>0</u> <u>2</u>	<u>+3</u> <u>11</u>
	<del>2009</del> <u>2010</u>	<u>+3</u> <u>11</u>	<u>+0</u>	<u>+1</u> <u>4</u>	0	0	<u>2</u> <u>0</u>	<u>+1</u> <u>7</u>
	<del>2010</del> <u>2011</u>	<u>+1</u> <u>7</u>	0	<u>+0</u>	0	0	<u>0</u> <u>1</u>	<u>7</u> <u>6</u>
UT	<del>2008</del> <u>2009</u>	1	0	0	0	0	0	1
	2009	+	0	0	0	0	0	+
	2010	1	0	0	0	0	0	1
	<del>2008</del> <u>2011</u>	<u>8</u> <u>1</u>	<u>3</u> <u>0</u>	0	0	0	0	<u>+1</u> <u>1</u>
VA	2009	11	2	1	0	0	0	12
	2010	12	0	1	0	0	0	11
	<u>2011</u>	<u>11</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>11</u>
WA	<del>2008</del> <u>2009</u>	9	1	0	0	0	1	9
	2009	9	+	0	0	0	+	9
	2010	9	0	1	0	0	0	8
	<del>2008</del> <u>2011</u>	<u>8</u>	<u>2</u> <u>0</u>	0	0	0	0	<u>+0</u> <u>8</u>
WI	2009	10	0	0	0	0	2	8
	2010	8	0	0	0	0	0	8
	<u>2011</u>	<u>8</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>8</u>
CANADA	<del>2008</del> <u>2009</u>	<u>5</u> <u>3</u>	<u>+0</u>	0	0	0	<u>3</u> <u>1</u>	<u>3</u> <u>2</u>
	<del>2009</del> <u>2010</u>	<u>3</u> <u>2</u>	0	0	0	0	<u>+0</u>	2
	<del>2010</del> <u>2011</u>	2	0	0	0	0	0	2
COSTA RICA	<del>2008</del> <u>2009</u>	2	<u>0</u> <u>1</u>	0	0	0	0	<u>2</u> <u>3</u>
	<del>2009</del> <u>2010</u>	<u>2</u> <u>3</u>	<u>+0</u>	0	0	0	0	3
	<del>2010</del> <u>2011</u>	3	0	0	0	0	<u>0</u> <u>2</u>	<u>3</u> <u>1</u>
IRELAND	<del>2008</del> <u>2009</u>	1	0	0	0	0	0	1
	2009	+	0	0	0	0	0	+
	2010	1	0	0	0	0	0	1
	<u>2011</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>



State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of Year
ISRAEL	<del>2008</del> <u>2009</u>	2	0	0	0	0	0	2
	2009	2	0	0	0	0	0	2
	2010	2	0	0	0	0	0	2
	<u>2011</u>	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>
US TOTALS	<del>2008</del> <u>2009</u>	<del>365</del> <u>400</u>	<del>75</del> <u>18</u>	<del>030</del>	0	0	<del>40</del> <u>42</u>	<del>400</del> <u>346</u>
	2009	400	18	30	0	0	42	346
	2010	346	8	40	0	0	4	310
	<del>2008</del> <u>2011</u>	<del>375</del> <u>310</u>	<del>766</del>	<del>022</del>	0	0	<del>43</del> <u>20</u>	<del>408</del> <u>272</u>
TOTAL	2009	408	19	30	0	0	43	354
	2010	354	8	40	0	0	4	318
	<u>2011</u>	<u>318</u>	<u>6</u>	<u>22</u>	<u>0</u>	<u>0</u>	<u>22</u>	<u>279</u>

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

Table 4  
Status of Company Owned Outlets  
For years ~~2008~~2009 to ~~2010~~2011<sup>1</sup>

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold To Franchisee	Outlets at End of Year
AZTX	<del>2008</del> <u>2009</u>	1	0	0	1	0	0
	<del>2009</del> <u>2010</u>	0	0	0	0	0	0
	<del>2010</del> <u>2011</u>	0	0	0	0	0	0
EO TOTAL	<del>2008</del> <u>2009</u>	1	0	0	<del>0</del> <u>1</u>	<del>1</del> <u>0</u>	0
	<del>2009</del> <u>2010</u>	0	0	0	0	0	0
	<del>2010</del> <u>2011</u>	0	0	0	0	0	0
TX	2008	0	1	0	0	0	1
	2009	1	0	0	1	0	0
	2010	0	0	0	0	0	0
TOTAL	2008	2	4	0	4	4	4
	2009	1	0	0	1	0	0
	2010	0	0	0	0	0	0

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

Table 5  
Projected Openings  
As of December 31, ~~2010~~2011 for ~~2011~~2012

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
California	2	0	0
<del>Colorado</del>	<del>1</del>	<del>0</del>	<del>0</del>
Florida	32	0	0
Illinois	1	0	0
Kansas	1	0	0
Maryland	+	0	0
Massachusetts	1	20	0
Minnesota	+	+	0
New Jersey	21	0	0
New York	2	0	0
North Carolina	3	0	0
Ohio	12	01	0
Oregon	+	0	0
Pennsylvania	+	0	0
South Carolina	4	0	0
Tennessee	1	0	0
Texas	13	2	0
Virginia	2	1	0
Wisconsin	3	0	0
Costa Rica	+	0	0
Ireland	1	0	0
U.S. TOTAL	2922	54	0
TOTAL	3122	54	0

Exhibit C1 lists the names of all current franchisees and the addresses and telephone numbers of their Studios as of December 31, ~~2010~~2011.

Exhibit C2 also list the name, city and state, and current business telephone number or the last known home telephone number of every franchisee who had a franchise agreement that was

terminated, canceled or not renewed, or who otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year, or who has not communicated with us within 10 weeks of the issuance date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the Franchise System.

Exhibit C3 lists the name, city and state and telephone numbers of all franchisees who have signed franchise agreements, but who have not yet opened a Studio.

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

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

## ITEM 21 FINANCIAL STATEMENTS

Attached as Exhibit D are our audited financial statements as of December 31, ~~2008, 2009, 2010,~~ and ~~2010-2011~~. Our fiscal year end is December 31.

## ITEM 22 CONTRACTS

Attached to this Disclosure Document are the following Exhibits:

- A State Addenda to the Disclosure Document and Franchise Agreement
- B Franchise Agreement and Exhibits
- ~~G—Representations-and-Acknowledgment-Statement~~ H Consent to Transfer
- ~~H~~ Form of Conversion Program Addendum to the Franchise Agreement
- I Form of Renewal Addendum
- J Form of General Release

There are no other contracts or agreements you are required to sign to purchase your Studio

**ITEM 23 RECEIPTS**

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

**EXHIBIT A**  
**STATE ADDENDA AND AGREEMENT RIDERS**

Exhibit A

FT Studio (Unit)  
Ex. A - ~~11/2011~~10/3/2012 Addtl. Disclosures/Riders v1  
~~1076.001.001/13300~~  
1076.001.003/41676

**STATE ADDENDA TO FRANCHISE DISCLOSURE DOCUMENT**

FT Studio (Unit)  
Ex. A - ~~11/2011~~03/2012 Addtl. Disclosures/Riders v1  
~~1076.001.001/13300~~  
1076.001.003/41676

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

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

1. Item I7(v) is deleted and replaced with the following:

All actions must be brought in a state or federal court of general jurisdiction in Illinois if required under the Illinois Franchise Disclosure Act

2. Item 17(w) is deleted and replaced with the following:

Illinois law governs, except that disputes regarding the **Marks** will be governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C., Sections 1051 et seq.)

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

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

**L** The following language is added to the end of the 4<sup>th</sup> paragraph of Item 12 of the Disclosure Document:

**; provided, however, that such general release will not apply to any claims arising under the Maryland Franchise Registration and Disclosure Law.**

**2** ~~1~~—Item 17 of this Disclosure Document is amended by the addition of the following paragraphs to the end of the chart.

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

Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise.

The Franchise Agreement requires you to sue in a state other than Maryland. However, you still can file a civil lawsuit in Maryland alleging a violation of the Maryland Franchise Registration and Disclosure Law.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**STATE ADDENDA TO FRANCHISE AGREEMENT**

FT Studio (Unit)  
Ex. A - ~~11/2011~~ 10/3/2012 Addtl. Disclosures/Riders v1  
~~1076.001.001/43300~~  
1076.001.003/41676

ADDENDUM TO FRANCHISE AGREEMENT  
FOR ILLINOIS

THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR ILLINOIS ("this Addendum") is entered into by and between FITNESS TOGETHER FRANCHISE CORPORATION, an Arizona corporation with its principal business address at 9092 South Ridgeline Road, Suite A, Highlands Ranch, Colorado 80129 ("we," "us" or "our") and \_\_\_\_\_ ("you" or "your"), whose principal business address is \_\_\_\_\_.

WHEREAS, we and you have entered into a certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") and wish to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum to comply with certain provisions required by the State of Illinois; and

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

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

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

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

14.1 Governing Law. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.) OR OTHER UNITED STATES FEDERAL LAW.

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

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

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

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

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

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

6. The following language is added as Section 18 of the Franchise Agreement:

**18. ILLINOIS FRANCHISE DISCLOSURE ACT**

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

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

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

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

**FRANCHISOR:**

FITNESS TOGETHER FRANCHISE CORPORATION

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

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

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

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

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

**ADDENDUM TO FRANCHISE AGREEMENT FOR MARYLAND**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR MARYLAND** (“this Addendum”) is entered into by and between **FITNESS TOGETHER FRANCHISE CORPORATION**, an Arizona corporation with its principal business address at 9092 South Ridgeline Road, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and \_\_\_\_\_ (“you” or “your”), whose principal business address is \_\_\_\_\_.

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) and wish to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum to comply with certain provisions required by the State of Maryland; and

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

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

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

2. **Releases.** Our requirement that a franchisee in the State of Maryland sign a general release as a condition of a ~~refund~~**relocation**, renewal,~~sale~~, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

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

4. **Jurisdiction and Venue.** The following language is added to the end of Section 14.2 of the Franchise Agreement:

**NOTWITHSTANDING THE FOREGOING, YOU MAY BRING AN ACTION IN MARYLAND FOR CLAIMS ARISING UNDER THE MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW.**



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

Notwithstanding the foregoing, any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three (3) years after the grant of the franchise.

6. Acknowledgments. The following language is added to the end of Section 16 of the Franchise Agreement:

To the extent so required by applicable law, these acknowledgments are not intended to act, nor shall they act, as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

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

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

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

**FRANCHISOR:**

FITNESS TOGETHER FRANCHISE CORPORATION

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

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

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

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

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

**ADDENDUM TO FRANCHISE AGREEMENT  
FOR MINNESOTA**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR MINNESOTA** ("this Addendum") is entered into by and between **FITNESS TOGETHER FRANCHISE CORPORATION**, an Arizona corporation with its principal business address at 9092 South Ridgeline Road, Suite A, Highlands Ranch, Colorado 80129 ("we," "us" or "our") and \_\_\_\_\_ ("you" or "your"), whose principal business address is \_\_\_\_\_.

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") and wish to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum to comply with certain provisions required by the State of Minnesota; and

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

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

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

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

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

3. Section 14 of the Franchise Agreement is amended by adding the following paragraph:

Pursuant to Minnesota Statutes Section 80C.21 and Minnesota Rule 2860.4400J, this Section shall not in any way abrogate or reduce any of your rights as provided for in Minnesota Statutes Chapter 80C, including the right to submit matters to the jurisdiction of the courts of Minnesota and the right to bring a cause of action within three years after the cause of action accrues. You cannot be required to consent to the waiver of a jury trial.

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

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

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

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

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

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

**FRANCHISOR:**

FITNESS TOGETHER FRANCHISE CORPORATION

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

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

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

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

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

**ADDENDUM TO FRANCHISE AGREEMENT  
FOR RHODE ISLAND**

**THIS ADDENDUM TO THE FRANCHISE AGREEMENT FOR RHODE ISLAND** (“this Addendum”) is entered into by and between **FITNESS TOGETHER FRANCHISE CORPORATION**, an Arizona corporation with its principal business address at 9092 South Ridgeline Road, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”) and \_\_\_\_\_ (“you” or “your”), whose principal business address is \_\_\_\_\_

**WHEREAS**, we and you have entered into a certain Franchise Agreement (the “Franchise Agreement”) dated \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) and wish to amend certain terms of the Franchise Agreement in accordance with the terms and conditions contained in this Addendum to comply with certain provisions required by the State of Rhode Island; and

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

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

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

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

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

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

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

*(Signature Page Follows)*

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

**FRANCHISOR:**

FITNESS TOGETHER FRANCHISE CORPORATION

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

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

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

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

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

**EXHIBIT B**  
**FRANCHISE AGREEMENT**

Exhibit B

FT Studio (Unit)  
Ex. B - ~~11/2014~~03/2012 Franchise Agreement v.12  
~~1076.001.001/13301~~  
1076.001.003/41677



**FRANCHISE AGREEMENT**

**FITNESS TOGETHER FRANCHISE CORPORATION**

9092 South Ridgeline Boulevard, Suite A

Highlands Ranch, Colorado 80129

(877) 663-0880

[www.fitnessstogether.com](http://www.fitnessstogether.com)

[info@fitnessstogether.com](mailto:info@fitnessstogether.com)



®

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**FRANCHISEE**

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**EFFECTIVE DATE OF AGREEMENT**

---

**ADDRESS/TERRITORY**

---

**STUDIO NO.**

FT Studio (Unit)

Ex. B - 11/2011/03/2012 Franchise Agreement v.42

1076.001.001/13301

1076.001.003/41677

**FITNESS TOGETHER FRANCHISE CORPORATION  
FRANCHISE AGREEMENT**

**TABLE OF CONTENTS**

1.	GRANT OF FRANCHISE .....	3
1.1.	Grant of Franchise. ....	3
2.	TERRITORY; LOCATION; PROTECTED AREA .....	3
2.1.	Territory.....	3
2.2.	Site Selection. ....	3
2.3.	Protected Area. ....	3
2.4.	Relocation of Your Studio. ....	4
3.	TERM; RENEWAL.....	4
3.1.	Initial Term. ....	4
3.2.	Renewal. ....	4
<del>3.3.</del>	<del>Operation After Expiration of Term.....</del>	<del>5</del>
4.	FEES; PAYMENTS.....	5
4.1.	Initial Franchise Fees. ....	5
4.2.	Royalty.....	5
4.3.	Definition Of Gross Receipts.....	6
4.4.	Product And Supply Orders.....	6
4.5.	Late Payments.....	6
4.6.	Default Fee.....	7
4.7.	Computer-Software- <u>7</u> Technology.....	<u>Fee.</u>
4.8.	<u>7</u> Dishonored Checks/Insufficient Funds.....	7
4.9.	Changes to Fees and Requirements. ....	7
4.10.	Set-Offs.....	7
4.11.	Marketing and Production Fund Fee. ....	7
4.12.	Marketing Cooperatives.....	<u>8</u>
4.13.	<u>Ongoing</u> Marketing Spend Requirement. ....	<u>8</u>
5.	OUR RELATIONSHIP; OUR OBLIGATIONS TO YOU .....	8
5.1.	Our Relationship with You.....	8
5.2.	Initial Training.....	<u>9</u>
5.3.	Additional Training and Conferences.....	9
5.4.	Supplies and Source of Supplies.....	9
5.5.	Studio Design.....	10
5.6.	On-going Support and Assistance. ....	10
5.7.	Our Reservation of Rights. ....	<u>44</u> <u>10</u>
6.	USE OF THE MARKS.....	12
6.1.	Ownership; Goodwill.....	12
6.2.	Limitation on Use. ....	12
6.3.	Discontinuance of Use of Marks. ....	12
6.4.	Notification of Infringements and Claims. ....	12
7.	OPERATION OF YOUR FRANCHISE; YOUR OBLIGATIONS.....	13

7.1.	Employees, Agents and Independent Contractors.....	13
7.2.	Lease Approval.....	13
7.3.	Opening Your Studio.....	<del>44</del> <b>13</b>
7.4.	Insurance.....	<del>45</del> <b>14</b>
7.5.	Operation of Your Studio.....	<del>16</del> <b>15</b>
7.6.	Your Other Obligations.....	19
8.	ADVERTISING.....	21
8.1.	Limitations.....	21
8.2.	<del>Pre-Opening Advertising-22</del> <b><u>Initial Marketing Spend Requirement</u></b> <b><u>22</u></b>	
8.3.	Marketing and Production Fund.....	22
8.4.	Marketing Cooperatives.....	<del>23</del> <b>24</b>
8.5.	<b><u>Ongoing Marketing Spend Requirement</u></b> .....	24
8.6.	Advisory Committee.....	24
8.7.	Gift Cards, Certificates and Checks.....	25
9.	INDEMNIFICATION.....	25
9.1.	Indemnification.....	25
10.	DEFAULT; TERMINATION.....	25
10.1.	Immediate Termination by Us.....	25
10.2.	Termination by Us-30 Days Notice.....	27
10.3.	Default Fee.....	<del>27</del> <b>28</b>
10.4.	Your Obligations Upon Termination.....	<del>27</del> <b>28</b>
10.5.	Our Options in the Event of Your Default.....	<del>28</del> <b>29</b>
11.	TRANSFER.....	29
11.1.	Transfers.....	29
11.2.	Transfer to Corporate Entity Owned by You.....	31
11.3.	Death, Disability or Permanent Incapacity.....	31
11.4.	Your Agreement to Transfer Restrictions.....	<del>34</del> <b>32</b>
11.5.	Intentionally Omitted.....	<del>34</del> <b>32</b>
11.6.	Our Right of First Refusal.....	<del>31</del> <b>32</b>
11.7.	Transfer if Franchisee is an Entity.....	32
11.8.	Controlling Interest.....	32
11.9.	Our Transfer.....	32
12.	RESTRICTIVE COVENANTS.....	<del>32</del> <b>33</b>
12.1.	Non-Competition During Term.....	<del>32</del> <b>33</b>
12.2.	Post Termination Covenant Not to Compete.....	33
12.3.	Branded Business.....	<del>33</del> <b>34</b>
12.4.	Permitted Interests.....	<del>33</del> <b>34</b>
12.5.	Confidential Information.....	34
13.	NOTICES.....	35
14.	GOVERNING LAW; JURISDICTION AND VENUE; ARBITRATION.....	35
14.1.	Governing Law.....	35
14.2.	Jurisdiction and Venue.....	<del>35</del> <b>36</b>
14.3.	Waiver of Jury Trial and Punitive Damages.....	36
14.4.	Remedies.....	36

14.5.	Arbitration.....	36
14.6.	Limitation of Claims.....	<u>3739</u>
15.	MISCELLANEOUS PROVISIONS.....	<u>3839</u>
15.1.	Remedies.....	<u>3839</u>
15.2.	Modification/Exercise of Judgment.....	<u>3839</u>
15.3.	No Waiver.....	<u>3940</u>
15.4.	Severability/Invalidity.....	<u>3940</u>
15.5.	Entire Agreement.....	<u>3940</u>
15.6.	Delegation by Us.....	<u>3940</u>
15.7.	Effective Date of Agreement.....	<u>3940</u>
15.8.	Review of Agreement.....	<u>4041</u>
15.9.	Costs and Attorneys Fees.....	<u>4041</u>
15.10.	Injunctive Relief.....	<u>4041</u>
15.11.	Survival.....	<u>4041</u>
15.12.	Joint and Several Liability.....	<u>4041</u>
15.13.	Counterparts; Paragraph Headings; Pronouns.....	<u>4041</u>
16.	ACKNOWLEDGMENTS.....	<u>4041</u>

Exhibits

1	Territory Description
2	Automatic Bank Draft Authorization
3	Statement of Ownership
4	Guaranty and Assumptions of Obligations
5	Confidentiality and Non-Compete Agreement
<u>6</u>	<u>Letter of Intent and Lease Addendum</u>
<u>7</u>	<u>Representations and Acknowledgment Statement</u>

**FITNESS TOGETHER FRANCHISE CORPORATION**

**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (“Agreement”) is entered into by and between **FITNESS TOGETHER FRANCHISE CORPORATION**, an Arizona corporation with its principal business address at 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129 (“we,” “us” or “our”),

and

\_\_\_\_\_ (“~~You~~you,” or “your”)  
(Name of Individual or Entity)

A \_\_\_\_\_  
(Type of Entity and State of Organization)

Its \_\_\_\_\_  
\_\_\_\_\_  
(Title of signor for Entity, if applicable)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

and is entered into as of the date set forth below our signature on this Agreement (the “Effective Date”).

## PURPOSE

A. We and our affiliates have developed methods to establish, operate and promote one-on-one and personal small group physical fitness training studios, a nutrition program and related products and services (“Fitness Together Studios” or “Studios”) offering various forms of physical fitness services, a nutrition program, and other services and products. These methods include the use and license of the “Fitness Together<sup>®</sup>” trademark, together with other valuable trademarks, service marks, trade names, symbols, emblems, slogans, insignias, designs and logos, existing now or which may exist in the future (together, the “Marks”) for use in establishing, operating and promoting Fitness Together Studios.

B. We grant the right to others to establish and operate Studios under the Marks according to our standards, specifications, methods, techniques, and operating and other procedures (“System Standards”), which constitute our unique Fitness Together franchise system (the “Franchise System”).

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

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

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

## 1. GRANT OF FRANCHISE

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

## 2. TERRITORY; LOCATION; PROTECTED AREA

- 2.1. Territory. Upon execution of this Agreement, you will identify a specific defined territory in which to locate your Studio, which will be described on Exhibit 1 of this Agreement (the "Territory"). The Territory is the area in which you will focus your efforts to find an acceptable location for your Studio. We are identifying the Territory for the sole purpose of facilitating the orderly development of the market, and not for purposes of granting you any exclusivity or protection within the Territory.
- 2.2. Site Selection. Unless we otherwise agree in writing, you will operate your Studio from a specific site or location within the Territory which we have approved (the "Studio Location"). You acknowledge and agree that our approval of the site for your Studio does not constitute a guarantee, recommendation, or endorsement of the Studio Location and that the success of your Studio depends upon your abilities as an independent business person. Our approval simply means that the Studio Location meets our current location criteria, which means it meets our requirements with respect to demographics, neighborhood characteristics, size, appearance, convenience, proximity to other businesses, and other characteristics we deem appropriate. During the term of this Agreement, the Studio Location shall be used exclusively to operate a Studio.

We, or at our option, a third party we designate, may provide real estate services to assist you in obtaining a site for your Studio. However, it is your sole responsibility to locate a suitable site for your Studio. Upon executing this Agreement, you must begin searching for a site for your Studio, making diligent efforts to work with us (or a third party we may designate) to review site information, view locations and review letters of intent, so that you can locate a site and sign a lease in a timely manner. Although there is no deadline by which you are required to select a site, you must open your Studio ~~within 180 days after you sign this Agreement~~ by the commencement of operations deadline set forth in Section 7.3(b).

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

2.4. Relocation of Your Studio. You must obtain our prior written approval in order to relocate your Studio. Our approval will be based on a variety of factors including, but not limited to, the viability of the Studio Location and the availability of alternative locations. We will provide a written response to any relocation request within 30 days of receiving your written request. We have no obligation to approve any relocation requests and can deny any such request for any reason. If approved, you must pay all costs of relocating your Studio, and sign a relocation addendum which will include our form of general release. If you cease operating your Studio for more than 30 days before relocation, we may require you to terminate this Agreement and sign our then-current franchise agreement for the new location.

3. **TERM; RENEWAL**

3.1. Initial Term. The initial term of this Agreement is for a period of 10 years from the Effective Date, unless sooner terminated pursuant to the terms of this Agreement.

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

- (a) you provide us written notice of your election to renew at least 180 days (but not more than one year) prior to the end of the term of this Agreement;
- (b) at the time you provide the written notice of renewal, you are not in default or under notice of default of any provisions of this Agreement or of any other agreement between us, including any other franchise agreement, master franchise agreement and/or area director agreement, and you have been in substantial compliance with the terms and conditions of all such agreements (including this Agreement) during the term of this Agreement;
- (c) all monetary obligations you owe us (under this Agreement or any other agreements between us, including any other franchise agreement, master franchise agreement and/or area director agreement) have been satisfied and paid when due throughout the term of this Agreement;
- (d) you sign and agree to be bound by our then-current form of franchise agreement, which may contain terms and conditions materially different from those set forth in this Agreement, including terms changing the Protected Area, the Monthly Royalty (defined in Section 4.2) and other fee amounts; provided you will not be required to pay a new Initial Franchise Fee (although you will have to pay us the renewal fee set forth below);
- (e) you and, your owners, and any guarantors under this Agreement, sign a general release in a form satisfactory to us, releasing any and all claims against us, our affiliates, and our and their respective shareholders, members, owners, principals officers, directors, employees, representatives, agents, successors and assigns, in their corporate and individual capacities, including, without limitation, claims



arising under federal, state and local laws, rules and ordinances and claims under this Agreement and the business relationship between us;

- (f) you and any other person who has an interest in your Studio (if Franchisee is a legal entity or two or more individuals) must attend and satisfactorily complete such refresher training as we may require, at such time and place prior to expiration of the term of this Agreement as we may designate;
- (g) you pay us a renewal fee of equal to twenty-five percent (25%) of our then-current initial franchise fee; and
- (h) if we deem it necessary, you must upgrade, remodel and refurbish, at your sole expense, the inside and outside of your Studio to conform to our then-current standards. The upgrade may include, but is not limited to, signs and equipment. All such upgrades, remodels and refurbishments must be performed in accordance with our System Standards and other standards and specifications we may designate.

~~3.3. Operation After Expiration of Term. This Agreement shall terminate unless you comply with all of the terms and conditions required to renew the Agreement. If you do not comply with all of the conditions contained in Section 3.2 above, then this Agreement will terminate and the provisions in Section 10 of this Agreement related to termination will apply.~~

#### 4. FEES; PAYMENTS

- 4.1. Initial Franchise Fees. You must pay to us, in the form of a lump sum payment, by cashier's check or wire transfer, the amount of Thirty-Nine Thousand Dollars (\$39,000) as a non-refundable initial franchise fee (the "Initial Franchise Fee").

The Initial Franchise Fee must be paid at the time you sign the Franchise Agreement. The Initial Franchise Fee is fully earned by us when paid by you and is not refundable under any circumstances.

- 4.2. Royalty. On the fifth (5<sup>th</sup>) day of the first full calendar month after opening your Studio and on the 5<sup>th</sup> day of each month after that date during the term of this Agreement, you must pay to us a continuing monthly royalty of six percent (6%) of your gross receipts (as defined below) (the "Monthly Royalty"). We reserve the right, but not the obligation, to collect the royalty payment on a weekly, rather than monthly, basis upon notification to you. You authorize us, as set forth in Exhibit 2 of this Agreement, to automatically withdraw funds from your bank account (sometimes referred to as ACH or auto-debit) to pay the Monthly Royalty based on your gross receipts from the previous month, as reported by you or obtained by us from our approved computer system used by you to record receipts, and to pay any other amounts you owe us or our affiliates (the "ACH Authorization"). The ACH Authorization shall remain in full force and effect during the term of this Agreement. You agree to ensure that funds are available in your

designated account to cover our withdrawals. Some banks charge fees for ACH transactions and, to the extent your bank charges ACH fees, you agree to pay those fees. In the event any Monthly Royalty payment is not paid on a timely basis, we will also have the right to ACH from your bank account such late fees, default fees or other fees that may be assessed in connection with your non-timely payment, or such other fees or payments as we may periodically designate.

If you fail to report your gross receipts (or we are unable to obtain your gross receipts directly from our approved computer system used by you to record receipts), we may debit your account for an estimated monthly-royalty Monthly Royalty equal to the greater of ~~(a) six one hundred ten percent (6110%)~~ of the average of your last ~~previous~~ three prior ~~(31)~~ months of reported gross receipts for your Studio, or ~~(b) six percent (6%)~~ of the average of the gross receipts for all Studios for the immediately prior month (“Estimated Monthly Royalty”). If the Estimated Monthly Royalty we debit from your account is less than the amount you actually owe us (once we have determined your Studio’s true and correct gross receipts), we will debit your account for the balance on the day we specify. If the Estimated Monthly Royalty we debit from your account is greater than the amount you actually owe us, we will credit the excess against the amounts we otherwise would debit from your account during the following month.

Despite any designation you make, we may apply any of your payments to any of your past due indebtedness to us.

We may require you to pay any amounts due under this Agreement or otherwise by means other than ACH (e.g., by check or credit card) whenever we deem appropriate, and you agree to comply with our payment instructions. If you fail to comply with our payment instructions, we reserve the right to exclude you from participating in certain programs; provided that such failure shall also be deemed a default under this Agreement.

- 4.3. Definition Of Gross Receipts. Gross receipts include: (a) all of your revenue and receipts, including those taken by cash, credit card, debit card, check, trade, barter or exchange, electronic funds transfer, or any other means of credit which are derived from the operations of your Studio, including the sales of physical fitness and nutrition services, merchandise, products, or any other products or services which are sold by you, whether sold at your Studio location or from an off-site location, excluding sales, use or privilege taxes paid to the appropriate taxing authority, refunds that are made to customers, and tips received by fitness trainers. ~~Gross receipts also include:~~ and (b) the gross amount of national gift cards (which may be redeemed at any Studio). However, the face value of Studio-specific gift cards and gift certificates (which are intended to be redeemed only at your Studio) will be included as gross receipts at the time of the sale of the Studio-specific gift card or gift certificate and not upon redemption. In addition, should your business be interrupted for any reason and you are receiving business interruption insurance payments, the gross amount of these payments will be considered to be gross receipts and will be subject to the Monthly Royalty.

- 4.4. Product And Supply Orders. You are required to purchase certain equipment, products, materials and/or services from our Approved Suppliers (defined below), which could be us or one of our affiliates, at the prices listed in the Operations Manual, on our website, or in such other place as we may designate.
- 4.5. Late Payments. For all past due amounts you owe us and/or our affiliates, you must pay us a late fee equal to the greater of 10% of the amount due or \$150.00 for each month or portion of months that the amount is past due. This fee applies to all amounts past due including, but not limited to, Monthly Royalty, extension, transfer and renewal fees, advertising fees payable to us (if any), default, late and insufficient funds fees, and amounts due for purchases from us or our affiliates.
- 4.6. Default Fee. If you are in default of the ~~Franchise~~this Agreement and we send you a default notice, you must pay us a fee of \$250.00.
- 4.7. ~~Computer-Software.~~ Technology Fee. You must use software we designate in the operation of your Studio. Prior to opening your Studio, you will be required to pay us a software set up fee of ~~\$51,500~~516 and, after opening your Studio, a monthly fee, which is currently ~~\$78,160~~, in each case, payable by ACH. We may periodically change the amount of the set up fee and monthly software fee, and/or the software requirements, and we may require you to purchase new or additional software. You may be required to execute a software license or other agreement in connection with your use of the required computer software. Other than providing the software specifications and Approved Suppliers from which you can purchase the required computer software, we are not obligated to provide you with any assistance in obtaining the required computer software or any support in connection with your use of the required software.
- 4.8. Dishonored Checks/Insufficient Funds. If you write us a check that is returned, cancelled or dishonored, or if we ACH your bank account and your account has insufficient funds or is inaccessible, you must pay us an insufficient funds fee of \$150.00.
- 4.9. Changes to Fees and Requirements. We may revise our System Standards and Operations Manual to implement new or different operating requirements and fees. You agree to comply with any new or changed requirements and fees.
- 4.10. Set-Offs. You have no right to set off any amounts you owe us against amounts we owe you, and you hereby expressly waive any such right. You agree you will not withhold payment of any fee or other amount you owe us (whether under this Agreement or any other agreements between us, including any other franchise agreement, master franchise agreement and/or area director agreement) because of alleged nonperformance of our obligations under this Agreement or otherwise. Absent a court order to the contrary, if you withhold any amounts owed to us and we pursue collection of such amounts, you must pay all of our reasonable costs, including court costs, attorneys' fees, the value of our employees' time, witness fees and travel expenses in connection with our collection efforts.

- 4.11. Marketing and Production Fund Fee. We do not require you to participate in any marketing and advertising programs at this time, but may in the future. If a Marketing and Production Fund is established, you will be required to make contributions to the Fund in an amount up to one percent (1%) of your gross receipts, which we will spend on preparing advertising and promotional materials and advertising, marketing and promotional programs for Studios. We will have no fiduciary obligations to you in connection with our administration of the Marketing and Production Fund. You must meet the Marketing Spend Requirement described below. The Marketing Spend Requirement may include any contributions you make to a Marketing and Production Fund (if established) and any contributions you make to a Marketing Cooperative (see below). If established, we may vary your Marketing and Production Fund contribution. may be stated as a percentage of your gross receipts or as a flat fee, subject to a maximum of 1% of gross receipts.
- 4.12. Marketing Cooperatives. We may designate a geographic area in which three or more Studios are located as an area in which to establish a marketing cooperative ("Marketing Cooperative"). The Marketing Cooperative's members will include all Studios operating in the geographic area, including us and our affiliates, if applicable. We may also require that you join an existing Marketing Cooperative operating in a geographic area encompassing or near your Studio. We may collect Marketing Cooperative fees and transfer those fees to the Marketing Cooperative, or the Marketing Cooperative may collect the fees directly, as we determine.
- 4.13. Ongoing Marketing Spend Requirement. ~~During the first 120 days after you open your Studio, you must spend at least \$18,000 to advertise, market and promote your Studio. Beginning 120 days after your Studio has opened and continuing until the first year anniversary of the date you open, you must spend a minimum of \$2,000 per month on advertising, marketing and promotional programs for your Studio. Beginning in the second year after our Studio has opened and continuing through the term of this Agreement, you must spend a minimum~~ You must spend a minimum of the greater of 5% of your gross receipts and \$3,000 per month on advertising, marketing and promotional programs for your Studio (the ~~\$18,000 first 4 months minimum spend, the \$2,000 per month spend and the 5% of gross receipts spend are referred to together herein as the~~ "Ongoing Marketing Spend Requirement"). Your Ongoing Marketing Spend Requirement may in the future include any contributions you make to a Marketing and Production Fund (if we establish a Marketing and Production Fund) and any contributions you make to a Marketing Cooperative. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Ongoing Marketing Spend Requirement does not drop below the minimum ~~5% of gross receipts you are required to spend to meet your~~ Ongoing Marketing Spend Requirement. Your required Marketing and Production Fund and Marketing Cooperative contributions could, by themselves, exceed the minimum Ongoing Marketing Spend Requirement. In addition, we have the right to collect any funds constituting the minimum Ongoing Marketing Spend Requirement that are not otherwise being contributed to the National Marketing and Production Fund or Marketing Cooperatives and use those funds for local, regional or national advertising or promotional programs that reach your Studio's local trade area.

## 5. OUR RELATIONSHIP; OUR OBLIGATIONS TO YOU

5.1. Our Relationship with You. We and you agree that each of us is an independent business person, our only relationship is by virtue of this Agreement, and no fiduciary relationship is created under this Agreement. No agency, employment or partnership is created or implied by the terms of this Agreement. In all public records, in your relationship with other persons, and in any disclosure document, prospectus or similar document, you must indicate clearly that you independently own your Studio and that the operations of your Studio are separate and distinct from the operations of our business. Neither party is liable or responsible for the other's debts or obligations, nor shall either party be obligated for any damages to any person or property directly or indirectly arising out of the operation of the other party's business.

5.2. Initial Training. Before you open your Studio, we or our designee will provide initial training to you or one of your co-owners, and one of your managers and/or employees ("Initial Training"). One designated individual must complete Initial Training before your Studio opens (at least five weeks prior to ~~before~~ opening) and the second designated individual must complete Initial Training within 180 days after your Studio opens. At least one owner must attend and successfully complete Initial Training. If you intend to have a manager or managers perform the day to day operations of your Studio, your manager will be required to attend and successfully complete Initial Training before your Studio opens. Any replacement manager must also attend and complete the Initial Training to our satisfaction. We have the discretion to determine whether or not any individual has successfully completed Initial Training. You must ensure that an individual who has successfully completed Initial Training is on-site at your Studio at all times. If you own more than one Studio, each Studio must have an individual on site at all times who has completed Initial Training to our satisfaction. You must pay for all travel, accommodations, meals and other expenses incurred by all individuals who attend Initial Training.

If you purchase additional franchise agreements, you will designate up to two individuals per franchise agreement to attend Initial Training; however, neither you nor your co-owners will ~~not~~ be required to attend Initial Training if you have already done so.

If you want more than 2 individuals (per franchise agreement) to attend Initial Training (such as new or additional managers or employees), you must pay us a fee of \$2,500 per person and you must pay for all travel, accommodations, meals and other expenses incurred by these individuals. Initial Training for additional individuals will be offered during our regularly scheduled Initial Training sessions.

5.3. Additional Training and Conferences. We may require that you pay the \$2,500 fee described above, and you are required to pay all travel, accommodations, meals and other expenses, for each individual you may designate for any refresher training we make available to our franchisees or for any optional training programs we may conduct from time to time. You must attend any annual conferences or seminars that we may require at a location we designate. You agree to pay all costs to attend.

- 5.4. Supplies and Source of Supplies. We may designate specific products that you must purchase, and require that you purchase products and services from suppliers and vendors we approve. We will provide you with the System Standards in the Operations Manual we make available to you. We can modify, amend and change our System Standards, Operations Manual, and other standards and specifications at any time and you agree to abide by any such modified, amended or changed provisions.

We may designate specific products and services from suppliers and vendors we approve. To the extent we have approved certain manufacturers, vendors, distributors, suppliers and producers, which may be us or our affiliates (collectively, "Approved Suppliers"), you are required to purchase from the Approved Suppliers. We reserve the right to require you to participate in certain mandatory service programs. You must purchase all goods and services required for the operation of your Studio from the Approved Suppliers (which may be one supplier for any given product or service) under terms, in the manner, and from the source designated by Franchisor or any of its affiliates. If you wish to purchase any product or service from a supplier that is not an Approved Supplier, you must first submit to us a written request to do so. Our fee for evaluating the supplies or supplier you request is \$100.00 per hour, which you must pay to us when invoiced. We will typically provide a response to the written request within 30 days from our receipt of the request. We may require that samples of the product produced by the proposed alternative supplier be delivered to us for review and testing. We may withhold approval of a supplier for any reason. We will not approve a new supplier or continue to approve any supplier unless the supplier has agreed that we have a right to inspect the supplier's premises and products. If any inspection discloses a supplier's failure to maintain our specified criteria for products or services, we may revoke our approval in writing. We do not make available to our franchisees our criteria for approving suppliers. If an exclusive supplier already has been designated for the equipment, products, services, supplies, or materials proposed to be offered by a new vendor, your request for a new vendor likely will be rejected without further review or investigation. **ALTHOUGH SUPPLIES OR SUPPLIERS MAY BE APPROVED BY US, WE AND OUR AFFILIATES MAKE NO WARRANTY AND EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO INVENTORY, PRODUCTS, FIXTURES, FURNITURE, EQUIPMENT (INCLUDING WITHOUT LIMITATION ANY REQUIRED COMPUTER SYSTEMS), SIGNS, STATIONERY, SUPPLIES OR OTHER APPROVED ITEMS.**

- 5.5. Studio Design. We, or at our option, our Approved Supplier, will provide you with a list of recommended and required specifications and guidelines for the design and layout of a typical Studio. You must comply with all such specifications and guidelines unless we approve otherwise in writing.
- 5.6. On-going Support and Assistance. We or our designee will provide the following operational support to you as we deem appropriate:
- (a) opening support and ongoing operational support of your Studio by telephone, in person, or otherwise;

- (b) recommendations for advertising and promotional materials;
- (c) merchandising, marketing and other data and advice as may periodically be developed by us;
- (d) advice, consultation and assistance regarding the operations of your Studio based primarily on our inspections of your Studio and reports you are required to provide to us. This assistance may be provided by telephone or in person or by newsletters, bulletins, or otherwise as we deem necessary or appropriate from time to time; and
- (e) such other resources and assistance as we may develop and provide in the future.

5.7. Our Reservation of Rights.

- (a) Right to Modify the Franchise System. Whenever this Agreement provides that we have a certain right, that right is absolute and the parties intend that our exercise of that right will not be subject to any limitation or review. We have the right to operate, administer, develop, and change the Franchise System in any manner that is not specifically precluded by the provisions of this Agreement.
- (b) Adaptations and Variances. Because uniformity under varying conditions may not be possible or practical, we specifically reserve the right to vary standards for any Studio. If we vary standards for any Studio, we have no obligation to vary standards for your Studio.
- (c) Right to License to Others. We may use and license others to use the Marks, Proprietary Assets and the Franchise System for the operation of Studios anywhere outside of your Protected Area. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall restrict our rights, or grant any rights to you, with respect to the pursuit of any business concept other than the Franchise System concept.
- (d) Right to Develop and Franchise Other Systems. Unless specifically stated in this Agreement, we retain the right to develop, use and franchise the rights to any systems, businesses, trade names, trademarks, service marks, trade symbols, emblems, signs, slogans, insignia, or copyrights not designated by us as part of the Franchise System, the Proprietary Assets, or Marks, at any location, including within the Protected Area, on such terms and conditions as we may deem advisable, and without granting you any rights therein.
- (e) Right to Sell Products and Services. We may sell any products or services, including those similar to the products and services offered by Studios, anywhere, using the Marks or not, through various channels of distribution (including internet, wholesale, mail order and retail). Franchisees may use various channels of distribution, such as direct mail, email and internet (but only through Studio websites maintained through us) to market their Studios, provided that we have approved any marketing materials. Franchisees must not market their Studios or

the services provided by the Studios by sending or transmitting unsolicited advertising or marketing faxes.

- (f) Right To Transfer, Assign, Purchase or Be Purchased. You acknowledge and agree that we have the right to transfer or assign all or any part of our right and interest in and to, and our obligations under, this Agreement to any person or legal entity without your approval. We also have the right to purchase or be purchased by, or merge or combine with, any Competitive Business (as defined in Section 12.1) or any other competing or other business, even if such business has locations within the Protected Area.
- (g) Right to Delegate Obligations. You acknowledge and agree that we have the right to delegate to third party designees the performance of all or any portion of our obligations under this Agreement.
- (h) Notice of Potential Profit. We or our affiliates may derive revenues or profits, or obtain other consideration, from your dealings with our Approved Suppliers or other suppliers. You acknowledge and agree that we have the right to receive payments, discounts, promotional allowances, and other payments from any supplier based on your purchases and the purchases of our other franchisees. Additionally, we have the right, and you acknowledge and agree that we are entitled, to derive revenues, profits and other consideration from your purchases from us or our affiliates.

## 6. USE OF THE MARKS

- 6.1. Ownership; Goodwill. You acknowledge that we and our affiliates have the sole right to license and control your use of the Marks and that the Marks shall remain under our and our affiliates' sole and exclusive ownership and control. You acknowledge that you do not acquire any right, title, or interest in the Marks except for the right to use the Marks in the operation of your Studio under this Agreement. You will display the Marks prominently at your Studio and on forms, advertising, marketing and other materials in the manner we prescribe. Any unauthorized use of the Marks by you shall constitute a breach of this Agreement and an infringement of our rights in and to the Marks. You acknowledge and agree that your use of the Marks and any resulting goodwill is for our exclusive benefit.
- 6.2. Limitation on Use. You shall not use any Mark as part of any corporate or trade name or with any prefix, suffix, or other modifying words, terms, designs, or symbols other than as approved in writing by us, nor may you use any Mark in connection with unauthorized services or products or in any other manner not expressly authorized by us in writing. You agree that no service or trade mark other than the Marks shall be used in the marketing, promotion, or operation of your Studio.
- 6.3. Discontinuance of Use of Marks. If it becomes advisable at any time for us or you to modify or discontinue the use of any Mark, or to use an additional Mark, you must comply with our directions to do so within a reasonable time after we provide notice to you. We



need not reimburse you for any lost revenue or the costs you incur to comply with such direction, including the costs to change your Studio's signs, replace proprietary supplies or promote the modified or newly required Marks.

- 6.4. Notification of Infringements and Claims. You must notify us immediately of any possible infringement of any Mark or use of a trademark confusingly similar to the Marks that comes to your attention. You must also notify us of any challenge to your use of the Marks. You may not communicate information about an infringement or challenge with any person other than us, our affiliates or our counsel. You may not settle any claim without our written consent. We may take any action we deem appropriate (including no action) and exclusively control any litigation or United States Patent and Trademark Office or other administrative proceeding arising out of any infringement, challenge or claim related to the Marks. We are not contractually obligated to protect you against infringement or unfair competition claims arising out of your use of the Marks, nor are we required to participate in your defense or indemnify you. However, we may choose to do so if, in the opinion of our legal counsel, such action is necessary or appropriate under the circumstances. In that case, we will pay all costs, including attorneys' fees and court costs, associated with any litigation required to defend or protect your authorized use of the Marks. We will not pay any of your attorneys' fees if you hire your own attorney. You must cooperate with us in any litigation. You must execute any and all instruments and documents, render such assistance, and perform such acts as may be necessary or advisable to protect and maintain our interests in the Marks.

## 7. OPERATION OF YOUR FRANCHISE; YOUR OBLIGATIONS

- 7.1. Employees, Agents and Independent Contractors. We acknowledge that you may hire employees, agents or independent contractors to assist in the operation of your Studio. You agree that any such employee, agent or independent contractor shall be required to execute a confidentiality and non-compete agreement substantially in the form set forth as Exhibit 5 to this Agreement ("Form of Confidentiality Agreement") or as we otherwise provide to you. You acknowledge and agree that the Form of Confidentiality Agreement is a form of agreement only and that it may or may not be enforceable in a particular jurisdiction. You agree that you are solely responsible for obtaining your own professional advice with respect to the adequacy of the terms and provisions of any confidentiality and non-compete agreement you require your employees, agents and independent contractors to sign.
- 7.2. Lease Approval. We must approve any lease for your Studio premises. You acknowledge and agree that any review and approval of any Studio premises or lease is for our sole benefit and the benefit of the Franchise System, and are not intended to imply or guarantee the success or profitability of any Studio Location. You acknowledge that you have been advised to obtain the advice of your own professional advisors before signing a lease. ~~Your lease must contain the following terms and provisions:~~

- ~~(a) — the initial term of the lease must be at least five years and there must be at least one five-year renewal term;~~
- ~~(b) — the landlord must consent to your use of the Marks and any other proprietary marks and signage we designate for use in your Studio;~~
- ~~(c) — any right you have to sublease or assign all or any part of the lease or your right to occupy the premises must require our prior written consent;~~
- ~~(d) — the landlord must agree to provide to us copies of any and all notices of default by you under the lease;~~
- ~~(e) — we (or our designee) must have the right, but not the obligation, to enter the leased premises to make modifications necessary to protect the Marks, or to cure any default under the Franchise Agreement or the lease for a period of up to 30 days from the date any notice of default is sent to you; and~~
- ~~(f) — we (or our designee) must have the option, upon default, expiration or termination of the Franchise Agreement, and upon notice to the landlord, to (i) assume all of your rights under the lease including, but not limited to, the right to pay rent and the right to assign or sublease the leased premises, and (ii) remove equipment, furniture and signs. You and your legal and other advisors are solely responsible for negotiating the terms of the lease for your Studio's premises. However, your lease must include the terms of our letter of intent and lease addendum attached hereto as Exhibit 6, unless otherwise approved by us in writing. You (and not any of your affiliates or owners) must be the tenant on the lease for the Studio's premises.~~

### 7.3. Opening Your Studio.

- (a) **Build-Out.** You are required to use our Approved Supplier for the design, architecture and construction services related to the build-out of your Studio. After obtaining possession of the Studio Location, you must promptly complete the following:
  1. prepare (or cause to be prepared) and submit to us for our approval, a site survey and any proposed modifications to our conceptual designs and specifications (not including construction) including, but not limited to, modifications to our required dimensions, exterior and interior design, materials, layout, equipment, fixtures, furniture, and signs and décor; provided, however, that modifications are permitted only if required to comply with applicable ordinances, building codes and permit requirements and are subject to our prior written approval;
  2. obtain all permits and licenses for the lawful construction and operation of the Studio, together with all certifications from government authorities having jurisdiction over the Studio Location that all requirements for

construction and operations have been met, including, but not limited to, zoning, access, sign, health, fire, and safety requirements, building and other required construction permits, licenses to do business, fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearances;

3. obtain all customary contractors' sworn statements and partial and final lien waivers for construction, remodeling, decorating and installation services;
  4. purchase or lease equipment, furniture, fixtures and signs as provided under this Agreement or in the Operations Manual;
  5. complete the construction and build out of the Studio premises, including installing equipment, fixtures, furniture and signs, and decorating your Studio, in full and strict compliance with the plans and specifications we have approved, and in accordance with all applicable ordinances, building codes and permit requirements; and
  6. otherwise complete all other aspects of developing your Studio as we may reasonably require in order to be able to commence operation of your Studio on or before the Projected Opening Date (defined below).
- (b) Commencement of Operations. You must have your Studio open and operating within 180 days from the Effective Date (the "Projected Opening Date"), unless otherwise specifically approved by us in writing. If you purchase multiple franchise agreements from us, you must sign a lease for each additional Studio at least 120 days before the date on which you must open the additional Studios ~~must open every 12 months thereafter.~~

You may not open your Studio for business until (a) we notify you that you have properly equipped your Studio, (b) you and your employees and other personnel have successfully completed the applicable training to our satisfaction, (c) you have paid all amounts due to us and our Approved Suppliers and other vendors, (d) you have obtained all required licenses and permits to operate your Studio, and (e) you have obtained our required minimum insurance coverage for your Studio and have provided us with a certificate of insurance and evidence that you have paid your insurance premium.

- 7.4. Insurance. Before your Studio opens, you must purchase insurance coverage from a responsible carrier with a performance rating of A+ or higher as rated in the most recent edition of Best Insurance Reports (or comparable criteria as we may specify). You must maintain the insurance throughout the duration of the term of this Agreement. Each insurance policy for your Studio must designate as additional insured parties us, our senior secured lender, and, if requested by us, any of our affiliates or area directors or other parties we may designate from time to time. In addition, each insurance policy must provide that

all additional insured parties will receive at least 30 days' prior written notice of termination, material amendment or cancellation.

Prior to opening your Studio, and then a minimum of annually or upon our request, you must provide to us a certificate of insurance (including those of each of your employees if required) reflecting the following minimum coverage limits: (a) \$1,000,000 per occurrence comprehensive general liability; (b) \$60,000.00 business interruption; (c) worker's compensation; (d) property insurance in amounts that protect your Studio's personal property, fixtures, and improvements; (e) at least \$1,000,000 per occurrence professional liability coverage due to errors or omissions in the performance of services at your Studio, including a minimum limit of \$50,000 for abuse and molestation coverage; and (f) at least \$1,000,000 per occurrence hired and non-owned auto insurance.

We reserve the right to change or modify (including increasing) the required minimum coverage limits. You acknowledge and agree that the minimum coverage limits we specify are for our benefit and are not intended to be relied upon by you as a recommendation as to the types of coverage or coverage limits that are or might be appropriate for your Studio. Additional insurance coverage or increased coverage limits might be appropriate based upon, for example, the location of your Studio. You agree to seek the advice of your insurance advisor regarding the appropriate types of coverage and coverage limits you may need to sufficiently protect your Studio.

If you fail to obtain or maintain the required insurance, or if you fail to provide us with proof of insurance coverage, we may, but are not obligated to, obtain the insurance for you and maintain it in full force and effect. You acknowledge and agree that, in the event we obtain or maintain insurance on your behalf, you will pay the applicable premiums, or reimburse us for the applicable premiums, by authorizing us to ACH your bank account for such amounts. You must also pay, or reimburse us for, our reasonable costs to obtain insurance on your behalf. If you do not comply with these insurance provisions, you will be in material breach of this Agreement. In addition to all other available remedies, we may demand that you cease operating the Studio for any period during which you do not have insurance coverage.

## 7.5. Operation of Your Studio.

Your Responsibilities. You are solely responsible for the successful operation of your Studio and for the performance of all of your obligations arising from the operation of your Studio, including, without limitation, the payment (when due) of all applicable taxes and the procurement and maintenance of all required or applicable business licenses and permits, including any changes to such licenses and permits. You shall at all times during the term of this Agreement own and control the Studio. Upon our request, you will promptly provide satisfactory proof of such ownership to us. You represent that the Statement of Ownership set forth as Exhibit 3 to this Agreement is true, complete, accurate, and not misleading.

- (a) System Standards. You must operate your Studio and use our Proprietary Assets in accordance with our System Standards, as described in the Operations Manual or otherwise communicated to you. You acknowledge receipt of a copy of the Operations Manual, which we are loaning to you. We have the right to revise the System Standards and the contents of the Operations Manual to meet changing conditions. The System Standards exist to protect our interests in the Franchise System, the Proprietary Assets and the Marks, and not for the purpose of establishing any control or duty to take control over those matters that are reserved to you. You acknowledge and agree that you will comply with the System Standards as they may be periodically changed or modified.
- (b) Operations Manual Requirements. You must at all times keep your copy of the Operations Manual current and up-to-date. In the event of any dispute as to the contents of the Operations Manual, the master copies maintained by us at our principal place of business shall be controlling.

You must treat the Operations Manual and the information it contains as confidential, and must use all reasonable efforts to maintain the information as secret and confidential. You must not copy, duplicate, record or otherwise reproduce the Operations Manual, in whole or in part, or otherwise make it or any part of it available to any unauthorized person. The Operations Manual will remain our sole property and must be kept in a secure place on the Studio premises.

You agree that the provisions of the Operations Manual, including the System Standards applicable to the Franchise System, and any changes and modifications to the Operations Manual, System Standards and Franchise System as we may make from time to time, are incorporated into this Agreement and are an essential part of your obligations under this Agreement.

At our option, we may post all or portions of the Operations Manual on a restricted website, intranet or extranet to which our franchisees will have access. If we do so, you agree to monitor and access the website, intranet or extranet for any updates to the Operations Manual. Any password or other digital identification necessary to

access the Operations Manual will be deemed to be our proprietary information, subject to the confidentiality provisions of this Agreement.

- (c) Products and Services. You acknowledge and agree that you are authorized to offer only those services and products we designate from time to time in the Operations Manual or otherwise. There are no limitations on our right to designate additional authorized services and products that you must offer. You cannot offer any other types of services or products, or operate or engage in any other type of business or profession, from or through the Studio, unless you first receive our written consent. You must participate in client membership programs as we require. We may, subject to applicable law, prescribe the maximum and/or minimum prices that you may charge clients for services and products and you agree to comply with these maximum and minimum prices.
- (d) Studio Management. You acknowledge and agree that you are solely responsible for all decisions relating to your employees including, without limitation, hiring and terminating your employees. During the term of this Agreement, except as we otherwise approve in writing, you (or if you are a legal entity, one of your owners, members, shareholders, directors or officers) or your manager, must devote full time and best efforts to the management and operation of your Studio. Your Studio must at all times be under the direct on-site supervision of an individual who has satisfactorily completed Initial Training. If you are an individual, we strongly recommend that you be the full time, on-site supervisor of your Studio's operations. We impose no limitations on, or requirements with respect to, who you may hire, except that you must comply with all applicable laws, and must not harm the goodwill associated with the Marks, the Proprietary Assets and the Franchise System. Your manager and other employees may be required to attend and complete Initial Training and will be required to enter into a non-compete and confidentiality agreement. These requirements may affect who you may hire.
- (e) Computer Hardware and Software. The minimum computer hardware requirements are specified in the Operations Manual. You may use any brand of computer hardware meeting our specifications and may acquire your computer hardware from any source. You must keep your computer in good working order and obtain and install the upgrades necessary to efficiently operate your Studio. You are responsible for consequences arising from improper use and/or poor upkeep and maintenance of your computer.

You must use the software program designated and described in the Operations Manual or otherwise designated by us. Currently, you must pay us a set up fee and a monthly fee for the required software program, which we ACH from your bank account on the first day of each month beginning with the first full month following the date on which you complete software training.

You must follow the Payment Card Industry Data Security Standards or any subsequent similar standards we require and are solely responsible for all

costs associated with these security issues. You must notify us if a data breach has occurred with respect to consumer data.

- (f) Computer Hardware and Software Updates. You must upgrade any hardware component or software program at any time to be compatible with the software package we require.
- (g) Accounting Software; Financial Reports. You must use the accounting software described in the Operations Manual or otherwise designated by us and maintain full, complete, and accurate books, records, and accounts. At the end of each calendar quarter you must provide to us, in the form we prescribe, a profit and loss statement and a balance sheet for the three-month period just ended. Within 90 days of the end of your fiscal year, you must submit to us a profit and loss statement for that fiscal year and a balance sheet as of the last day of the fiscal year prepared on an accrual basis, including all adjustments necessary for a fair presentation of your financial results. You must also maintain a report of all promotional expenditures relating to the Ongoing Marketing Spend Requirement, which we may review at our request. All such financial statements and report shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be accurate and complete in all material respects.
- (h) Additional Financial Information; Our Right to Audit. In addition to the financial statements and reports described above, we shall have the right to periodically request additional financial information about your Studio and to inspect and audit your books and records. You must permit us or our representatives or designees to enter your Studio during normal business hours to inspect and examine your operations, facilities, books and records, and you must cooperate with such inspections by rendering assistance as we or they may reasonably request. We and our affiliates may collect the Studio's books, records and other financial information for review in any form or manner we reasonably determine including, without limitation, requiring you to send documents to our offices. If an inspection or audit of your books and records reveals a deficiency in amounts owed to us, then those amounts shall become immediately due and payable to us, with interest at the rate of 12%, calculated on a per annum basis, from the date the amount was due until paid. If an inspection or audit discloses an understatement of two percent (2%) or more, then you will also reimburse us for any costs and expenses, including accountants' and attorneys' fees, in connection with the inspection or audit. You must retain your books and records for three years following the fiscal year to which they relate.
- (i) Financing and Title to Assets. You agree that you will directly obtain all financing required for the development and operation of the Studio and that no third party will obtain financing on your behalf. You further agree that you will directly own all of the assets necessary for the operation of the Studio.

- (i) ~~(j)~~ Security Interest. As security for the performance of your obligations under this Agreement, including payments owed to us or our affiliates, you shall grant us a security interest in all of the furniture, fixtures, equipment, signage, and realty (including your interests under all real property and personal property leases) of the Studio, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof, wherever located, used in connection with the Studio. You agree to execute such other documents as we may reasonably request in order to further document, perfect and record our security interest. If you default in any of your obligations under this Agreement, we may exercise all rights of a secured creditor granted to us by law, in addition to our other rights under this Agreement and at law. This Agreement shall be deemed to be a Security Agreement and Financing Statement and may be filed for record as such in the records of any county and/or state that we deem appropriate to protect our interests.
- (k) ~~(j)~~ Other Products and Services. You may not install or maintain on your Studio premises any newspaper racks, video games, juke boxes, gaming machines, gum machines, games, rides, vending machines or other similar items without our prior written approval.

7.6. Your Other Obligations. To further protect the Marks, the Proprietary Assets and the Franchise System, and their associated goodwill, you must:

- (a) attend and satisfactorily complete Initial Training and make certain that any other employee or individual having day to day supervisory responsibility for Studio operations attends and satisfactorily completes the Initial Training;
- (b) train your employees and other individuals working in your Studio so that they meet the qualifications established by us from time to time;
- (c) ensure that all of your fitness trainers have adequate insurance, including professional liability insurance or the equivalent;
- (d) feature and use the Marks and Proprietary Assets solely in the manner prescribed by us;
- (e) observe such reasonable requirements with respect to the Marks, fictitious name registrations, and copyright notices as we may direct from time to time;
- (f) not offer, sell or promote, in connection with the Marks or any same or similar mark, any type of physical fitness and nutrition services or other services or products other than those authorized by us under this Agreement;
- (g) sell or offer for sale at the Studio only services and products that we require or recommend and meet our current System Standards established in our Operations Manual;



- (h) use advertising, promotional and other materials displaying only the Marks and other names, marks, insignia and symbols we recommend or require for the Franchise System;
- (i) equip and stock your Studio with the equipment, furniture and fixtures, inventory, products and supplies required and approved by us so that at all times your Studio can operate at maximum capacity;
- (j) comply with all laws, ordinances and regulations applicable to the operation of your Studio and the offering of physical fitness and nutrition services;
- (k) provide all authorized services only at your Studio Location unless otherwise approved by us in writing;
- (l) notify us in writing within five calendar days of the commencement of any action, lawsuit, complaint or proceeding, or of the issuance of any writ, injunction, award or decree of any court, agency, governmental agency, or instrumentality that may adversely affect your financial condition or your ability to meet your obligations under this Agreement or operate your Studio and, upon request, furnish us with copies of all documents related to any such action, award or decree;
- (m) pay on a timely basis all fees and costs incurred in the operation of your Studio, whether owing to us or to third parties to avoid irreparable harm to our reputation and credit and the reputation and credit of the Franchise System and other Studios;
- (n) submit to us on a monthly basis, at the time we specify and on a form approved by us, a signed statement of the Studio's gross receipts for the previous month to be used by us to ACH from your bank account the Monthly Royalty;
- (o) submit to us, at the time we specify and on a form approved by us, such other reports we may prescribe from time to time in the Operations Manual or otherwise;
- (p) take all reasonable steps necessary to protect us, the Franchise System, the Marks and the Proprietary Assets against any misappropriation and/or similar actions taken by any third party that may damage us, the Marks, the Proprietary Assets or the Franchise System, and immediately notify us of such misappropriation or similar action;
- (q) devote such time to the operation of your Studio as is necessary to effectively and efficiently operate the Studio;
- (r) comply with all requirements in this Agreement and in the Operations Manual, as the same may be modified from time to time;
- (s) accept the transfer of any client or member of another Studio who desires to obtain physical fitness and nutrition services from you; provided however, that (i) the franchisee of such other Studio has remitted to you any prepaid amounts paid by the

client or member to the other franchisee for unused services, or (ii) arrangements have been made to assist you with accepting the client or member transfer (whether such assistance is offered by Franchisor or otherwise);

- (t) at no time solicit any employee of another Studio to become associated with your Studio as an employee, independent contractor, co-owner or otherwise;
- (u) at all times use the Studio Location solely to operate your Studio on the days and during the hours as we periodically specify, and refrain from using or permitting the use of the Studio Location for any other purpose or activity;
- (v) maintain and improve the condition and appearance of your Studio consistent with our System Standards and other Franchise System requirements as may be necessary to effectively operate your Studio;
- (w) without our prior written approval, make any material alterations to the Studio Location or make material replacements of, or alterations to, the Studio's equipment, fixtures or signs;
- (x) record all sales and related activities on a computer that is fully compatible with any program or system we require and ensure that we or our designee have full and direct access to all of your Studio's data and related information, whether in person, by telephone modem, or otherwise; and
- (y) display at all times our standard quality control and franchise opportunity signs in a highly visible area of your Studio.

## 8. ADVERTISING

8.1. Limitations. You agree to actively promote your Studio, to abide by all of our marketing and advertising requirements and to comply with the following provisions:

- (a) You may advertise your Studio and solicit clients from any area, even if the clients live or work in a territory or protected area other than the Protected Area, so long as you provide services only at the Studio location we have approved. You are not required to compensate any individual or entity in connection with this advertising and solicitation. We and our other franchisees reserve the same right to solicit, accept and provide physical and nutrition services to clients who live or work within the Protected Area, without compensating you.
- (b) All advertising and promotional materials, signs, and other items we designate for use in your Studio must bear the Marks in the form, color, location and manner we specify, and you must obtain all such materials from Approved Suppliers. Your advertising and promotional materials (including for your website) must meet our standards and specifications as described in the Operations Manual or as otherwise communicated to you by us. You may prepare and use your own advertising and promotional materials only with our prior written approval. Prior to using

advertising and promotional materials you prepare (including signs, containers, boxes, specialty and novelty items, equipment and apparel), you must submit to us a copy of the materials, along with a description of how you intend to use the materials (including in newspapers, on television, radio or the internet, in a direct mail campaign, or in any other media sources). We have the right to approve, disapprove, or place conditions upon the advertising and promotional materials, such as limiting or modifying text, artwork or the manner in which you intend to disseminate the materials. We will approve or disapprove your advertising and promotional materials in writing within 30 days after we receive your request for approval. If we do not respond within such 30 day period, the advertising material will be deemed disapproved.

- (c) You must pay us or a party we designate a fee to establish and maintain a website for your Studio (the "Studio Website"). If you own more than one Studio, you can use one website for all of your Studios. You must use our Approved Suppliers to set-up, design and host your website. We retain the right to require you to cease maintaining the Studio Website and participate, at your cost, in a website that we, at our option, maintain for all Studios in the future. A "website" is any interactive electronic document, mobile media, social media tool or page or other Internet presence, contained in or utilizing a network of computers linked by communication software, including the Internet, Worldwide Web and any successor technology, including texting, social media promotions, posting or sites such as Facebook, Twitter and MySpace, and including any other electronic, mobile or digital device, method or system enabling the transmission of information.
- (d) You may utilize any social media website or any other Internet community that we approve (the "Approved Sites") pursuant to our then-current social media policy, which we may modify from time to time. You must follow our guidelines when posting messages relating to your Studio on the Approved Sites. We reserve the right to require our approval of any message you compose for an Approved Site or to revoke our approval to use any Approved Site at any time.

8.2. Pro-Opening-Advertising-Initial Marketing Spend Requirement. During the period beginning at least 60 days before your Studio opens and continuing through the first 90 days of your Studio's operations, you must spend at least \$25,000 to advertise, market and promote your Studio. We will provide you with recommendations and guidelines for advertising and promoting your Studio prior to opening. You are required to purchase a stationery start-up kit and we recommend that you also purchase a press kit and other advertising and promotional materials. ~~If you choose to create your own pro-opening advertising and promotional materials, you must obtain our written approval of the materials before using them. You are required to spend at least \$3,000 to \$6,000 on your pre-opening activities.~~

### 8.3. Marketing and Production Fund.

- (a) We do not currently, but may at a later time, establish and administer a Marketing and Production Fund. If a Marketing and Production Fund is established, you will be required to make contributions to the Fund as required under Section 4.11. We would have the right to collect for deposit into the Marketing and Production Fund any advertising, marketing, or similar allowances paid to us by suppliers to the Franchise System who instruct us to use the allowances for advertising or marketing purposes. We may incorporate the Marketing and Production Fund or operate it through a separate entity as we deem appropriate. We will have no fiduciary obligations to you in connection with our administration of the Marketing and Production Fund. We will not use any of the funds contributed to the Marketing and Production Fund principally to solicit new franchise sales. If we or our affiliates own any Studios, those Studios will make contributions to the Marketing and Production Fund on the same basis as you and our other franchisees.
- (b) We will designate all programs and production of materials to be financed by the Marketing and Production Fund and will have sole control over the creative concepts, materials (including materials produced by us), and endorsements used and their geographic, market, and media placement and allocation. The Marketing and Production Fund may pay for (i) preparing and producing video, audio, and written materials (including marketing and promotional materials and local store marketing advertisements we prepare) and electronic media, (ii) administering regional and multi-regional marketing and advertising programs, including purchasing space in print publications, direct mail, radio and other media advertising and using advertising, promotion, and marketing agencies and other advisors to provide assistance, (iii) supporting public relations, market research, and other advertising, promotion, and marketing activities, and (iv) develop and maintain website(s) for the Franchise System. The Marketing and Production Fund will advertise in printed materials or on radio or television for local, regional or national circulation. We and/or our regional or national advertising agency will produce all advertising and marketing. We will determine the use of the funds contributed to the Marketing and Production Fund, including allocating a portion of any Fund contributions to any regional advertising programs we may establish in the future. We will not be required to spend any particular amount on marketing, advertising or promotion in the area in which your Studio will be located. In addition, we will not be required to ensure that Marketing and Production Fund expenditures for or affecting any geographic area be proportionate or equivalent to Marketing and Production Fund contributions by Studios operating in that area, or that any Studio benefits from the development or placement of advertising and marketing materials directly or in proportion to its Marketing and Production Fund contributions. We may use collection agents and institute legal proceedings to collect Marketing and Production Fund contributions at the Marketing and Production Fund's expense. We also may forgive, waive, settle, and compromise all claims by or against the Marketing and Production Fund. Except as set forth in the Franchise Agreement, we assume no other direct or indirect liability or

obligation to you for collecting amounts due, or maintaining, directing, or administering the Marketing and Production Fund. We have no fiduciary obligation to you in connection with our administration of the Marketing and Production Fund.

- (c) We will account for the Marketing and Production Fund separately from our other funds and will not use the Marketing and Production Fund for any of our general operating expenses, except to compensate us for the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Marketing and Production Fund and its programs, including conducting market research, preparing advertising, promotion, and marketing materials, and collecting and accounting for Marketing and Production Fund contributions. The Marketing and Production Fund will not be our asset and we will not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing and Production Fund or for any other reason. The Marketing and Production Fund may spend in any fiscal year more or less than the total Marketing and Production Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will use interest earned on Marketing and Production Fund contributions to pay costs before spending the Fund's other assets.
- (d) If a Marketing and Production Fund is established, we will prepare annual unaudited financial statements that will be available to you upon written request 120 days after the end of the Marketing and Production Fund's fiscal year. We are not required to audit the Marketing and Production Fund but may do so at our discretion.

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

8.5. Ongoing Marketing Spend Requirement.

- (a) You must spend the minimum Ongoing Marketing Spend Requirement described in Section 4.13 of this Agreement. The Ongoing Marketing Spend Requirement shall initially consist of the amounts you spend to advertise, market and promote your Studio.
- (b) No later than 90 days prior to the date on which you open your Studio, you must submit to us for approval an advertising and marketing plan describing your pre-opening advertising plan and your plan for the first three months after your Studio opens. You will not be permitted to open your Studio until we approve this advertising and marketing plan. Subsequent to such period, and during the term of this Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Ongoing Marketing Spend Requirement.

8.6. Advisory Committee. We have established and receive input and feedback regarding advertising and marketing from the Franchisee Leadership Council Subcommittee on Growth Initiatives (the "Advisory Committee"). The Franchisee Leadership Council consists in part of franchisees and area directors, each of whom represents the region in which his or her Studio or area director territory is located, and are elected by the franchisees and area directors in their respective regions. In addition, representatives of management participate in the Franchisee Leadership Council. Each franchisee and area director member of the Franchisee Leadership Council provides us with feedback and input on operational, marketing and other matters related to the Franchise System. Each franchisee and area director is entitled to one vote for each Studio and territory owned. Elected members of the Franchisee Leadership Council serve a two-year term. The Advisory Committee consists of a chairperson, who is a member of the Franchisee Leadership Council, and franchisees and/or area directors who agree to serve on the Advisory Committee at the request of the chairperson. The Franchisee Leadership Council and the Advisory Committee serves in an advisory capacity only and does not have operational or decision-making power. We may alter the function and/or composition of the Franchisee Leadership Council and Advisory Committee at any time, and may otherwise form, change or dissolve the Franchisee Leadership Council or the Advisory Committee.

8.7. Gift Cards, Certificates and Checks. If we determine that you are required to sell and honor gift cards, you must purchase gift cards from our Approved Supplier and may use and honor gift cards only in the manner we designate and require. You may be required to purchase gift certificates and checks from a supplier we designate and to use and honor gift certificates and check as we may designate or require.

## 9. INDEMNIFICATION

9.1. Indemnification. You agree to indemnify, defend and hold harmless us and our affiliates, and our and their respective shareholders, members, managers, owners, principals, directors, officers, employees, agents, representatives, successors and assigns (the "Indemnified Parties") from and against, and agree to reimburse them for, all claims, obligations and damages described in this Section 9.1, any and all of your third party payment or other obligations, and any and all claims and liabilities directly or indirectly arising out of the operation of your Studio or the use of the Marks and Proprietary Assets in any manner, including, without limitation, those alleged to be or found to have been caused by the Indemnified Party's negligence or willful misconduct, unless (and then only to the extent that) the claims and liabilities are determined to be caused solely by the Indemnified Party's gross negligence or willful misconduct in a final, un-appealable ruling issued by a court or arbitrator with competent jurisdiction. For purposes of this indemnification, claims means and includes all obligations, actual and consequential damages, and costs reasonably incurred in the defense of any claims against the Indemnified Parties including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. Each Indemnified Party shall have the right to defend any such claim against it at your expense and agree to settlements or take any other remedial, corrective, or other actions. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

## 10. DEFAULT; TERMINATION

10.1. Immediate Termination by Us. We have the right, at our option, to terminate this Agreement and all rights granted to you, without affording you any opportunity to cure any default (subject to any state laws to the contrary, in which case state law will prevail), effective upon delivery to you of a termination notice, upon the occurrence of any of the following events:

- (a) Unauthorized Disclosure. If you or any person under your control intentionally or negligently discloses to any unauthorized person, or copies or reproduces, the contents or any part of the Operations Manual or any other Proprietary Assets, trade secrets or confidential information of ours or our affiliates;
- (b) Fraud. If you commit fraud in connection with the purchase or operation of the Studio or otherwise engage in conduct that, in our sole judgment, impairs or may impair the goodwill associated with the Marks or otherwise subjects the Marks or the Franchise System to ridicule, scandal, reproach, scorn or indignity;
- (c) Abandonment. If you cease to operate your Studio or you otherwise abandon your Studio for a period of two consecutive days, or you indicate an intent to permanently discontinue operation of the Studio, unless and only to the extent full operation of your Studio is suspended or terminated due to fire, flood, earthquake,

or other similar causes beyond your control and not related to the availability of funds to you;

- (d) **ifBankruptcy.** **If** you, or any person controlling, controlled by or under common control with you (“your affiliates”), becomes insolvent or are adjudicated bankrupt; or if you or any of your affiliates file or has filed against you or any of your affiliates, a petition in bankruptcy, reorganization or similar proceeding under the bankruptcy laws of the United States; or if a permanent or temporary receiver is appointed for you or any of your affiliates; or if you or any of your affiliates requests the appointment of a receiver or makes a general assignment for the benefit of creditors;
- (e) **ifJudgment.** **If** a final judgment against you or any of your affiliates in the amount of five thousand dollars (\$5,000) or more remains unsatisfied of record for 30 days or longer; or if the bank accounts, property or receivables of you or any of your affiliates are attached and such attachment is not dismissed within 30 days; or if execution is levied against your or any of your affiliates’ business or property; or if suit is instituted to foreclose any lien or mortgage against your Studio, the premises thereof or equipment thereon, and not dismissed within 30 days;
- (f) **ifCriminal Conviction.** **If** you or any of your Bound Parties (as defined in Section 12.1) is convicted of, or pleads no contest or guilty to, a felony, a crime involving moral turpitude, or any crime or offense that, in our sole judgment, is reasonably likely to harm or unfavorably affect the Marks, the Proprietary Assets or the Franchise System or their associated goodwill and reputation;
- (g) **ifFailure to Pay.** **If** you or any other legal entity in which you or one of your owners with at least a 25% ownership interest in you, is an owner) fails to pay any amounts due us or our affiliates within 10 days after delivery of notice that such fees or amounts are overdue;
- (h) **ifUnderreporting.** **If** you intentionally under report your Studio’s gross receipts by any amount or negligently under report your Studio’s gross receipts by 5% or more during any reporting period;
- (i) **ifTraining/Commencement of Operations.** **If** you or any of your owners is discovered to be cheating at Initial Training or fails to complete Initial Training to our satisfaction, or if you fail to open your Studio by the Projected Opening Date;
- (j) **ifMisuse of Marks.** **If** you or any of your affiliates misuse the Marks or Proprietary Assets; fail to follow our directions and guidelines concerning use of the Marks or Proprietary Assets, or use any marks in connection with your Studio not authorized by us and fail to correct the misuse or failure within 10 days after delivery of notice from us;



- (k) ~~if~~**Repeated Non-Compliance.** **If** you receive three notices of default from us within a 12-month period, regardless of whether you cured the defaults;
- (l) ~~if~~**Unauthorized Transfer.** **If** you sell, transfer or otherwise assign this Agreement, the Studio, or any interest in this Agreement or the Studio, or sell, transfer or otherwise assign a substantial portion of the Studio, in each case, without complying with the provisions of this Agreement applicable to transfers;
- (m) ~~if~~**Loss of Possession.** **If** you lose the right to occupy the Studio premises;
- (n) ~~if~~**Termination of Other Agreement.** **If** we or any of our affiliates issues a notice of termination with respect to any other franchise agreement, master franchise agreement or area director agreement between us and any of our affiliates and you (or other legal entity in which you, or one of your owners with at least a 25% ownership interest in you, is an owner) governing the operation of another Studio, or master franchise or area director business;
- (o) ~~if~~**Loan Default.** **If** you commit a default under any loan from, or lease with, us, our affiliates or a third party and fail to cure the default within the time specified by us or by any third party;
- (p) ~~if~~**Health/Safety.** **If** you create or allow to exist any condition in or at the Studio, or on or about the Studio premises, that we reasonably believe presents health or safety concerns for the Studio's customers or employees.

10.2. **Termination by Us-30 Days Notice.** If you breach any other provision of this Agreement, we will have the right to terminate this Agreement 30 days after we deliver to you prior written notice of any such breach (subject to any state laws to the contrary, in which case state law will prevail), including, without limitation, if you fail to comply with the provisions of the Operations Manual and fail to cure the default during the 30 day period. In that event, this Agreement will terminate without further notice to you, effective upon expiration of the 30 day period.

10.3. **Default Fee.** In addition to our other rights and remedies, we have the right to charge you a \$250 default fee per breach by you of any term or condition of this Agreement including, without limitation, failure to pay (or to have adequate amounts available for ACH from your bank account) amounts owed to us or our affiliates or failure to timely provide required reports. We may change or eliminate this fee.

10.4. **Your Obligations Upon Termination.** Upon the expiration or termination of this Agreement for any reason, you must:

- (a) pay all Monthly Royalties and other amounts then owed to us or our affiliates pursuant to this Agreement or any other agreement between us, including any other franchise agreement, or any master franchise agreement or area director agreement, or otherwise;

- (b) cease identifying yourself as a franchisee of the Franchise System, cease using any of the Marks and Proprietary Assets or any confusingly similar names, marks, systems, insignia, symbols or other procedures or methods, and cease doing anything that would indicate any relationship between us;
- (c) return to us the Operations Manual and all other manuals, plans, specifications, designs, records, data samples, models, programs, materials, handbooks, drawings and other materials provided to you by us;
- (d) notify the telephone company and all telephone company directory publishers and all domain name providers of the termination or expiration of your right to use any telephone number and any regular, classified, or other telephone directory listings, and any domain names associated with any Mark (including any telephone number, directory listing or domain name used in connection with your Studio) and authorize their transfer to us or our designee. You acknowledge that, as between you and us, we have the sole right to, and interest in, all telephone, teletype and facsimile machine numbers, directory listings and domain names associated with any Mark (including those related to your Studio). Should you fail to make such notifications, you authorize us, and hereby appoint us and any of our officers as your attorney-in-fact, to direct the telephone company, all telephone directory publishers, and all domain name providers to transfer to us or our designee any telephone, teletype and facsimile machine numbers, directory listings and domain names relating to the Studio, and the telephone company, all telephone directory publishers and all domain name providers may accept such direction or this Agreement as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;
- (e) notify the clients of your Studio that you are no longer our franchisee and refund to your clients any prepaid amounts for unused services;
- (f) direct your clients to another Studio that can perform any unused, but prepaid services for your clients;
- (g) transfer your client list to us or our designee. You acknowledge that, as between you and us, we have the sole right to, and interest in, your client lists and other client information; and
- (h) abide by all restrictive covenants set forth in Section 12 of this Agreement.

10.5. Our Options in the Event of Your Default.

- (a) If you are in default of the Franchise Agreement and have not cured the default within the applicable cure period:
  - (i) we have the right (but not the obligation) to enter your Studio to make modifications necessary to protect the Proprietary Assets, to remove your equipment and signage, to cure any default under the Franchise Agreement

or under the lease for the Studio Location, and assume all of your rights under the lease (including making lease payments), including the right to assign or sub-lease.

- (ii) we have the right (but not the obligation) to enter the Studio and assume the Studio's management (or to appoint a third party to assume its management) for any time period we deem appropriate. If we (or a third party) assume the Studio's management, you must pay us or the third party we designate (in addition to the Monthly Royalty and any additional amounts you owe us or our affiliates) our then-current monthly management fee (currently \$5,000). If we (or a third party) assume the Studio's management, you acknowledge that we (or the third party) will have a duty to utilize only reasonable efforts and will not be liable to you or your owners for any debts, losses, or obligations the Studio incurs, or to any of your creditors for any supplies or services the Studio purchases, while we (or the third party) manage it. The exercise of our rights under this Section 10.5 of this Agreement shall not affect our right to terminate this Agreement.

## 11. TRANSFER

11.1. Transfers. You acknowledge and agree that we are entering into this Agreement in reliance upon, and in consideration of, your business skills, financial capacity and other required qualifications. Accordingly, the rights and duties created under this Agreement are personal to you. Your interest in this Agreement, any of your rights under this Agreement, your Studio, and any interest therein may not be assigned, transferred, shared or divided, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner, without our prior written consent. Any actual or intended assignment, transfer or sale made in violation of the terms of this Section 11 shall be null and void and shall constitute a material breach of this Agreement, constituting good cause for termination of this Agreement. We will not unreasonably withhold our consent to a transfer, provided you fully comply with the provisions herein. If the proposed transfer is of this Agreement and the Studio or the day-to-day operational responsibilities for the Studio, or a controlling interest in you, or is one of a series of transfers (regardless of the time period over which these transfers take place) that, in the aggregate, transfer this Agreement and the Studio or a controlling interest in you (25% or more), all of the following conditions must be met before or concurrently with the effective date of the transfer:

- (a) all obligations created by this Agreement, all ancillary documents and any other franchise agreements, master franchise agreements, area director agreements or other agreements between us have been discharged or otherwise assumed by the transferee;
- (b) all amounts due and owing pursuant to this Agreement or otherwise (including under another franchise agreement, master franchise agreement or area director agreement with us) by you (or any other legal entity in which you, or one of your

owners with at least a 25% ownership interest in you, is an owner) to us, our affiliates, or third parties whose debts or obligations we have guaranteed on your behalf, if any, are paid in full;

- (c) you are not in default under this Agreement or under any other franchise agreement, master franchise agreement, area director agreement or other agreements between us;
- (d) the proposed transferee agrees to operate the Studio as a Fitness Together Studio and signs the then-current form of franchise agreement, the provisions of which may be materially different than the provisions contained in this Agreement;
- (e) the proposed transferee (and any other persons required by us under the then-current form of franchise agreement) must satisfactorily complete Initial Training;
- (f) you provide written notice to us at least 30 days prior to the proposed effective date of the transfer and include information reasonably detailed to enable us to evaluate the terms and conditions of the proposed transfer, which, at a minimum, includes a written offer from the proposed transferee;
- (g) the proposed transferee provides information to us sufficient for us to assess the transferee's business experience, aptitude, and financial qualification, and we approve the proposed transferee as a franchisee;
- (h) neither the transferee nor its owners or affiliates have an ownership interest in, or perform services in any capacity for a Competitive Business (defined in Section 12.1)
- (i) the proposed transferee agrees to renovate, refurbish, remodel or replace, at its own cost, the real and personal property and equipment used in operating the Studio within the timeframe specified by us in order to comply with our then current image and System Standards;
- (j) your landlord permits you to transfer the Studio lease to the transferee;
- (k) you, your owners, and any other Guarantors under this Agreement, execute a non-disparagement agreement and general release in a form satisfactory to us, releasing us and our affiliates, and our and their respective officers, directors, members, shareholders, employees and agents, in their corporate and individual capacities, from any and all claims, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;
- (l) you and your owners and guarantors abide by all post-termination covenants, including the covenant not to compete set forth in Section 12.2;

- (m) you or the transferee pay us a fee in the amount ~~equal to~~ equal to 50% of the then-current initial franchise fee ("Transfer Fee"). The Transfer Fee must be paid to us in the form of a cashier's check or wire transfer ~~en~~ prior to the date consummation of the transfer;
- (n) if you are an individual transferring this Agreement and the Studio to an entity wholly owned by you, you agree to remain personally responsible for the entity's performance of its obligations under this Agreement and to continue to comply personally with all obligations under this Agreement; and
- (o) neither the transferee nor its owners may, without our prior written consent, take possession of the Studio until the transfer process has been completed.

You acknowledge that the proposed transferee will be evaluated by us based on the same criteria as those currently being used to assess new franchisees and that the proposed transferee will be provided with the disclosures required by law. We may review all information regarding the Studio and your franchise business that you give the transferee, and we may give the transferee copies of any reports or information that you have given us or that we have made regarding the Studio.

- 11.2. Transfer to Corporate Entity Owned by You. Notwithstanding the foregoing, you may, solely for the convenience of ownership, ~~within 90 days from the Effective Date and~~ without the payment of the Transfer Fee, transfer the ownership of your Studio under this Agreement to a legal entity which is wholly or majority owned by you. Before such transfer, you must supply to us a copy of the organizational documents of the entity, cause all owners of the entity to execute a guaranty of the obligations under this Agreement (substantially in the form set forth as Exhibit 4), and cause all necessary parties to execute any other transfer documents we deem reasonably necessary. As a condition to such transfer, you and your owners and guarantors must sign our then-current general release.
- 11.3. Death, Disability or Permanent Incapacity. Upon your death, disability or permanent incapacity, we shall not unreasonably withhold our consent to the transfer of your interest in the Agreement to a spouse, heirs or relatives, by blood or marriage, whether such transfer is made by will or by operation of law, provided that the conditions of Section 11.1 and the requirements of this Agreement have been met, and further provided that the transfer does not result in a change of control of you to any party other than such spouse, heir or relative. In such event, no Transfer Fee shall be required. If your heirs do not obtain our consent as prescribed herein, your personal representative shall have 180 days to dispose of your interest hereunder, which disposition shall be subject to all of the terms and conditions for transfers under this Agreement.
- 11.4. Your Agreement to Transfer Restrictions. Any transfer permitted by this Section 11 shall not be effective until all requirements in this Agreement concerning transfer have been met and we have approved the transfer in writing. You agree that the restrictions on transfer imposed in this Agreement are reasonable and necessary to protect the Marks, the

Proprietary Assets, your Studio and the Franchise System, as well as our reputation and image, and are for the protection of us, you, and our other franchisees.

11.5. Intentionally Omitted.

- 11.6. Our Right of First Refusal. At least 60 days prior to a proposed sale or transfer by you of a controlling interest in this Agreement (25% or more) or the assets of your Studio, whether voluntarily or involuntarily undertaken, you must give us written notice of such proposed sale or transfer. The notice shall set forth the name of the proposed purchaser, a description of the proposed transfer transaction, all terms and conditions of the proposed sale, and a copy of a fully executed purchase and sale agreement. The effectiveness of the purchase and sale agreement must be contingent upon our waiver of our right of first refusal as described in this Section 11.6.

Upon our receipt of the notice and other documents, we will have 60 days in which to exercise our right of first refusal on the same terms and conditions set forth within the notice. During such period, we may also notify you that we have acted to withhold approval of the proposed transfer and will provide you with the specific reasons for such action.

- 11.7. Transfer if Franchisee is an Entity. If Franchisee is a legal entity, the terms of this Section 11 shall be deemed to also apply to any sale, resale, pledge, assignment, transfer or encumbrance (“transfer”) of the voting stock of, or other ownership interest in you, which would alone or together with other related, previous, simultaneous or proposed transfers, result in the transfer of a controlling interest in you.
- 11.8. Controlling Interest. A person will be deemed to have a controlling interest in you if that person has the right to vote 25% or more of the voting securities or other forms of ownership interest of a corporation, partnership or other form of entity, or is entitled to receive 25% or more of the net profits of any such entity, or is otherwise able to direct or cause the direction of that entity’s management or policies.
- 11.9. Our Transfer. This Agreement inures to the benefit of us and our successors and assigns, and we have the right to transfer or assign all or any part of our interest, rights, privileges, duties and obligations hereunder to any person or legal entity without your approval.

12. **RESTRICTIVE COVENANTS**

- 12.1. Non-Competition During Term. You agree that, in addition to the license of the Marks granted to you under this Agreement, you have been licensed commercially valuable information that comprises the Proprietary Assets, including without limitation, operations, marketing, advertising and related information and materials. You further agree that the value of this information arises not only from the time, effort and money expended on compiling the information, but also from all franchisees’ use of the information. Therefore, you agree that, other than the Studio, neither you nor any of your officers, directors, shareholders, members, partners or other owners, nor any spouse or

immediate family member of yours or any of these individuals (collectively, "Bound Parties"), shall, during the term of this Agreement:

- (a) have any direct or indirect interest as a disclosed or beneficial owner in a "Competitive Business" as defined below, wherever located or operating;
- (b) perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business, wherever located or operating;
- (c) divert or attempt to divert any business related to the Studio, our business, or any other franchisee's Studio by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of ours, any of our affiliates, or another franchisee, to any Competitive Business;
- (d) directly or indirectly solicit or employ any person who is employed by us, any of our affiliates, or another franchisee of ours without obtaining the employer's prior written consent; or
- (e) use any of the Proprietary Assets for any unauthorized purpose, use any confusingly similar method, format, procedure, technique, slogan, insignia, term, designation, design, diagram, promotional material or course material, or cause or permit any facility or program to look like, copy or imitate any facility or program operated or licensed by us without our prior written consent.

The term "Competitive Business" for purposes of this Agreement, means any business operating or granting franchises or licenses to others to operate one-on-one or personal small group physical fitness studios or any other physical fitness or nutrition service business, or any business offering or selling products or educational materials, or conducting workshops for, services that are the same as, similar to, or competitive with the Franchise System or other Studios.

- 12.2. Post Termination Covenant Not to Compete. For a period of two years after the expiration or termination of this Agreement (regardless of the cause of termination) or the sale or transfer of your Studio, or such other date as you and all other Bound Parties begin to comply with this Section 12.2, whichever is later, neither you nor any other Bound Party shall have any direct or indirect interest as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative, agent, or in any other capacity in any Competitive Business located or operating within a three-mile radius of your Studio (including a) the former Studio Location) or within a three-mile radius of any other Studio existing on the later of the effective date of termination or expiration of this Agreement or the date on which you and all other Bound Parties begin to comply with this Section 12.2. You and the other Bound Parties expressly acknowledge that you and they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section 12.2 will not deprive you or them of their personal goodwill or ability to earn a living.

- 12.3. Branded Business. During the term of this Agreement, neither you nor any other Bound Party will, without our written consent, operate, directly or indirectly, any Branded Business within a one-quarter (¼) mile radius of your Studio. The term “Branded Business” means any business marketed by a franchisor or chain under a locally, regionally, or nationally known or registered trademark or service mark (including by our affiliate, Fitness Together Franchise Corporation).
- 12.4. Permitted Interests. Nothing in this Section 12 shall prohibit you or any other Bound Party from owning shares of a class of securities listed on a stock exchange or traded on the over-the-counter market representing five percent (5%) or less of the aggregate number of shares of that class of securities issued and outstanding.
- 12.5. Confidential Information. We possess certain proprietary confidential information consisting of the Marks, the Proprietary Assets, our System Standards, and other methods, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques and knowledge of and experience in the operation and franchising of Studios (the “Confidential Information”). We shall disclose the Confidential Information to you in Initial Training, in the Operations Manual, and in guidance and materials furnished to you during the term of this Agreement. You have not acquired any interest in the Confidential Information other than the right to utilize it in the territory and Protected Area in the execution of your duties hereunder during the term of this Agreement, and you acknowledge that the use or duplication of the Confidential Information in any other business venture would constitute an unfair method of competition. You acknowledge and agree that the Marks and Proprietary Assets have valuable goodwill attached to them, that their protection and maintenance are essential to us and our affiliates, and that any unauthorized use or disclosure of the Marks, the Proprietary Assets or other Confidential Information will result in irreparable harm to us and our affiliates. You also acknowledge and agree that the Confidential Information is proprietary, includes trade secrets of ours, and is disclosed to you solely on the condition that you agree, and all of the other Bound Parties hereby agree that you:
- (a) will not use the Confidential Information in any other business or capacity;
  - (b) will maintain the absolute confidentiality of the Confidential Information during and after the term of this Agreement;
  - (c) will not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and
  - (d) will adopt and implement all reasonable procedures prescribed periodically by us to prevent unauthorized use or disclosure of the Confidential Information, including requiring that every employee, agent or independent contractor you hire or engage to assist you in the operation of your Studio execute a confidentiality and non-compete agreement. (See Section 7.1)



You agree that we shall have the perpetual right to use and authorize other franchisees to use, and you shall fully and promptly disclose to us, all ideas, concepts, methods, and techniques relating to the development and operation of the Franchise System howsoever conceived or developed by you or your employees during the term of this Agreement. You acknowledge that any ideas, concepts, methods, and techniques or materials' concerning any Studio, whether or not protectable intellectual property and whether or not created by or for you or your owners or employees, must be promptly disclosed to us and will be deemed to be our and our affiliates' sole and exclusive property, part of the Franchise System and works "made for hire" for us and our affiliates. With respect to any such item, you assign ownership of that item, or will cause your owners or employees to assign ownership of that item, and all related rights to that item, to us and our affiliates and you must sign whatever assignment or other documents we or our affiliates request to reflect our ownership of, or to help us and our affiliates obtain intellectual property rights in, the item. If you are an individual, you agree that your spouse shall be bound, and if you are an entity, you agree that any officers, directors, partners, shareholders and members and their respective spouses shall be bound by this Section 12.5.

### 13. NOTICES

All notices required to be given under this Agreement shall be in writing and shall be hand delivered or sent by a nationally recognized overnight mail delivery service, registered or certified mail, postage prepaid, return receipt requested, or by any delivery service providing documentation of receipt, to the address set forth on page 1 of this Agreement, or to such other address as specified in a written notice given to the other party from time to time. Any such notice shall be deemed delivered (a) on the date shown on the return receipt or in the courier's records as of the date of delivery, or (b) on the date of first attempted delivery, if actual delivery cannot be made for any reason.

### 14. GOVERNING LAW; JURISDICTION AND VENUE; ARBITRATION

- 14.1. Governing Law. ALL MATTERS RELATING TO ARBITRATION WILL BE GOVERNED BY THE UNITED STATES FEDERAL ARBITRATION ACT (9 U.S.C. §§ 1 ET SEQ.). EXCEPT TO THE EXTENT GOVERNED BY THE FEDERAL ARBITRATION ACT, THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. SECTIONS 1051 ET SEQ.), OR OTHER UNITED STATES FEDERAL LAW, THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN US AND YOU WILL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED (CURRENTLY, COLORADO) WITHOUT REGARD TO ITS CONFLICT OF LAWS RULES, EXCEPT THAT ANY STATE LAW REGULATING THE SALE OF FRANCHISES OR GOVERNING THE RELATIONSHIP OF A FRANCHISOR AND ITS FRANCHISEE WILL NOT APPLY UNLESS ITS JURISDICTIONAL REQUIREMENTS ARE MET INDEPENDENTLY WITHOUT REFERENCE TO THIS PARAGRAPH.

- 14.2. Jurisdiction and Venue. SUBJECT TO SECTION 14.5, YOU AND THE BOUND PARTIES AGREE THAT ALL ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OTHERWISE AS A RESULT OF THE RELATIONSHIP BETWEEN YOU AND US MUST BE COMMENCED EXCLUSIVELY IN THE STATE OR FEDERAL COURT OF GENERAL JURISDICTION IN THE LOCATION IN WHICH OUR PRINCIPAL PLACE OF BUSINESS IS LOCATED, WHICH IS CURRENTLY DENVER, COLORADO, AND WE AND YOU (AND EACH OWNER) IRREVOCABLY CONSENT TO THE JURISDICTION OF THOSE COURTS AND WAIVE ANY OBJECTION TO EITHER THE JURISDICTION OF OR VENUE IN THOSE COURTS.
- 14.3. Waiver of Jury Trial and Punitive Damages. WE, YOU AND THE OTHER BOUND PARTIES EACH WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY. EXCEPT FOR YOUR OBLIGATION TO INDEMNIFY US FOR THIRD PARTY CLAIMS UNDER SECTION 19.1, AND EXCEPT FOR PUNITIVE, EXEMPLARY OR MULTIPLE DAMAGES AVAILABLE TO EITHER PARTY UNDER UNITED STATES FEDERAL LAW, WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY OR MULTIPLE DAMAGES AGAINST THE OTHER AND AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN US AND YOU, THE PARTY MAKING A CLAIM WILL BE LIMITED TO EQUITABLE RELIEF AND TO RECOVERY OF ANY ACTUAL DAMAGES IT SUSTAINS.
- 14.4. Remedies. The parties agree that any claim for lost earnings or profits by you shall be limited to a maximum amount equal to the net profits of the Studio for the prior year as shown on your federal income tax return. ~~In the event this Agreement is terminated by us based on your default, the parties agree that it would be difficult, if not impossible, to determine the amount of damages that we would suffer. Therefore, the parties agree that a reasonable estimate of damages is the net present value of the Monthly Royalty and other fees that would have become due following termination of this Agreement for the period this Agreement would have remained in effect but for your default or termination of the Agreement without cause. Monthly Royalty and other fees for purposes of this Section 14.4 shall be calculated based on your Studio's average monthly gross receipts for the 12 months preceding the termination date of this Agreement. In the event you have not opened the Studio for business for at least 12 months preceding the termination date, Monthly Royalty and other fees for purposes of this Section 14.4 shall be calculated based on the average monthly gross receipts of all Studios in the Franchise System during our last fiscal year prior to the termination date.~~
- 14.5. Arbitration. We and you agree that all controversies, disputes, or claims between us and our affiliates, and our and their respective shareholders, members, officers, directors, agents, and/or employees, and you (and/or your owners, guarantors, affiliates, and/or employees) arising out of or related to:

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

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association-in-the-United-States (“AAA”). The arbitration proceedings will be conducted by one arbitrator and, except as this Subsection otherwise provides, according to the AAA’s then current commercial arbitration rules. All proceedings will be conducted at a suitable location chosen by the arbitrator located in or within fifty (50) miles of our then-current principal place of business (currently Denver, Colorado). All matters relating to arbitration will be governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Judgment upon the arbitrator’s award may be entered in any court of competent jurisdiction.

The arbitrator shall issue only a standard decision and not a reasoned decision. The arbitrator has the right to award or include in his or her award any relief which he or she deems proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys’ fees and costs ~~(as allowable under this Agreement or applicable law)~~, provided that the arbitrator may not declare any Marktrademark generic or otherwise invalid or, except as expressly provided in this Section 14.5 or 14.3 above, award any punitive, exemplary or multiple damages against either party (we and you hereby waiving to the fullest extent permitted by law, except as expressly provided in this Section 14.5 or Section 14.3 above, any right to or claim for any punitive, exemplary or multiple damages against the other).

We and you agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. We and you further agree that, in any arbitration proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the United States Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim which is not submitted or tiled as required is forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us. We reserve the right, but have no obligation, to advance your share of the costs of any arbitration proceeding in order for such arbitration proceeding to take place and by doing so shall not be deemed to have waived or relinquished our right to seek the recovery of those costs in accordance with Section 15.9 below.

We and you agree that arbitration will be conducted on an individual, not a class-wide, basis and that an arbitration proceeding between us and our affiliates, and our and their respective shareholders, officers, directors, agents, and/or employees, and you (and/or your owners, guarantors, affiliates, and/or employees) may not be commenced, conducted or consolidated with any other arbitration proceeding between us and any other person. Notwithstanding the foregoing or anything to the contrary in this Section 14.5 or Section 15.4, if any court or arbitrator determines that all or any part of the preceding sentence is unenforceable with respect to a dispute that otherwise would be subject to arbitration under this Section 14.5, then all parties agree that this arbitration clause shall not apply to that dispute and that such dispute shall be resolved in a judicial proceeding in accordance with ~~this Section 14 (excluding this Section 14.5)~~ the dispute resolution provisions of this Agreement.

You and we agree that, in any arbitration arising as described in this Section 14.5, requests for documents shall be limited to documents that are directly relevant to significant issues in the case or to the case's outcome; shall be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain; and shall not include broad phraseology such as "all documents directly or indirectly related to." You and we further agree that there shall be no interrogatories or requests to admit. With respect to any electronic discovery, you and we agree that:

- (a) production of electronic documents need only be from sources used in the ordinary course of business. No such documents shall be required to be produced from back-up servers, tapes or other media;
- (b) the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format which is usable by the party receiving the documents and convenient and economical for the producing party. Absent a showing of compelling need, the parties need not produce metadata, with the exception of header fields for email correspondence;
- (c) the description of custodians from whom electronic documents may be collected shall be narrowly tailored to include only those individuals whose electronic documents may reasonably be expected to contain evidence that is material to the dispute; and
- (d) where the costs and burdens of electronic discover are disproportionate to the nature of the dispute or to the amount in controversy, or to the relevance of the materials requested, the arbitrator shall either deny such requests or order disclosure on condition that the requesting party advance the reasonable cost of production to the other side, subject to allocation of costs in the final award as provided herein.

In any arbitration arising out of or related to this Agreement, each side may take three discovery depositions. Each side's depositions are to consume no more than a total of 15

hours. There are to be no speaking objections at the depositions, except to preserve privilege. The total period for the taking of depositions shall not exceed six weeks.

The provisions of this Section 14.5 are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

Any provisions of this Agreement below that pertain to judicial proceedings shall be subject to the agreement to arbitrate contained in this Section 14.5.

14.6. Limitation of Claims. You and the other Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Except with regard to your obligation to pay us and our affiliates Monthly Royalty and other fees and payment due from you pursuant to this Agreement or otherwise, any claims between the parties must be commenced within one year from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claim, or such claim will be barred. The parties understand that such time limit might be shorter than otherwise allowed by law. You and the other Bound Parties agree that your sole recourse for claims arising between the parties shall be against us or our successors or assigns. You and the Bound Parties agree that the members, managers, shareholders, directors, officers, employees, and agents of us and our affiliates shall not be personally liable nor named as a party in any action between us and you or any Bound Party; provided, however, that this shall not preclude claims you have directly against an area director. ~~We, you and the Bound Parties further agree that, in connection with any such proceeding, each must submit or file any claims which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim that is not submitted or filed as described in this Section 14.6 will be forever barred. The parties agree that any proceeding will be conducted on an individual, not a class-wide basis, and that a proceeding between us and you or the Bound Parties may not be consolidated with another proceeding between us and any other person or entity, nor may any claims of another~~ The parties agree that claims of any other party or parties shall not be joined with any claims asserted in any action or proceeding between us and you. No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement.

## 15. MISCELLANEOUS PROVISIONS

15.1. Remedies. All rights and remedies enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, shall not exclude any other rights or remedies allowed at law or in equity, and said rights and remedies may be exercised and enforced concurrently.

15.2. Modification/Exercise of Judgment. No amendment, waiver, or modification of this Agreement shall be effective unless it is in writing and signed by us and you. You acknowledge that we may unilaterally modify our System Standards and other standards

and specifications and operating and marketing techniques, whether set forth in the Operations Manual or otherwise, under any conditions and to the extent we deem necessary to protect, promote or improve the Marks, the Proprietary Assets or the Franchise System, so long as such modifications are not specifically prohibited by this Agreement.

Whenever we reserve the right in this Agreement to take or withhold taking an action, or to grant or decline to grant you a right to take or omit an action, we may, except as otherwise specifically provided in this Agreement, make our decision or exercise our rights based on information readily available to us and our judgment of what is in our and/or the Franchise System's best interests at the time we make our decision, without regard to whether or not we could have made other reasonable or arguably preferable alternative decisions or whether or not our decision promotes our financial or other interests.

- 15.3. No Waiver. No waiver of any term, covenant or condition of this Agreement, or failure to exercise a right or remedy by us or you shall constitute or imply a further waiver of the same or any other covenant or condition. Our subsequent acceptance of any payments due to us under this Agreement shall not be deemed to be a waiver by us of any preceding breach by you of any terms, covenants or conditions of this Agreement. Whenever this Agreement requires our prior approval or consent, such approval or consent shall be obtained in writing. We make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you, in connection with any waiver, approval or consent we may grant to you in connection with this Agreement, or by reason of any neglect, delay or denial of any waiver or request for waiver under this Agreement. Any waiver granted by us shall be subject to our continuing review, may subsequently be revoked for any reason effective upon 10 days prior written notice, and shall be without prejudice to any other rights we may have.
- 15.4. Severability/Invalidity. If any provision of this Agreement or the application of any provision to any person or circumstances shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Agreement or the application of such provisions to any other person or circumstances, all of which shall remain in full force and effect. It is the intention of the parties that if any provision of this Agreement is susceptible to two or more interpretations, one of which would render it enforceable, then the provision shall have the meaning that renders it enforceable.
- 15.5. Entire Agreement. This Agreement constitutes the entire agreement between us regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements between us regarding such subject matter. No officer, employee, servant or agent of ours or yours has been authorized to make any representation, warranty or other promise not contained in this Agreement or in the accompanying Franchise Disclosure Document. Nothing in this Agreement or any related agreement is intended to disclaim the representations made in the accompanying Franchise Disclosure Document. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

- 15.6. Delegation by Us. We shall have the right to delegate the performance of any portion or all of our obligations and duties under this Agreement to third parties, whether they are our affiliates, agents, representatives and/or area directors or other individuals or entities with which we have contracted to perform such obligations, duties or services. You agree in advance to any such delegation and acknowledge and agree that we will not be bound, and this Agreement may not be modified, by any third party (including area directors) without our prior written consent. You acknowledge and agree that any delegation of our duties and obligations to third parties does not assign or confer any rights under this Agreement to such third parties and that they are not third party beneficiaries of this Agreement.
- 15.7. Effective Date of Agreement. This Agreement shall not be effective until accepted by us as evidenced by the signature of an officer or other duly authorized representative of ours and the dating of the Agreement as of the date of such signature. Notwithstanding the foregoing, we reserve the right to make the effective date of this Agreement the date on which you sign the Agreement.
- 15.8. Review of Agreement. You acknowledge that you have had a copy of the Franchise Disclosure Document in your possession for not less than 14 full calendar days, during which time you have had the opportunity to submit the Franchise Disclosure Document and this Agreement and other documents and agreements related thereto for professional review and advice of your choosing prior to freely executing this Agreement.
- 15.9. Costs and Attorneys Fees. In the event either party (or any of the Bound Parties) initiates a judicial, arbitration or other proceeding, the prevailing party will be entitled to reasonable costs and expenses (including reasonable attorneys' fees incurred in connection with such judicial or other proceeding).
- 15.10. Injunctive Relief Nothing in this Agreement shall prevent us or you from seeking injunctive relief in appropriate cases to prevent irreparable harm.
- 15.11. Survival. All of our and your (and your owners' and other Bound Parties') obligations that expressly or by their nature survive the expiration or termination of this Agreement will continue in full force and effect subsequent to, and notwithstanding, its expiration or termination until they are satisfied in full or by their nature expire, including, without limitation, the post-termination restrictive covenants contained in Section 12.2, dispute resolution covenants and notice and confidentiality provisions.
- 15.12. Joint and Several Liability. If you consist of more than one individual, the liability of all individuals are deemed to be joint and several.
- 15.13. Counterparts; Paragraph Headings; Pronouns. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The paragraph headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof. Each pronoun used herein shall be deemed to include the other gender and number.

## 16. ACKNOWLEDGMENTS

BEFORE SIGNING THIS AGREEMENT, YOU SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. YOU ACKNOWLEDGE THAT:

- (A) THE SUCCESS OF THIS BUSINESS VENTURE INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON YOUR ABILITY AS AN INDEPENDENT BUSINESS PERSON AND YOUR ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS;
- (B) YOU HAVE NOT BEEN GIVEN ANY ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, BY US OR OUR REPRESENTATIVES AS TO THE POTENTIAL SUCCESS OF YOUR STUDIO OR FRANCHISE BUSINESS, THE VIABILITY OF ANY STUDIO LOCATION OR THE EARNINGS OR PROFITS LIKELY TO BE ACHIEVED FROM THE OPERATION OF THE STUDIO, NOR HAVE YOU RELIED UPON ANY SUCH ASSURANCE OR WARRANTY IN EXECUTING THIS AGREEMENT;
- (C) WHILE WE HAVE OFFERED ASSISTANCE, YOU HAVE FINAL APPROVAL OF THE SITE SELECTED, LEASE EXECUTED AND OTHER DECISIONS CONCERNING YOUR FRANCHISE PURCHASE, STUDIO LOCATION AND THE OPERATIONS OF YOUR STUDIO;
- (D) NO STATEMENT, REPRESENTATION, OR OTHER ACT, EVENT, OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS DOCUMENT AND IN ANY FRANCHISE DISCLOSURE DOCUMENT SUPPLIED TO YOU, IS BINDING UPON US IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT;
- (E) YOU ARE AWARE THAT OTHER FRANCHISEES MAY OPERATE THEIR STUDIOS UNDER DIFFERENT FORMS OF AGREEMENTS AND, CONSEQUENTLY, THAT OUR OBLIGATIONS AND RIGHTS WITH RESPECT TO THEM MAY DIFFER MATERIALLY THAN OUR OBLIGATIONS AND RIGHTS WITH RESPECT TO YOU IN CERTAIN CIRCUMSTANCES;
- (F) THE INDIVIDUALS EXECUTING THIS AGREEMENT ON YOUR BEHALF REPRESENT AND WARRANT THAT THE SIGNATURES LISTED BELOW CONSTITUTE ALL OF THE INDIVIDUALS, PARTNERS, LIMITED PARTNERS, MEMBERS, DIRECTORS, OFFICERS AND/OR SHAREHOLDERS OF YOURS NECESSARY TO BIND YOU AND THAT THEY HAVE READ, UNDERSTAND AND CONSENT TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date stated below.

**FRANCHISOR:**

FITNESS TOGETHER FRANCHISE CORPORATION

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

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

Its: \_\_\_\_\_

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

(\*Effective Date of this Agreement)

**FRANCHISEE:**

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

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

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

Its: \_\_\_\_\_

(Title of Signor, if applicable)

**EXHIBIT 1**

**TERRITORY DESCRIPTION**

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

Franchise Agreement Effective Date: \_\_\_\_\_

The territory in which you will locate your Studio shall be as follows:

**FRANCHISOR:**

**FITNESS TOGETHER FRANCHISE CORPORATION**

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

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

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

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

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

Exhibit 1

**EXHIBIT 2**

**AUTOMATIC BANK DRAFT AUTHORIZATION**

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

Owner Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
(if different from owner)

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

I hereby authorize Fitness Together Franchise Corporation ("Franchisor") to initiate entries to my checking or savings account identified below for Monthly Royalty (as defined in my Franchise Agreement with Franchisor), loan payments to Franchisor, software, website, default, late and other fees and amounts that may be incurred by me under the Franchise Agreement or otherwise and, if necessary, to initiate any adjustments for transactions credited in error.

Name and Address on Account: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pay to the order of: Fitness Together Franchise Corporation

Your Financial Institution:  
(Name, Address & Phone #) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

**PLEASE ATTACH A VOIDED CHECK**

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

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

Fitness Together Account Number: \_\_\_\_\_ Studio Name: \_\_\_\_\_

Exhibit 2

**EXHIBIT 3**  
**STATEMENT OF OWNERSHIP**

Name of Franchisee Legal Entity: \_\_\_\_\_

Date of Formation: \_\_\_\_\_ State of Formation: \_\_\_\_\_

Type of Entity: \_\_\_\_\_

All Shareholders, Members and Partners:

Name	Type of Interest	% Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

The legal entity's activities must be confined exclusively to operating the Studio and Fitness Together franchise business, unless Franchisor otherwise agree in writing.

Each shareholder, member, partner or other beneficial owner personally guarantees Franchisee's performance under the Franchise Agreement.

The legal entity must maintain a current list of all shareholders, members, partners, and other beneficial owners, and must furnish an updated list to Franchisor prior to making any ownership changes. Franchisor must approve the ownership changes described in the Franchise Agreement.

**Documents to be provided to Franchisor:**

- Certificate and Articles of Incorporation or Organization
- By-Laws, Operating Agreement or Partnership Agreement
- Other, as reasonably requested by Franchisor

Exhibit 3

**EXHIBIT 4**

**GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS**

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS ("GUARANTY") IS GIVEN THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (the "Guarantor").

In consideration of, and as an inducement to the execution of that certain Franchise Agreement of even date (the "Agreement") by Fitness Together Franchise Corporation (the "Franchisor"), and \_\_\_\_\_ ("Franchisee"), each of the undersigned hereby personally and unconditionally (a) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities.

Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations guaranteed; and (4) any right he or she may have to require that an action be brought against Franchisee or any other person as a condition of liability. Each of the undersigned consents and agrees that (1) his or her direct and immediate liability under this Guaranty shall be joint and several; (2) her or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; (4) liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may grant to Franchisee or to any other person, including the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Agreement; and (5) Guarantor is bound by the restrictive covenants, confidentiality provisions, and indemnification provisions contained in the Agreement.

Each of the undersigned Guarantors represents and warrants that, if no signature appears below for such Guarantor's spouse, such Guarantor is either not married or, if married, is a resident of a state which does not require the consent of both spouses to encumber the assets of a marital estate.

Exhibit 4

Guarantor hereby consents and agrees that:

(a) Guarantor's liability under this undertaking shall be direct, immediate, and independent of the liability of, and shall be joint and several with, Franchisee and the other owners of Franchisee;

(b) Gurantor shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;

(c) This undertaking will continue unchanged by the occurrence of any bankruptcy with respect to Franchisee or any assignee or successor of Franchisee or by any abandonment of the Agreement by a trustee of Franchisee. Neither the Guarantor's obligations to make payment or render performance in accordance with the terms of this undertaking nor any remedy for enforcement shall be impaired, moditied, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Franchisee or its estate in bankruptcy or of any remedy for enforcement, resulting from the operation of any present or future provision of the U.S. Bankruptcy Act or other statute, or from the decision of any court or agency;

(d) Franchisor may proceed against Guarantor and Franchisee jointly and severally, or Franchisor may, at its option, proceed against Guarantor, without having commenced any action, or having obtained any judgment against Franchisee. Guarantor hereby waives the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation hereby guaranteed; and

(e) Guarantor agrees to pay all reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempt to collect amounts due pursuant to this undertaking or any negotiations relative to the obligations hereby guaranteed or in enforcing this undertaking against Guarantor.

Guarantor agrees to be personally bound by the arbitration obligations under Section 14.5 of the Agreement, including, without limitation, the obligation to submit to binding arbitration the claims described in Section 14.5 of the Agreement in accordance with its terms.

*[Signature page follows]*

**IN WITNESS WHEREOF**, each of the undersigned has affixed his or her signature on the same day and year as the Agreement was executed.

~~IN WITNESS WHEREOF~~, each of the undersigned has affixed his signature on the same day and year as the Agreement was executed.

**GUARANTOR(S):**

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

The undersigned, as the spouse of the Guarantor indicated below, acknowledges and consents to the guaranty given herein by his/her spouse. Such consent also serves to bind the assets of the marital estate to Guarantor's performance of this Guaranty.

_____ Name of Guarantor
_____ Name of Guarantor's Spouse
_____ Signature of Guarantor's Spouse

_____ Name of Guarantor
_____ Name of Guarantor's Spouse
_____ Signature of Guarantor's Spouse

_____ Name of Guarantor
_____ Name of Guarantor's Spouse
_____ Signature of Guarantor's Spouse

_____ Name of Guarantor
_____ Name of Guarantor's Spouse
_____ Signature of Guarantor's Spouse

_____ <u>Name of Guarantor</u>
_____ <u>Name of Guarantor's Spouse</u>
_____ <u>Signature of Guarantor's Spouse</u>

_____ <u>Name of Guarantor</u>
_____ <u>Name of Guarantor's Spouse</u>
_____ <u>Signature of Guarantor's Spouse</u>



**EXHIBIT 5**  
**FORM OF NON-COMPETE AND CONFIDENTIALITY AGREEMENT**

Exhibit 5

FT Studio (Unit)  
Ex. B - ~~11/2011~~ 03/2012 Franchise Agreement v. ~~12~~  
~~1076.001.001/43304~~  
1076.001.003/41677

## NON-COMPETITION AND CONFIDENTIALITY AGREEMENT

This Non-Compete and Confidentiality Agreement (the "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ among \_\_\_\_\_ ("Employer") and \_\_\_\_\_ ("Employee").

### 1. RECITALS.

- A. Employer is a party to a franchise agreement (the "Franchise Agreement") with Fitness Together Franchise Corporation ("Franchisor") under which Franchisor granted Employer certain rights with regard to a Fitness Together® studio (a "Studio");
- B. Employer has hired Employee to perform services as a [personal fitness instructor] at Employer's Studio;
- C. Before allowing Employee to have access to the Confidential Information and as a material term of the Franchise Agreement necessary to protect Franchisor's confidential know-how and distinctive systems, designs, décor, trade dress, specifications, standards, techniques and procedures authorized or required by Franchisor from time to time for use in the operation of Employer's Studio (the "Franchise System"), Employer requires that Employee enter into this Agreement; and
- D. As a condition of employment or continued employment by Employer, Employee has agreed to enter into this Agreement.

### 2. DEFINITIONS.

Certain terms that are capitalized in this Agreement are defined in this section or at the places they first appear.

(a) The term "Competitive Business" as used in this Agreement means any business (other than a Studio) (i) operating or granting franchises or licenses to others to operate one-on-one and personal small group physical fitness studios or any other physical fitness or nutrition service business, or (ii) offering or selling products or educational materials or conducting workshops for services that are the same as, similar to, or competitive with the Franchise System or other Studios.

(b) The term "Confidential Information" as used in this Agreement means certain confidential and proprietary information relating to the development and operation of the Studios, which includes, but is not limited to: (i) the interior layout and design, color scheme, signage and equipment, copyrights, titles, symbols, emblems, slogans, insignia, designs, diagrams, artworks, advertising and promotional materials, audio and written materials, worksheets, originals, manuals, techniques, rules, ideas, philosophies, illustrations, course materials, confidential operations manual, other manuals, technical bulletins, other written or videotaped materials and other materials and documents related to the operation of the Studio; (ii) standards and specifications of the Franchise System; (iii) information about clients of Studios, (iv) financial information of Studios, and (v) other methods, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques and knowledge of and experience in the operation and franchising of Studios.

3. **PROTECTION OF CONFIDENTIAL INFORMATION.**

Employee agrees to use the Confidential Information only to the extent reasonably necessary to perform his or her duties on behalf of Employer taking into consideration the confidential nature of the Confidential Information. Employee may disclose the Confidential Information only as an agent for Employer. Employee acknowledges and agrees that neither Employee nor any other person or entity will acquire any interest in or right to use the Confidential Information under this Agreement or otherwise other than the right to utilize it as authorized in this Agreement and that the unauthorized use or duplication of the Confidential Information, including, without limitation, in connection with any other business would be detrimental to Franchisor and Employer and would constitute a breach of Employee's obligations of confidentiality and an unfair method of competition with Franchisor and/or other Studios owned by Employer or franchised by Franchisor.

Employee acknowledges and agrees that the Confidential Information is confidential to and a valuable asset of Franchisor. The Confidential Information will be disclosed to Employee solely on the condition that Employee agrees to the terms and conditions of this Agreement. Employee therefore agrees that during the term of the Franchise Agreement and thereafter, he or she: (a) will not use the Confidential Information in any other business or capacity; (b) will maintain the absolute confidentiality of the Confidential Information; (c) will not make unauthorized copies of any portion of the Confidential Information disclosed or in written form; and (d) will adopt and implement all reasonable procedures prescribed from time to time by Franchisor and Employer to prevent the unauthorized use or disclosure of or access to the Confidential Information.

Notwithstanding anything to the contrary contained in this Agreement, the restrictions on Employee do not apply to (a) disclosure or use of information, methods, or techniques which are generally known and used in the industry (as long as the availability is not because of an unauthorized disclosure by Employee or Employee's agents), provided that Employee has first given Franchisor written notice of his or her intended disclosure and/or use; and (b) disclosure of the Confidential Information in legal proceedings when Employee is legally required to disclose it, provided that Employee has first given Franchisor the opportunity to obtain an appropriate legal protective order or other assurance satisfactory to Franchisor that the information required to be disclosed will be treated confidentially.

4. **IN-TERM RESTRICTIVE COVENANT.**

Employee acknowledges and agrees that Franchisor and Employer would be unable to protect the Confidential Information against unauthorized use or disclosure and Franchisor would be unable to achieve a free exchange of ideas and information among Studios if persons authorized to use the Confidential Information were permitted to engage in, have ownership interests in or perform services for Competitive Businesses. Employee therefore agrees that for as long as Employee is employed by Employer, neither Employee nor Employee's spouse shall (i) have any direct or indirect interest as a disclosed or beneficial owner in a Competitive Business; or (ii) perform services as a director, officer, member, employee, manager, consultant, representative, agent or otherwise for any Competitive Business. Employee further acknowledges that the

restrictions contained in this Section 4 will not deprive him or her or members of his or her immediate family of any personal goodwill or ability to earn a living.

5. **RESTRICTIVE COVENANT UPON TERMINATION  
OR EXPIRATION OF THE FRANCHISE AGREEMENT  
OR EMPLOYEE'S ASSOCIATION WITH EMPLOYER.**

Upon the first to occur of (a) termination or expiration without renewal of the Franchise Agreement; or (b) the date as of which Employee is no longer an employee of, or otherwise providing services to, Employer (each of these events is referred to as a "Termination Event"), Employee agrees that for a period of one (1) year commencing on the effective date of a Termination Event, neither Employee nor Employee's spouse shall have any direct or indirect interest as a disclosed or beneficial owner in, or assist, accept payments from, or perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for, a Competitive Business located or operating within a three (3) mile radius of any Studio, including Employer's Studio.

6. **SURRENDER OF DOCUMENTS.**

Employee agrees that as of the effective date of a Termination Event, Employee shall immediately cease to use the Confidential Information disclosed to or otherwise learned or acquired by Employee and return to Employer or to Franchisor (if directed by Franchisor) all copies of the Confidential Information loaned or made available to Employee.

7. **INJUNCTIVE RELIEF AND DAMAGES.**

Both parties recognize that the services to be rendered by Employee for Employer are special, unique and of an extraordinary character. Upon breach of this Agreement, Franchisor or Employer shall be entitled, if it/they so elects, to seek injunctive relief in any court of competent jurisdiction to enforce the covenants set forth herein. In addition to injunctive relief, Franchisor or Employer shall be entitled to seek such other and further relief, including, but not limited to, the recovery of damages as may be permitted by law or in equity.

8. **COSTS AND ATTORNEYS' FEES.**

In the event that Franchisor or Employer is required to enforce this Agreement in an action against Employee, Employee shall reimburse Franchisor and/or Employer if it/they prevail (whether or not awarded a money judgment) for its/their reasonable attorneys' fees, whether such fees are incurred before, during or after any trial or administrative proceeding or on appeal.

9. **WAIVER.**

Failure to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any right or remedy hereunder at any one or more times be deemed a waiver or relinquishment of such right or remedy at any other time or times.

10. **SEVERABILITY.**

Each section, paragraph, term and provision of this Agreement and any portion thereof shall be considered severable and if for any reason any such provision is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which Franchisor is a party, that ruling shall not impair the operation of or have any other effect upon such other portions of this Agreement as may remain otherwise intelligible. Such other portions shall continue to be given full force and effect and bind the parties hereto. Any portion held to be invalid shall be deemed not to be a part of this Agreement from the date the time for appeal expires if Employee is a party thereto or upon Employee's receipt of a notice from Franchisor that it will not enforce the section, paragraph, term or provision in question.

11. **RIGHTS OF PARTIES ARE CUMULATIVE.**

The rights of the parties hereunder are cumulative and no exercise or enforcement by a party hereto of any right or remedy granted hereunder shall preclude the exercise or enforcement by them of any other right or remedy hereunder or which they are entitled by law to enforce.

12. **BENEFIT.**

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Franchisor shall be deemed a third party beneficiary of this Agreement and shall have the right to enforce this Agreement directly.

13. **GOVERNING LAW.**

This Agreement and the relationship between the parties hereto shall be construed and governed in accordance with the internal laws of the State of Colorado without regard to its conflict of laws principles.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in multiple counterparts as of the day and year first above written.

**EMPLOYER:**

If a Legal Entity:

[Name of Employer]

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

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

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

If an Individual:

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

**EMPLOYEE:**

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

**EXHIBIT 6**

**LETTER OF INTENT AND LEASE ADDENDUM**

**Exhibit 6**

**FT Studio (Unit)**  
**Ex. B - 03/2012 Franchise Agreement v.2**  
**1076.001.003/41677**

Letter of Intent Franchise Location

1. TENANT: d/b/a Fitness Together

2. LANDLORD: \_\_\_\_\_

3. PREMISES: Commonly known as: \_\_\_\_\_  
\_\_\_\_\_ Street Address \_\_\_\_\_ Suite # (if any)

\_\_\_\_\_ City of: \_\_\_\_\_ County of: \_\_\_\_\_

\_\_\_\_\_ State of: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Description:

The Premises are a part of that certain Shopping Center known as \_\_\_\_\_ (the "Shopping Center"). [Complete if applicable]

4. SIZE: Approximately \_\_\_\_\_ square feet as shown on the attached site plan.

5. INITIAL TERM: [recommended Five (5) Years]

6. OPTIONS: [recommended Two Option Terms of Five (5) Years Each]

7. RENT:

Years 1-5:

Years 6-15:

8. TI ALLOWANCE: Landlord shall provide Tenant with \$ \_\_\_\_\_ per square foot to be used towards actual tenant improvements.

9. LANDLORDS WORK: Landlord shall provide Tenant with a vanilla shell, as outlined in the attached LOI work letter.

10. ACCESS: Upon Tenant's request, after Landlord's response to this Letter of Intent, Landlord shall provide Tenant with access to the Premises for purposes of inspecting and surveying the Premises and the fixtures and equipment located within the Premises.

Property \_\_\_\_\_ Manager  
Name: \_\_\_\_\_ Phone: \_\_\_\_\_

11. EXPENSES: Landlord will provide Tenant detail as to the actual expenses currently applicable to the property. Tenant's share of expenses for the first Lease Year shall not exceed \$ \_\_\_\_\_, and shall not increase thereafter by more than 3% per year.

12. PERMITTED USES: Tenant shall have the right to use the Premises for purposes of a fitness studio providing various exercise services, including personal training and retail sales and other ancillary purposes associated therewith. Landlord acknowledges and represents to Tenant that such use does not conflict with any other use provision within the Shopping Center.



13. RENT COMMENCEMENT: Payment of rent shall commence upon the earlier of (i) Tenant's opening for business in the Premises or (ii) 120 days from the later of (A) the date the Lease is fully executed and (B) the date Landlord delivers possession of the Premises to Tenant in broom-clean condition with all of Landlord's Work complete and all utilities properly functioning.

14. SECURITY DEPOSIT: No security deposit shall be required.

15. SIGNS: Tenant has the right to install the customary and usual display signs mandated by Franchisor (see attached) on and adjacent to the Premises, as well as any monument signs, subject to applicable municipal codes and Landlord's approval, not to be unreasonably withheld. Tenant shall also have the right to erect and display a banner reading "Coming Soon" or a similar message during the period between Lease execution and the date that is thirty (30) days after Tenant opens for business. Finally, Tenant shall be permitted to display signs and tasteful promotional items in the windows of the Premises consistent with Franchisor's national standards.

16. EXCLUSIVE: Throughout the lease Term and any extension, Landlord agrees that (i) Tenant shall have the exclusive right in the Shopping Center to operate a fitness and exercise studio, and (ii) fitness, exercise and personal training services and related services hereunder shall be considered a protected use for Tenant. If the provisions of this Section including the protected use provision, are violated, then in addition to any other remedy Tenant may have at law or in equity, Tenant shall have the right to (a) terminate the Lease or (b) immediately reduce its Base Rent under the Lease to One Dollar (\$1.00) per month until such time as Landlord's breach is cured, or for the remainder of the Term (and any renewals) if such breach cannot be cured.

17. BROKER'S FEES:

Tenant's Broker: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_

Landlord's Broker: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_

Landlord shall pay all commissions/fees due the above listed broker(s) per a separate agreement between Landlord and broker(s).

18. ASSIGNMENT RIGHTS: Tenant shall have the right to assign the Lease or sublet the Premises, without charge and without Landlord's consent being required, to Franchisor or its parent, subsidiaries or affiliates (Franchisor, its parent, subsidiaries and affiliates are each referred to herein as an "FT Entity"). Tenant shall also have the right to assign the Lease or sublet the Premises, without charge and without Landlord's consent being required, to another duly authorized franchisee of an FT Entity. In the event of an assignment to an FT Entity, the FT Entity shall have the right to reassign the Lease, without

charge and without Landlord's consent being required, to a duly authorized franchisee of an FT Entity and to thereupon be released from any further liability under the Lease. Any options to extend the term of the Lease shall automatically transfer to an assignee in connection with a transfer made pursuant to this paragraph. Tenant shall agree to attorn to any assignee of Landlord provided such assignee will agree not to disturb Tenant's possession of the Premises.

19. LANDLORD WARRANTIES: Landlord represents, covenants and warrants (i) that it has lawful title to the Shopping Center and has full right, power and authority to enter into the Lease; (ii) that the Shopping Center is in compliance with the Americans with Disabilities Act ("ADA"); (iii) that the permitted "use" of the Premises does not currently violate the terms of any of Landlord's insurance policies; (iv) that it currently maintains all risk of physical loss coverage for the full replacement cost of the Shopping Center and shall maintain throughout the term of the Lease general liability insurance coverage for the Shopping Center consistent with that being maintained from time to time by reasonably prudent owners of properties similar to the Shopping Center in the same area; (v) that so long as Tenant pays all monetary obligations due under the Lease and performs all other covenants contained therein, Tenant shall peacefully and quietly have, hold, occupy and enjoy the Premises during the term of the Lease and its use and occupancy thereof shall not be disturbed; and (vi) that (a) the Shopping Center has the proper zoning and a legally adequate number of parking spaces for Tenant's permitted use, and (b) Tenant's permitted use does not violate any contracts or agreements to which Landlord is a party or any other covenants, conditions, restrictions or agreements applicable to the Shopping Center. Landlord covenants and agrees that it shall take no action that will interfere with Tenant's intended usage of the Premises. Landlord shall indemnify and hold harmless Tenant and its officers, partners, agents and employees from and against any loss, cost, liability, damage or expense arising out of (i) Landlord's operation of the Shopping Center, (ii) Landlord's breach in the performance of any of its obligations under the Lease or (iii) any violation of law by Landlord or any other act or omission of Landlord or its contractors, agents or employees. The foregoing indemnification shall survive expiration or termination of the Lease.

20. RENT ABATEMENT: Landlord agrees to abate all rental payments for four (4) months following the Rent Commencement Date.

21. APPROVALS: Tenant shall obtain all franchisor approvals, permits and governmental approvals needed for the lawful construction and operation of Tenant's Franchise operation prior to lease signing. The lease will be contingent on franchisee obtaining financing for the operation of the business.

22. RADIUS RESTRICTIONS AND TENANT RELOCATION: Any radius restrictions or relocation provisions found in the Lease are hereby deleted.

23. EXPIRATION OF PROPOSAL: This proposal shall remain in force for seven (7) days from the date of this proposal. Should this Letter of Intent meet with the approval of Landlord, Landlord shall return an executed copy of this document to Tenant within such

time period. Landlord agrees not to discuss or negotiate towards leasing the Premises to anyone other than Tenant for sixty (60) days after Landlord approves this Letter of Intent. Landlord and Tenant each hereby agree to negotiate the terms and provisions of a Lease consistent with this Proposal within said sixty (60) day period.

24. RENEWAL OPTIONS: Landlord hereby grants Tenant the option to extend the term of the Lease for two (2) periods of five (5) years each, upon the same terms and conditions stated in the Lease except that the Minimum Annual Rent during shall be as set forth in Paragraph 7 above. In order to exercise each option to extend the term of the Lease, Tenant must notify Landlord in writing not later than ninety (90) days prior to the expiration of the then current Lease term of its exercise of the pending option.

25. TENANT TERMINATION RIGHT: Upon the second anniversary date of the Lease and provided that Tenant shall not be in default under the Lease, Tenant shall have the right to terminate the Lease upon 120 days' prior written notice to Landlord. Upon such termination, Tenant shall reimburse Landlord for the greater of the following amounts: (i) the unamortized balance of Landlord's improvement allowance plus any real estate commissions paid, or (ii) three (3) months of Base Rent.

26. APPROVAL OF FRANCHISORS LEASE ADENDUM: The landlord hereby agrees to the attached ADDENDUM TO LEASE, and agrees that this ADDENDUM will become part of the actual lease upon execution.

LANDLORD AND TENANT ACKNOWLEDGE THAT THIS PROPOSAL IS NOT A LEASE, AND THAT IT IS INTENDED AS THE BASIS FOR THE PREPARATION OF A LEASE. THE LEASE SHALL BE SUBJECT TO LANDLORD'S, TENANT'S AND FRANCHISOR'S APPROVAL, AND ONLY A FULLY EXECUTED LEASE SHALL CONSTITUTE A LEASE FOR THE PREMISES. EXCEPT AS TO THE OBLIGATIONS OF LANDLORD AND TENANT SET FORTH IN PARAGRAPH 21 ABOVE THE TERMS AND PROVISIONS OF THIS PROPOSAL ARE NON-BINDING.

AGREED AND ACCEPTED:

Landlord:

Tenant:

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

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

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

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

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

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

(Date signed)

(Date signed)

## ADDENDUM TO LEASE

This Addendum to Lease ("Addendum") shall be attached to and made part of that certain lease agreement dated \_\_\_\_\_, 2012 ("Lease") by and between \_\_\_\_\_ ("Landlord") and \_\_\_\_\_ ("Tenant"). In the event of any contradiction or inconsistency between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. All defined terms not specifically defined in this Addendum shall be given the same meanings as the defined terms in the Lease.

### Recitals

- A. Tenant is party to a franchise agreement with Fitness Together, Inc. ("Franchisor"), pursuant to which Tenant was granted the right to own and operate a Fitness Together studio (the "Studio").
- B. Tenant desires to operate the Studio at the Premises described in the Lease.
- C. Franchisor requires that the Lease contain certain provisions, the purpose of which is to protect Franchisor's proprietary assets, marks and franchise system ("Proprietary Assets and System").
- D. Tenant has requested, and the Landlord has agreed, to amend the Lease to include the requirements set forth below.

### Franchisor Required Terms

- 1. TERM OF LEASE. The initial term of the Lease shall be 5 years with at least one 5-year renewal term.
- 2. RENT. Rent under the Lease must be specified as an exact amount per month and cannot be an amount equal to a percentage of Tenant's gross receipts, and any provisions in the Lease related to percentage rent (such as a definition of gross receipts) shall be deleted in their entirety.
- 3. TENANT USE and IDENTITY. Tenant shall have the right to use the Premises for purposes of a fitness studio providing various types of exercise services including personal training, and retail sales and other ancillary purposes associated therewith. Landlord acknowledges and represents to Tenant that such use does not conflict with any other use provision within the Shopping Center. Tenant is the individual franchise owner or such entity as may have been created to own the franchise business, which will operate under the trade name "Fitness Together" or any similar trade name. Under no circumstances is Franchisor or any of its affiliates, or its or their respective shareholders, members, principals, owners, directors, officers, employees, representatives, designees or assigns the tenant under the Lease, a guarantor under the Lease, or in any other way obligated with respect to Tenant's obligations under the Lease.

4. RADHUS RESTRICTIONS AND TENANT RELOCATION: Any radius restrictions or relocation provisions found in the Lease are hereby deleted.
5. PAST DUE OBLIGATIONS; LATE CHARGES: Tenant shall have the right to cure any non-payment of its rent obligations under the Lease within ten (10) days of Tenant's receipt of written notice from Landlord of such failure to pay.
6. EXCLUSIVITY/PROTECTED USE: Throughout the lease Term and any extension, Landlord agrees that (i) Tenant shall have the exclusive right in the Shopping Center to operate a fitness and exercise studio, and (ii) fitness, exercise and personal training services hereunder shall be considered a protected use for Tenant. If the provisions of this Section, including the protected use provision, are violated, then in addition to any other remedy Tenant may have at law or in equity, Tenant shall have the right to (a) terminate the Lease or (b) immediately reduce its Base Rent under the Lease to One Dollar (\$1.00) per month until such time as Landlord's breach is cured, or for the remainder of the Term (and any renewals) if such breach cannot be cured.
7. RIGHT OF TERMINATION: Upon the second anniversary date of the Lease and provided that Tenant shall not be in default under the Lease, Tenant shall have the right to terminate the Lease upon 120 days' prior written notice to Landlord. Upon such termination, Tenant shall reimburse Landlord for the greater of the following amounts: (i) the unamortized balance of Landlord's improvement allowance plus any real estate commissions paid, or (ii) three (3) months of Base Rent.

In the event Tenant exercises its right to terminate the Lease as provided in this Section, the Franchisor shall have the right, but not the obligation, to manage the Studio for such period of time as may be necessary to locate a new franchise owner to occupy the Studio location.
8. HOURS OF OPERATION. Tenant's hours of operations shall generally be from 9:00 a.m. to 8:00 p.m. Monday through Thursday, and 9:00 a.m. to 7:00 p.m. Friday through Sunday, although such hours may fluctuate depending on Tenant's scheduling of services. As a result, there may be short periods of time during Tenant's hours of operations that the Studio will be closed.
9. CONSENT TO USE OF PROPRIETARY ASSETS AND SYSTEM. Landlord consents to Tenant's use of the Proprietary Assets and System as may be required by Franchisor under the terms of its franchise agreement with Tenant.
10. SIGNAGE. Tenant has the right to install the customary and usual display signs mandated by Franchisor (see Exhibit A) on and adjacent to the Premises, as well as any monument signs, subject to applicable municipal codes and Landlord's approval, not to be unreasonably withheld. Tenant shall also have the right to erect and display a banner reading "Coming Soon" or a similar message during the period between Lease execution and the date that is thirty (30) days after

Tenant opens for business. Finally, Tenant shall be permitted to display signs and tasteful promotional items in the windows of the Premises consistent with Franchisor's national standards.

11. TENANT RIGHT TO ASSIGN OR SUBLEASE. In the event Tenant is permitted to assign or sublease the Lease under any circumstances, Tenant must first be required to obtain Franchisor's prior written consent. Tenant shall have the right to assign the Lease or sublet the Premises, without charge and without Landlord's consent being required, to Franchisor or its parent, subsidiaries or affiliates (Franchisor, its parent, subsidiaries and affiliates are each referred to herein as an "FT Entity"). Tenant shall also have the right to assign the Lease or sublet the Premises, without charge and without Landlord's consent being required, to another duly authorized franchisee of an FT Entity. In the event of an assignment to an FT Entity, the FT Entity shall have the right to reassign the Lease, without charge and without Landlord's consent being required, to a duly authorized franchisee of an FT Entity and to thereupon be released from any further liability under the Lease. Any options to extend the Term of the Lease shall automatically transfer to an assignee in connection with a transfer made pursuant to this Section.
12. TENANT DEFAULT. Landlord must simultaneously provide Franchisor with a copy of any notice of default by Tenant under the Lease, such notice to be sent to: Fitness Together, Inc., Attention: Legal Department, 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129.
13. FRANCHISOR RIGHTS UNDER THE LEASE. In addition to any other rights Franchisor may have under the Lease, Franchisor (or its designee) shall have the right, but not the obligation, to enter the Premises to make modifications necessary to protect the Proprietary Assets and System, or to cure any default under Tenant's franchise agreement or the Lease. Landlord agrees to give Franchisor written notice of any Tenant defaults as a prerequisite to exercising any remedies against Tenant under the Lease. Franchisor shall have Tenant's cure period plus an additional ten (10) days to cure (at Franchisor's option) any such defaults on Tenant's behalf, and to perform any other acts on Tenant's behalf as may be necessary to keep the Lease in full force and effect. In addition, Franchisor (or its designee) shall have the option, upon default, expiration or termination of Tenant's franchise agreement, and upon notice to Landlord to (i) assume all of Tenant's rights under the Lease including, but not limited to, the rights to renew the Lease and pay rent, (ii) the right to assign or sublease the Premises per the terms above, and (iii) remove equipment, furniture and signs.
14. LANDLORD WARRANTIES. Landlord represents, covenants and warrants (i) that it has lawful title to the Shopping Center and has full right, power and authority to enter into the Lease; (ii) that the Shopping Center is in compliance with the Americans with Disabilities Act ("ADA"); (iii) that the permitted "use" of the Premises does not currently violate the terms of any of Landlord's insurance policies; (iv) that it currently maintains all risk of physical loss

coverage for the full replacement cost of the Shopping Center and shall maintain throughout the term of the Lease general liability insurance coverage for the Shopping Center consistent with that being maintained from time to time by reasonably prudent owners of properties similar to the Shopping Center in the same area; (v) that so long as Tenant pays all monetary obligations due under the Lease and performs all other covenants contained therein, Tenant shall peacefully and quietly have, hold, occupy and enjoy the Premises during the term of the Lease and its use and occupancy thereof shall not be disturbed; and (vi) that (a) the Shopping Center has the proper zoning and a legally adequate number of parking spaces for Tenant's permitted use, and (b) Tenant's permitted use does not violate any contracts or agreements to which Landlord is a party or any other covenants, conditions, restrictions or agreements applicable to the Shopping Center. Landlord covenants and agrees that it shall take no action that will interfere with Tenant's intended usage of the Premises. Landlord shall indemnify and hold harmless Tenant and its officers, partners, agents and employees from and against any loss, cost, liability, damage or expense arising out of (i) Landlord's operation of the Shopping Center, (ii) Landlord's breach in the performance of any of its obligations under the Lease or (iii) any violation of law by Landlord or any other act or omission of Landlord or its contractors, agents or employees. The foregoing indemnification shall survive expiration or termination of the Lease.

15. LANDLORD WORK AND REPAIRS. If the Shopping Center is not in compliance with all laws, codes or other regulations, Landlord shall perform the necessary remedial work at its sole cost and expense. Landlord covenants and agrees, at its sole cost and expense and without reimbursement or contribution by Tenant, to keep, maintain and replace, if necessary, the foundations, the exterior paint, the plumbing system, the electrical system, the utility and sewer lines and connections to the Premises, the sprinkler mains, if any, structural elements and systems including, without limitation, the roof, roof membrane, roof covering (including interior ceiling if damaged by leakage), load-bearing walls, floor slabs and masonry walls in good condition and repair. All utilities required for Tenant's permitted use shall be stubbed to the Premises at no cost to Tenant, and Landlord shall be responsible for all fees associated with bringing such services to the Premises, including but not limited to tap-in and connection fees. Landlord shall pay all impact and development fees. Landlord shall be responsible for the replacement if and when necessary of the HVAC system properly sized for the Studio, and Tenant shall be responsible for the maintenance of same during the Term of the Lease.

16. COMMON AREAS. Landlord shall not change or alter the Common Areas in any manner which would alter the dimensions or location of the Premises or adversely affect the use, operation or conduct of Tenant's business being conducted in the Premises, adversely affect the accessibility or visibility of the Premises or reduce the current ratio of parking to rentable square feet in the Shopping Center by more than ten percent (10%). The costs of capital

improvements to the Common Areas (defined as any costs which, in accordance with generally accepted accounting principles, are not fully chargeable to current expenses in the year the expenditure is incurred) shall be excluded from the calculation of Tenant's Common Areas costs pass through, if any.

17. ALTERATIONS. Tenant may make nonstructural alterations and improvements to the interior of the Premises of Ten Thousand and 00/100 Dollars (\$10,000.00) or less per alteration without Landlord's prior consent, provided the work is performed in a good and workmanlike manner. Tenant may close its business once every five (5) years for up to thirty (30) days to refurbish and redecorate the Premises.

18. HAZARDOUS MATERIALS. Landlord represents and warrants that the Premises are free of all asbestos, asbestos containing materials and other hazardous or toxic materials (collectively, "Hazardous Materials"). Tenant shall have no obligation to make any repairs, alterations or improvements to the Premises or incur any costs or expenses whatsoever as a result of Hazardous Materials in or about the Shopping Center, the building of which the Premises are a part (the "Building") or the Premises, other than those Hazardous Materials brought onto such areas by Tenant. Landlord shall indemnify and hold Tenant harmless from and against all liabilities, loss, costs, damages and expenses which Tenant may incur (including reasonable attorneys' fees) as the result of a breach of Landlord's representation and warranty set forth in this Section or the presence of Hazardous Materials in or about the Shopping Center, Building or the Premises, unless those Hazardous Materials were brought onto such areas by Tenant.

19. TENANT FINANCING. Tenant shall have the right from time to time to grant and assign a mortgage or other security interest in all of Tenant's personal property and equipment located within the Premises to its lenders in connection with Tenant's financing arrangements, and any lien (if any) of Landlord against Tenant's personal property and equipment (whether by statute or under the terms of the Lease) shall be subject and subordinate to such security interest. Landlord shall execute such documents as Tenant's lenders may reasonably request in connection with any such financing. The parties acknowledge that there may be certain personal property and equipment in the Premises not owned by Tenant, which property and equipment shall not be subject to any lien (if any) of Landlord. Upon request, Landlord shall grant the party who owns such property and equipment reasonable access to the Premises for the sole purpose of removing such items, provided such party repairs any damage caused by such removal and otherwise complies with Landlord's reasonable requirements with respect to such access.



IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the date and year first written above.

**LANDLORD:**

[name]

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

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

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

**TENANT:**

[name]

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

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

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

**EXHIBIT 7**  
**REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT**

## REPRESENTATIONS AND ACKNOWLEDGMENT STATEMENT

The purpose of this Statement is to demonstrate to Fitness Together Franchise Corporation ("Franchisor") that the person(s) signing below ("I," "me" or "my"), whether acting individually or on behalf of any legal entity established to acquire the franchise rights, (a) fully understands that the purchase of a Fitness Together Studio franchise is a significant long-term commitment, complete with its associated risks, and (b) is not relying on any statements, representations, promises or assurances that are not specifically set forth in Franchisor's Franchise Disclosure Document and Exhibits (collectively, the "EDD") in deciding to purchase the franchise.

In that regard, I represent to Franchisor and acknowledge that:

I understand that buying a franchise is not a guarantee of success. Purchasing or establishing any business is risky, and the success or failure of the franchise is subject to many variables such as my skills and abilities (and those of my partners, officers, employees), the time my associates and I devote to the business, competition, interest rates, the economy, inflation, operation costs, location, lease terms, the market place generally and other economic and business factors. I am aware of and am willing to undertake these business risks. I understand that the success or failure of my business will depend primarily upon my efforts and not those of Franchisor. INITIAL:

I received a copy of the EDD, including the Franchise Agreement, at least 14 calendar days (10 business days in California, Michigan, Rhode Island and Washington) before I executed the Franchise Agreement. I understand that all of my rights and responsibilities and those of Franchisor in connection with the franchise are set forth in these documents and only in these documents. I acknowledge that I have had the opportunity to personally and carefully review these documents and have, in fact, done so. I have been advised to have professionals (such as lawyers and accountants) review the documents for me and to have them help me understand these documents. I have also been advised to consult with other franchisees regarding the risks associated with the purchase of the franchise. INITIAL:

Neither the Franchisor nor any of its officers, employees or agents (including any franchise broker) has made a statement, promise or assurance to me concerning any matter related to the franchise (including those regarding advertising, marketing, training, support service or assistance provided by Franchisor) that is contrary to, or different from, the information contained in the EDD. INITIAL:

My decision to purchase the franchise has not been influenced by any oral representations, assurances, warranties, guarantees or promises whatsoever made by the Franchisor or any of its officers, employees or agents (including any franchise broker), including as to the likelihood of success of the INITIAL:

franchise.

I have made my own independent determination as to whether I have the capital necessary to fund the business and my living expenses, particularly during the start-up phase. **INITIAL:**

I have not received any information from the Franchisor or any of its officers, employees or agents (including any franchise broker) concerning actual, average, projected or forecasted sales, revenues, income, profits or earnings of the franchise business (including any statement, promise or assurance concerning the likelihood of my success) except as contained in the FDD or as indicated below (write "None" if none provided): **INITIAL:**

\_\_\_\_\_

\_\_\_\_\_

Prohibited Parties Clause. I acknowledge that Franchisor, its employees and its agents are subject to U.S. laws that prohibit or restrict (a) transactions with certain parties, and (b) the conduct of transactions involving certain foreign parties. These laws include, without limitation, U.S. Executive Order 13224, the U.S. Foreign Corrupt Practices Act, the Bank Secrecy Act, the International Money Laundering Abatement and Anti-terrorism Financing Act, the Export Administration Act, the Arms Export Control Act, the U.S. Patriot Act, and the International Economic Emergency Powers Act, and the regulations issued pursuant to these and other U.S. laws. As part of the express consideration for the purchase of the franchise, I represent that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been listed on:

1. the U.S. Treasury Department's List of Specially Designated Nationals;
2. the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, or General Orders;
3. the U.S. State Department's Debarred List or Nonproliferation Sanctions; or
4. the Annex to U.S. Executive Order 13224.

I warrant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, is now, or has been: (i) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or (ii) is owned or controlled by terrorists or sponsors of terrorism. I warrant that I am now, and have been, in compliance with U.S. anti-money laundering and counter-terrorism financing laws and regulations, and that any funds provided by me to Franchisor were legally obtained in compliance with these laws.

I further covenant that neither I nor any of my employees, agents, or representatives, nor any other person or entity associated with me, will, during the term of the Franchise Agreement, become a person or entity described above or otherwise become a target of any anti-terrorism law.

**FRANCHISEE:**

Sign here if you are taking the franchise as an

INDIVIDUAL(S)

(Note: use these blocks if you are an individual or a partnership but the partnership is not a separate legal entity)

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name:  
\_\_\_\_\_  
Date:  
\_\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name:  
\_\_\_\_\_  
Date:  
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\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name:  
\_\_\_\_\_  
Date:  
\_\_\_\_\_

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name:  
\_\_\_\_\_  
Date:  
\_\_\_\_\_

Sign here if you are taking the franchise as

a  
CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP

\_\_\_\_\_  
Print Name of Legal Entity  
\_\_\_\_\_

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

\_\_\_\_\_  
Print Name:  
\_\_\_\_\_  
Title:  
\_\_\_\_\_  
Date:  
\_\_\_\_\_

**NOTE TO MARYLAND RESIDENTS OR FRANCHISEES WITH A STUDIO LOCATED IN MARYLAND: This Representation and Acknowledgment Statement is not intended to and shall not waive any liability Franchisor may have under the Maryland Franchise Registration and Disclosure Law.**

**EXHIBIT C1**

**LIST OF FRANCHISEES AS OF 12/31/11**

Open Franchisees as of December 31, 2011

Studio No.	Studio Address	Studio City	Studio State	Studio Zip	Studio Owner	Studio Telephone
AL-002	600 Olde English Ln Ste 104	Mountain Brook	AL	35223	Keith Pooser	(205) 879-1116
AL-003	5361 Highway 280 South Ste 102A	Birmingham	AL	35242	Rob Hackett	(205) 981-2454
AL-004	8000 Liberty Pkwy Ste 108	Vestavia	AL	35242	Brett Garrison	(205) 967-2226
AL-005	521 Montgomery Hwy Ste 105	Birmingham	AL	35216	Terry Sims, Aaron Saxton & Clarissa Coe	(205) 978-1737
AL-008	1430 Gadsden Hwy Ste 112	Birmingham	AL	35235	Keith Pooser	(205) 661-3260
AL-011	2341 John Hawkins Pkwy	Hoover	AL	35244	Brett Garrison	(205) 739-0180
AL-013	4800 Whitesburg Dr Ste 29	Huntsville	AL	35802	James Pace & Robert Montgomery	(256) 880-7461
AL-017	2021 S College St Ste D	Auburn	AL	36832	Vanessa Ocasio	(334) 501-2222
CA-002	34255 Pacific Coast Highway, Ste 107-108	Dana Point	CA	92629	Debbie Peters	(949) 488-0005
CA-006	16389 Bernardo Center Dr	San Paulo	CA	92128	Dona Wilson	(858) 451-6051
CA-015	23411 Aliso Viejo Pkwy Ste L	Aliso Viejo	CA	92656	Chad Dennis	(949) 448-7900
CA-016	1815A S Centre City Pkwy	Escondido	CA	92025	Dona Wilson	(760) 741-6100
CA-020	1501 Corporate Dr, Ste B5	Ladera Ranch	CA	92694	Jennifer Fitzgerald & Chad Dennis	(949) 364-5700
CA-021	1450 5th Street Ste 120	Santa Monica	CA	90401	Kelly Radomski	(310) 576-1508
CA-022	2121 Natomas Crossing Or Ste 400	Sacramento	CA	95834	Dave VonRuden	(916) 515-3940
CA-029	14701 Via Bettona, Ste 220	San Diego	CA	92127	Matt Ceglie	(858) 756-0999
CA-038	31045 Temecula Pkwy Ste 103	Temecula	CA	92592	Ed Farreil	(951) 302-2995
CA-063	155 W Green St	Pasadena	CA	91105	Laura Jones	(626) 792-7907
CA-067	330 Via Las Brisas Ste 130	Newbury Park	CA	91320	Kathy Zetterberg	(805) 375-6200
CA-069	4019 Goldfinch St	San Diego	CA	92103	Blake Beckcom	(619) 794-0014
CA-071	12730 Carmel Country Rd Ste F-120	San Diego	CA	92130	Dimple Limaye	(858) 720-1111
CA-073	1990 N Fowler Ave Ste 116	Clovis	CA	93619	Rob Johnson & Andrew Polterock	(559) 299-1880
CA-074	2002 W Bullard Ave	Fresno	CA	93711	Rob Johnson & Andrew Polterock	(559) 436-1755
CA-075	2750 Dewey Rd Ste 101	San Diego	CA	92106	Greg Sterner	(619) 756-7500
CA-077	3263 Camino De Los Coches Ste 100	Carlsbad	CA	92009	Amy & Reece Jensen	(760) 944-8446
CA-078	12265 Ventura Blvd Ste 208	Studio City	CA	91604	Lou & Jarrod Silvers	(818) 509-7801
CAN-004	1550 Avenue Rd	Toronto	ON	M5M 3X5	Kathie Kilpatrick	(647) 436-8847
CAN-007	#16 2500 4th St SW	Calgary	AB	T2S 1X6	James Gaida & Bart Onyszko	(403) 452-2996
CO-001	340 Holly St	Denver	CO	80220	Todd Tantillo	(303) 322-7132
CO-003	5139 S Yosemite St	Greenwood Village	CO	80111	Aaron Dawkins & Vince Trujillo	303-694-3203
CO-006	19027 E Plaza Dr	Parker	CO	80134	Terry Rice	(303) 805-3912
CO-007	32214 Ellingwood Tr Ste 107	Evergreen	CO	80439	Jason Paulin	(303) 670-3830
CO-013	159 McCaslin Blvd Ste C	Louisville	CO	80027	Scott Strini	(303) 926-8800
CO-015	1028 S Gaylord	Denver	CO	80209	Todd Tantillo	(303) 322-7132
CO-016	2750 W 29th Ave	Denver	CO	80211	David Diaz	(720) 855-6600
CO-017	9064 Forsstrom Dr Ste B25	Lone Tree	CO	80124	Chris & Brian Kinaschuk	(303) 799-1700
CR-003	Del Centro Comercial La Paco 200 al oeste	Rohrmoser	CR		Mauricio de la Espriella	(800) 446-6274
CT-001	242 West Ave	Dahen	CT	06820	Rita Jagodzinski	(203) 656-2626
CT-002	33 East Ave	New Canaan	CT	06840	Susan Teoli	(203) 966-1044
CT-003	300 Country Club Rd	Avon	CT	06001	Robert Fricchione	(860) 673-3993
CT-004	156 New Britain Ave	Rocky Hill	CT	06067	Michael Kaman	(860) 372-4885
DC-001	1112 16th St NW Ste 140	Washington	DC	20036	Man McKinnis	(202) 861-2222
DC-002	408 H Street NE	Washington	DC	20002	Alita Brown	(202) 558-6486

Open Franchisees as of December 31, 2011

Studio No.	Studio Address	Studio City	Studio State	Studio Zip	Studio Owner	Studio Telephone
DC-005	3222 N Street NW	Washington	DC	20007	Matt & Paul McKinnis	(202) 625-8484
FL-003	6710 Parkside Dr Ste C - 7	Parkland	FL	33067	Rita Munoz & Marc Martinez	(954) 341-2071
FL-004	335 14th Ave South	Naples	FL	34102	Annette Suridis & Paula Allia	(239) 263-9348
FL-005	41 PGA Tour Blvd	Ponte Vedra Beach	FL	32082	Wes Greer	(904) 285-3236
FL-008	2500 Vanderbilt Beach Rd Ste 1106	North Naples	FL	34109	Rob Finne & Corey Schneider	(239) 597-0549
FL-009	2917 W Bay Dr	Belleair Bluffs	FL	33770	Mark Anderson	(727) 501-0535
FL-015	301 Woodlands Pkwy	Oldsmar	FL	34677	Mark Anderson	(727) 784-9576
FL-020	5829 SW 73rd St Ste 2	South Miami	FL	33143	Eddie Rodriguez	(305) 446-3665
FL-021	3333 Rice St Ste 101	Coconut Grove	FL	33133	Eddie Rodriguez	(305) 648-2202
FL-025	9671 Gladiolus Dr	Fort Myers	FL	33908	Jeff & LouAnn Good	(239) 337-2639
FL-026	927 Mall Ring Rd	Sebring	FL	33870	Matt Collar	(863) 382-2257
FL-028	4837 New Broad St	Orlando	FL	32814	Scott & Milla Matlock	(407) 896-7778
FL-029	11362 San Jose Blvd Ste 12	Jacksonville	FL	32223	Colin Woodmansee	(904) 268-5355
FL-031	8470 State Rd 70 East	Bradenton	FL	34202	T & C Fitness, LLC (Jeff Taylor)	(941) 739-3682
FL-033	13457 Atlantic Blvd Ste 3	Jacksonville	FL	32225	Wes Greer	(904) 221-6646
GA-002	1255 Johnson Ferry Rd Ste 26	Marietta	GA	30068	Katie Warechowski	(770) 321-1347
GA-003	5482 Chamblee-Dunwoody Rd Ste 29A	Dunwoody	GA	30338	Russ Yeager	(770) 351-9111
GA-006	11877 Douglas Rd Ste 109	Johns Creek	GA	30005	Russ Yeager	(678) 867-0101
GA-009	4840 Roswell Road NW Ste 101	Atlanta	GA	30342	Kelly Huggins	(404) 303-8305
IA-001	12871 University Ave Ste 200	Clive	IA	50325	Steve Reese	(515) 222-1200
ID-002	3132 S Bown Way	East Boise	ID	83706	Tyler Williamson	(208) 336-8348
ID-003	420 E State St Ste 125	Eagle	ID	83616	Brian Mitchell	(208) 939-6283
IL-002	3075 Book Rd Ste 123	Naperville	IL	60564	Nathan Toensing	(630) 922-7400
IL-003	507 S 3rd St Ste 1	Geneva	IL	60134	Brian Monaghan & Erick Dodendorf	(630) 232-1500
IL-004	1112 W Northwest Hwy	Palatine	IL	60067	Steve Gagliardo	(847) 776-7000
IL-005	4481 Ash Grove Dr	Springfield	IL	62711	Joe & Jill Thiel	(217) 726-7613
IL-007	546B Lincoln Ave	Winnetka	IL	60093	Steve Mills	(847) 441-6399
IL-008	1001 E Ogden Ave Ste 101	Naperville	IL	60563	Betty Scarimbolo	(630) 420-7500
IL-009	340 W Front St	Wheaton	IL	60187	Ryan & Mari Fasshauer	(630) 588-8448
IL-012	221 S Main St	Bartlett	IL	60103	John & Kristi Walsh	(630) 483-8100
IL-013	225 E Deerpath Ste 126	Lake Forrest	IL	60045	Alex Mueller	(847) 283-6060
IL-014	740 N Waukegan Rd Ste 108	Deerfield	IL	60015	David Conine	(847) 236-4980
IL-015	13717 N State Route 30	Plainfield	IL	60544	Nathan Toensing	(815) 577-9500
IL-024	11321 143rd St	Orland Park	IL	60467	Kevin Sefcik & Chris Mlyniec	(708) 460-4244
IRE-001	151 Leinster Rd	Dublin	IRE		Carl Cautley	(1) 496-5829
ISL-001	54 Haatzmaut St	Savoyon	ISL	56304	Amir Alroy	(3) 632-0038
ISL-002	72 Pinhas Rozen St	Zahala	ISL	69512	Amir Alroy	(3) 647-2202
KS-002	13370 Metcalf Ave	Overland Park	KS	66213	Joel Harmon	(913) 451-2200
KS-003	11 On the Mall	Prairie Village	KS	66208	Derek Welles	(913) 236-8383
KS-007	10096 E 13th St Ste 106	Wichita	KS	67206	Shannon Libel & Travis Radford	(316) 636-5858
LA-001	2252 Tower Dr Ste 104	Monroe	LA	71201	Rico Boyer & Paula Burgess	(318) 998-2348
MA-001	2088 Commonwealth Ave	Newton	MA	02466	Sandy Mayer & Tony Matterna	(617) 630-1101
MA-002	245 Washington St Ste 206	Wellesley Hills	MA	02481	Chad Asnes	(781) 235-4800



Open Franchisees as of December 31, 2011

Studio No.	Studio Address	Studio City	Studio State	Studio Zip	Studio Owner	Studio Telephone
MA-003	423 Boston Post Rd	Sudbury	MA	01776	Josh Rosenfeld	(978) 443-7080
MA-005	66 Dwight Rd Ste 2	Longmeadow	MA	01106	Nathan Cote	(413) 565-2600
MA-006	97 Lowell Rd	Concord	MA	01742	Michael Oakes	(978) 318-9050
MA-007	115 Eastern Ave	Dedham	MA	02026	Steve Lichtman	(781) 461-9300
MA-008	605R Main St	Winchester	MA	01890	John Howland	(781) 721-9996
MA-009	30 Church St	Belmont	MA	02478	PJ Castaldini	(617) 484-9048
MA-010	1404 Beacon St	Brookline	MA	02446	Radovan Serbula	(617) 232-2297
MA-012	21 G Turnpike Rd	Southborough	MA	01772	Bob Savin	(508) 438-0050
MA-013	950 Cummings Ctr Ste 98X	Beverly	MA	01915	Derek Maxfield	(978) 922-3636
MA-014	445 Franklin St	Melrose	MA	02176	Scott Batchelar	(781) 665-8282
MA-016	433 Marrett Rd	Lexington	MA	02421	Kip LeBaron & Kerri Powers	(781) 862-1175
MA-017	930 High St	Westwood	MA	02090	Eric Urbanowicz	(781) 251-3399
MA-018	796 Beacon St	Newton Centre	MA	02459	Mike Ruggiero	(617) 641-9588
MA-019	143 Hampshire St	Cambridge	MA	02139	Norman Rousseau	(517) 547-4244
MA-020	1347 Main St	Waltham	MA	02451	Renato Capobianco	(781) 642-1004
MA-022	220 Winter St	Bridgewater	MA	02324	Robert Humble	(508) 697-6660
MA-023	300 Eliot St	Ashland	MA	01721	Bob Savin	(508) 438-0050
MA-024	790 Chief Justice Cushing Hwy	Cohasset	MA	02025	Steve Lichtman	(781) 383-8004
MA-025	175 Littleton Rd	Westford	MA	01886	Greg Briggie	(978) 392-5800
MA-026	13 Main St	Franklin	MA	02038	Jerry Espinosa	(508) 520-6888
MA-027	454 Washington St	Norwell	MA	02061	Steve Lichtman	(781) 659-0034
MA-028	36 E Main St Ste B	Westborough	MA	01581	Steve Lichtman	(508) 366-0099
MA-029	166 N Main St Ste 3A	Andover	MA	01810	Lisa Swanson	(978) 623-8181
MA-030	80 Copeland Dr	Mansfield	MA	02048	Robert Humble & Seth Lytle	(508) 339-0733
MA-031	411 W Main St	Northborough	MA	01532	Brandon & Luisa Cloutier	(508) 393-1660
MA-033	130 Middlesex Rd Ste 2	Tyngsboro	MA	01879	Cathy Schaum	(978) 649-6799
MA-035	10A Post Office Square	Lynnfield	MA	01940	Dina Whalen	(781) 780-7591
MA-038	6 South Ave	Natick	MA	01760	Josh Rosenfeld	(508) 655-5544
MA-040	646 Humphrey St Plaza	Swampscott	MA	01907	Rhiannon Goehlert	(781) 596-0500
MA-042	73 Main St	North Andover	MA	01845	Maureen Sullivan	(978) 659-0047
MA-043	83 Parkhurst Rd	Chelmsford	MA	01824	Jay Clermont	(978) 244-1136
MA-044	137 Main St	Reading	MA	01867	Tom Lavoie	(781) 944-3232
MA-045	149 S Main St	Middleton	MA	01949	Stephen Stabile	(978) 278-3182
MA-046	184 Cambridge St	Burlington	MA	01803	Brendan Stapleton	(781) 273-0093
MA-049	321 Columbus Ave	Boston	MA	02116	Bob Zadrozny	(617) 262-0021
MA-050	36 Newbury St	Boston	MA	02116	Michael Morris & Ross Hadfield	(617) 247-3900
MA-051	365 Salem St	Medford	MA	02155	Peter & Donna Petrella	(781) 395-3600
MA-052	309 Walnut St	Newtonville	MA	02460	Sandy Mayer & Tony Mattera	(617) 965-0412
MA-054	37 Broadway	Arlington	MA	02474	Michael Morris & Ross Hadfield	(781) 316-8500
MA-056	18 Strong Ave	Northampton	MA	01060	Jessica Phaneuf	(413) 582-0727
MA-058	10 S Main St	Topsfield	MA	01983	Cari Jones	(978) 887-1007
MA-060	238 Main St	Medfield	MA	02052	Robert Humble	(508) 242-9900
MA-063	534 Main St	Amherst	MA	01002	Jessica Phaneuf	(413) 461-3032

Open Franchisees as of December 31, 2011

Studio No.	Studio Address	Studio City	Studio State	Studio Zip	Studio Owner	Studio Telephone
MA-065	145 Hanover St	Boston	MA	02108	JP Krueger & Larry Post	(617) 778-2426
MA-067	80 State St	Newburyport	MA	01950	Sean Stellmach	(978) 961-0335
MA-068	429 S Washington St	North Attleboro	MA	02760	Jerry & Teris Espinosa	(508) 699-2999
MA-069	145 Lincoln Rd Ste 101A	Lincoln	MA	01773	Jason Hartz	(781) 259-8806
MA-071	44 Main St	Wayland	MA	01778	Josh Rosenfeid	(508) 653-3848
MA-072	84 North St	Hingham	MA	02043	Ken Fischer	(781) 749-2511
MD-001	4851 Cordell Ave	Bethesda	MD	20814	Rick Coe	(301) 656-3904
MD-002	3570 St Johns Ln	Ellicott City	MD	21042	Joan Schnorf	(410) 750-2228
MD-003	912 Thayer Ave Ste 102	Silver Springs	MD	20910	Ken Clarke	(301) 587-0012
MD-004	6270 Montrose Rd	Rockville	MD	20852	Rick Coe	(301) 255-0446
MD-005	111 Chinquapin Rd Ste 201	Annapolis	MD	21401	Price Booker & Jeff Miyamoto	(410) 295-7880
MD-006	1756 York Rd	Lutherville	MD	21093	Mark Dees & Ed Shrader	(410) 252-6144
MD-007	485 Ritchie Hwy Ste 203	Sevema Park	MD	21146	Jim Cleveland	(410) 647-8974
MD-008	12189 Darnestown Rd	Gaithersburg	MD	20878	Rick Coe	(301) 355-8042
MD-009	9199 Reisterstown Rd	Owings Mills	MD	21117	Mark Dees & Ed Shrader	(410) 580-1777
MI-001	6279 Haggerty Road	West Bloomfield	MI	48322	Ken Gaffney	(248) 668-9884
MI-002	440 N Beacon Blvd	Grand Haven	MI	49417	Ron & Jennifer Clark	(616) 296-0100
MI-006	111 W 3rd St	Rochester	MI	48307	Phil Anderson	(248) 651-5810
MI-007	24276 Novi Road	Novi	MI	48375	Boo Sadikot	(248) 348-9230
MI-012	1144 E Paris Ave	Grand Rapids	MI	49546	Steve Vanderberg & Kenneth Hass	(616) 957-4738
MI-017	4901 Okemos Re	Okemos	MI	48864	Brian Hossink	(517) 347-9020
MI-022	3155 W Shore Dr	Holland	MI	49424	Steve Vanderberg & Kenneth Hass	(616) 399-6770
MN-001	5008 Vernon Ave	Edina	MN	55436	Deron Lindquist	(952) 927-0300
MN-002	858 E Lake St	Wayzata	MN	55391	Deron Lindquist	(952) 476-2177
MN-003	1024 Washington Ave South	Minneapolis	MN	55415	Randy Zarecki	(612) 378-8898
MN-005	11250 86th Ave North	Maple Grove	MN	55369	Stacy Kettelhut	(763) 494-0061
MN-010	2110 Eagle Creek Ln Ste 150	Woodbury	MN	55129	Pete Piranio	(651) 436-8137
MN-014	600 Market St Ste 150	Chanhassen	MN	55317	Eric & Tracy Mattson	(952) 934-9346
MO-001	911 NE Woods Chapel Rd	Lees Summit	MO	64064	Julia Wilson	(816) 347-8833
MO-002	6222 N Chatham Ave	Kansas City	MO	64151	Scott Espinosa	(816) 741-0108
MO-003	6047 Mid Rivers Mall Dr	Cottleville	MO	63304	Nate Vogel	(636) 922-5320
MO-006	3360 SW Fascination Dr	Lees Summit	MO	64081	Kevin Lau	(816) 966-8340
MO-007	13321 Manchester Rd	Des Peres	MO	63131	Tim Chudy	(314) 909-9565
MO-011	1120 Technology Dr Ste 117	O'Fallon	MO	63368	NTL Fitness, Inc. (Linda & Eric Larson)	(636) 300-9010
MO-012	1628 E Republic Rd	Springfield	MO	65804	Jeff & Amy Frizzell	(417) 877-4652
MO-013	12528 Olive Blvd Ste B	Creve Coeur	MO	63141	Bryan Muehlberger	(314) 985-6718
MS-002	1127 Old Fannin Rd Ste B	Brandon	MS	39047	Paula Burgess & Beth Rhodes	(601) 992-3433
NC-001	1057 Darrington Dr	Cary	NC	27513	David & Wilda Young	(919) 481-9277
NC-002	428 Sam Newell Rd	Matthews	NC	28105	Rick Anderson	(704) 847-3859
NC-003	16151 Lancaster Hwy	Charlotte	NC	28277	Mike McAllister & Rick Anderson	(704) 341-8802
NC-005	5629 Oleander Dr Ste 110	Wilmington	NC	28403	Christopher Harper & Cecil Worsley	(910) 798-8820
NC-007	1600 E Woodlawn Rd	Charlotte	NC	28209	JD Brooks	(704) 525-5759
NC-008	2425 Kildaire Farm Rd Ste 407	Cary	NC	27518	Justin Fitzgerald	(919) 233-0865

Open Franchisees as of December 31, 2011

Studio No.	Studio Address	Studio City	Studio State	Studio Zip	Studio Owner	Studio Telephone
NC-009	1318 Central Ave Ste E2	Charlotte	NC	28205	Rick Anderson & William Ellifrits	(704) 333-2999
NC-010	8163c Kensington Dr	Waxhaw	NC	28173	Lenny Turi	(704) 243-1130
NC-011	305-C Pisgah Church Rd	Greensboro	NC	27455	David & Wida Young	(336) 545-3065
NC-012	1923-A South Blvd	Charlotte	NC	28203	Mike McAllister	(704) 375-3001
NC-013	229 Medical Park Rd Ste 100	Mooresville	NC	28117	Bryan Wisdom	(704) 658-1522
NC-014	605 Meadowmont Village Cir	Chapel Hill	NC	27517	Jeremy Bailey	(919) 932-7303
NC-017	4520 Mint Hill Village Ln	Mint Hill	NC	28227	Rick Anderson	(704) 573-1995
NC-018	13545 SteeleCroft Pkwy	Charlotte	NC	28278	Joe Reed	(704) 504-0911
NC-019	9818 Gilead Rd Ste B105	Huntersville	NC	28078	William Ellifrits	(704) 947-5222
NC-020	610 Jetton St Ste 115	Davidson	NC	28036	Coach Rock Fitness Inc. (Jeff Heal)	(704) 895-6044
NE-002	17525 Gold Plaza	Omaha	NE	68130	Nick Ryan	(402) 932-5346
NH-002	767 Islington St Ste IB	Portsmouth	NH	03801	Sean Stellmach	(603) 334-6333
NH-003	240 N Broadway	Salem	NH	03079	Jason Clermont	(603) 890-5400
NJ-002	150 Main St	Manasquan	NJ	08736	Mike Keenan	(732) 292-1333
NJ-003	110 Marter Ave Ste 411	Moorestown	NJ	08057	Cari Severs	(856) 778-3700
NJ-004	44 S Finley Ave	Basking Ridge	NJ	07920	William Beyer	(908) 204-9909
NJ-015	33 Market St	Morristown	NJ	07960	Peter O'Hagan & Phil Squatrito	(973) 538-1313
NJ-016	679 Stokes Rd	Medford	NJ	08055	Allison Bonelli	(609) 953-0300
NJ-020	158 Speedwell Ave	Morris Township	NJ	07961	Peter O'Hagan & Phil Squatrito	(973) 998-7971
NJ-021	386 Franklin Ave	Wyckoff	NJ	07481	Stephen Kopshaw & Lisa Petersen	(201) 848-9800
NY-003	721 W Jericho Turnpike	Huntington	NY	11743	Robert Mittleman	(631) 659-3730
NY-005	636 Central Park Ave	Scarsdale	NY	10583	Stephen Kopshaw & Lisa Petersen	(914) 723-1810
NY-011	156 E Main Str	Port Jefferson	NY	11777	Lee Cirillo	(631) 473-8200
NY-024	329 Route 59	Aimont	NY	10952	Michael Moore	(845) 369-8663
NY-026	24 Palmer Ave	Bronxville	NY	10708	Lonnie Walton	(914) 771-5999
NY-031	601 New Loudon Rd Ste 3	Latham	NY	12110	Jennifer & Susan Clermont	(518) 389-2320
OH-002	1295-B W Lane Ave	Columbus	OH	43221	Bernie & Alex Craig	(614) 488-3300
OH-003	89 1st St	Hudson	OH	44236	Michael Hall, Jonathan Slain & Brad Newcomb	(877) 348-6446
OH-005	13 W Orange St	Chagrin Falls	OH	44022	Michael Hall, Jonathan Slain & Brad Newcomb	(877) 348-6446
OH-006	8251 Chippewa Rd	Brecksville	OH	44141	Kyle Nichol	(877) 348-6446
OH-007	3417 Princeton Rd	Hamilton	OH	45011	Jack Cook	(513) 869-2999
OH-008	19910 Detroit Rd	Rocky River	OH	44116	Michael Hall, Jonathan Slain & Brad Newcomb	(877) 348-6446
OH-009	6579 Ironwood Blvd	Canfield	OH	44406	Erin Mellinger	(330) 702-1311
OH-012	3725 Medina Rd	Medina	OH	44256	Kyle Nichol	(877) 348-6446
OH-013	1540 Chagrin River Rd	Gates Mills	OH	44040	Michael Hall, Jonathan Slain & Brad Newcomb	(877) 348-6446
OK-002	34th Ave SW	Norman	OK	73072	Troy Hanna	(405) 310-3111
OK-003	2816 W Country Club Dr	Oklahoma City	OK	73116	Bart Sreithaupt	(405) 842-7373
OK-004	3547 W Memorial Rd	Oklahoma City	OK	73134	Cam Williams	(405) 751-6655
OK-005	11813 S Western Ave	Oklahoma City	OK	73170	Fitness Together South OKC, LLC (Angela McLa	(405) 378-2777
OK-006	1320 E 41st St	Tulsa	OK	74105	Wayne Pyle, LLC (Wayne Pyle)	(918) 398-6999
OK-007	7829 W Hefner Ste J	Oklahoma City	OK	73120	Carey Guthmiller	(405) 603-5280
OK-008	9540 N Garnett Rd Ste 106	Owasso	OK	74055	Steve & Paula Dibbins	(918) 272-6363
OK-009	9708 S Riverside Pkwy	Tulsa	OK	74137	Michael Watkins	(918) 392-0540

Open Franchisees as of December 31, 2011

Studio No.	Studio Address	Studio City	Studio State	Studio Zip	Studio Owner	Studio Telephone
OK-012	7939 S Memorial Rd	Tulsa	OK	74133	Aaron Henson	(918) 392-5370
OK-014	1300 Vandament Ave	Yukon	OK	73099	Seth Humphrey	(405) 350-7373
OK-015	6048 S Yale Ave	Tulsa	OK	74135	Aaron Henson	(918) 551-6799
OK-016	16616 N Western Ave.	Edmond	OK	73003	Bart Breithaupt	(405) 285-9307
OK-017	2334 SE Washington Blvd Ste H	Bartlesville	OK	74006	Steve & Paula Dibbins	(918) 333-7676
OK-018	1212 E Kenosha	Broken Arrow	OK	74012	Broken Arrow FT, LLC (Wayne Pyle)	(918) 259-0051
OK-020	1916 N Perkins Rd	Stillwater	OK	74075	Heather & Brad Griffin	(405) 372-2255
OK-021	12141 S Elm Ste 109	Jenks	OK	74037	Danny W Ison & Levi Morehead	(918) 298-0880
OR-011	7417 SW Beaverton Hillsdale Hwy Ste 500	Portland	OR	97225	Tony Magden & Lisa Lund	(503) 928-8008
OR-012	2020 8th Ave Ste D	West Linn	OR	97068	Chris Phillips & Derek Cooper	(503) 908-0391
OR-014	19291 SW Martinazzi Ave	Tualatin	OR	97062	Tony Magden & Lisa Lund	(503) 691-8333
PA-003	500 Chesterbrook Blvd Ste B3	Chesterbrook	PA	19087	Owen & Yvonne Evans	(610) 889-2070
PA-004	1116 Horsham Rd	Ambler	PA	19002	Joseph Stott	(215) 643-3825
PA-005	115 W State St	Media	PA	19063	Bruce Kelly	(610) 565-2007
PA-009	428 Egypt Rd	Norristown	PA	19403	Matthew Baker	(610) 630-2303
PA-010	807 N Easton Rd	Doylestown	PA	18902	Edward Allen	(215) 230-3580
PA-016	483 E Uwchlan Ave	Chester Springs	PA	19425	Sandra Ellmore	(610) 524-1075
RI-001	788 Main St	East Greenwich	RI	02818	Robin Ball	(401) 886-4646
RI-002	3 Wake Robin Rd	Lincoln	RI	02865	Matthew Gagliano	(401) 333-3363
RI-003	145 Elmgrove Ave	Providence	RI	02906	Aaron Atwood	(401) 369-7660
RI-004	334A County Rd	Barrington	RI	02806	Matthew Gagliano	(401) 289-2330
SC-001	1136 Hungryneck Blvd Ste J	Mt. Pleasant	SC	29464	Brian Durbin & Josh Durbin	(843) 849-7662
TN-002	313 Manufacturers Rd	Chattanooga	TN	37405	Julian Kaufman	(423) 634-0320
TN-003	4926 Thoroughbred Ln	Brentwood	TN	37027	Keith Duke	(615) 377-9550
TN-004	9430 S Northshore Dr Ste 102A	Knoxville	TN	37922	Andrew Henderson	(865) 357-8663
TN-006	1820 Gunbarrel Pointe Ste 600	Chattanooga	TN	37421	Justin Tate	(423) 648-7575
TN-009	103 International Dr	Franklin	TN	37067	Keith Duke	(615) 778-0400
TN-010	11521 Kingston Pike	Farragut	TN	37934	Craig Collier	(865) 671-2022
TN-011	7240 Kingston Pike	Knoxville	TN	37919	Craig Collier	(865) 212-2322
TN-017	10752 Hardin Valley Rd	Knoxville	TN	37932	Andrew Henderson	(865) 249-7630
TX-001	15854 Champion Forest Dr	Spring	TX	77379	Blake & Amy Edmonson	(281) 379-4422
TX-003	5809 Preston Rd Ste 584	Piano	TX	75093	Jake & Jill Delcambre	(972) 403-7800
TX-006	5604 Colleyville Blvd Ste G	Colleyville	TX	76034	Jim Burgess, Paula Burgess & Ryan Robinson	(817) 581-2348
TX-013	651 N Denton Tap Ste 200	Coppell	TX	75019	Jim & Paula Burgess	(972) 315-5454
TX-014	1207 North Loop 1604 West Ste 119	San Antonio	TX	78258	Zack & Ed Marks	(210) 493-1234
TX-021	1201 W McDennot Dr Ste 106	Allen	TX	75013	Gloria Garcia	(469) 675-3378
UT-002	2258 East Fort Union Blvd	Cottonwood Heights	UT	84121	Jacob Jones	(801) 733-7200
VA-001	300 N Washington St Ste 106	Alexandria	VA	22314	Matt McKinnis	(703) 683-0777
VA-002	1408 Great Neck Rd	Virginia Beach	VA	23454	Frank & Laura Rosalie	(757) 412-0700
VA-004	3914 Centreville Rd Ste 125	Chantilly	VA	20151	John & Simone Mays	(571) 323-2223
VA-007	44335 Premier Plaza Ste 130	Ashburn	VA	20147	Joshua Champney	(703) 858-9220
VA-008	4854 Longhill Rd Ste 1-A	Williamsburg	VA	23188	Frank Rosalie	(757) 345-2246
VA-009	2476 Nimmo Pkwy	Virginia Beach	VA	23456	Ikaika413, LLC (Herberto Sanchez)	(757) 430-1682

Open Franchisees as of December 31, 2011

Studio No.	Studio Address	Studio City	Studio State	Studio Zip	Studio Owner	Studio Telephone
VA-011	2235 Cedar Ln Ste 102	Tysons	VA	22182	Rob Graveline & Meredith Minix	(703) 289-9909
VA-013	350 W 22nd St Ste 102	Norfolk	VA	23517	Mark & Marti Carrier	(757) 228-5310
VA-014	1320 Kempsville Rd Ste 103	Chesapeake	VA	23320	Scot & Ruth Johnson	(757) 549-1103
VA-015	5597 Guinea Rd	Fairfax	VA	22032	Sherry Nicely	(703) 250-5333
VA-016	7949 Stonewall Shops Square	Gainesville	VA	20155	Ron Stringfellow	(571) 261-9292
WA-001	10600 NE 68th St	Kirkland	WA	98033	Chuck Miller & Clark Miller	(425) 739-4668
WA-002	660 NW Gilman Blvd	Issaquah	WA	98027	Juliana Jade	(425) 835-3171
WA-006	3209 East 57th Ave Ste G	Spokane	WA	99223	Joel Hayek	(509) 448-3732
WA-008	3011 78th Ave SE Ste 140	Mercer Island	WA	98040	Scot & Ananda Gellock	(206) 275-1313
WA-012	4202 E Madison	Seattle	WA	98112	Scot & Ananda Gellock	(206) 324-3010
WA-015	14215 NE Woodinville-Duvall Rd	Woodinville	WA	98072	Zachary Miller	(425) 488-3033
WA-016	3008 Issaquah Pine Lake Rd SE	Sammamish	WA	98075	Juliana Jade	(425) 557-7651
WA-018	4546 California Ave SW Ste 203	Seattle	WA	98116	Bonnie Katz	(206) 938-7828
WI-001	615 E Silver Spring Dr	Whitefish Bay	WI	53217	Holly Tamm & Sabrina Domenosky	(414) 962-8889
WI-002	17280 W North Ave	Brookfield	WI	53045	Pete Piranio	(262) 780-6350
WI-003	10974 N Port Washington Rd	Mequon	WI	53092	Holly Tamm & Sabrina Domenosky	(262) 241-3530
WI-004	524 Milwaukee St Ste 101	Delafield	WI	53018	Pete Piranio	(262) 646-5444
WI-005	411 E Menomonee St	Milwaukee	WI	53202	Pete Piranio	(414) 223-3482
WI-007	2525 Mayfair Rd	Wauwatosa	WI	53226	Pete Piranio	(414) 453-9800
WI-013	1809 Milton Ave Ste 3	Janesville	WI	53545	James & Elizabeth Siegert	(608) 758-3838
WI-016	2631 S Packerland Dr Ste 100	Green Bay	WI	54313	Eric & Tanya Gorder	(920) 592-9255

**EXHIBIT C2**

**FRANCHISEES WHO LEFT SYSTEM DURING LAST FISCAL YEAR**

**Exhibit C2**

FT Studio (Unit)  
Ex. C2 – 03/2012 List of Fees That Left System  
1076.001.003/42187

Franchisees Who Left System During Last Fiscal Year

Former Studio No.	Former Studio City	Former Studio State	Former Owner	Former Owner Telephone	Reason for Change
AL-001	Hoover	AL	Jack Eyer	(205) 988-8580	Terminated
AR-005	Little Rock	AR	Robert Hughes	(501) 821-6293	Terminated
CA-049	Westlake Village	CA	David Pincus	(818) 535-3301	Ceased Operations
CA-053	Laguna Niguel	CA	Debbie Peters	(949) 488-0005	Ceased Operations
CA-054	Sacramento	CA	Rob Johnson & Andrew Polterock	(559) 974-2203	Ceased Operations
CA-064	Sacramento	CA	Michelle Shackelford	(916) 501-9339	Ceased Operations
CA-076	Folsom	CA	Gil Villarreal	(916) 985-3100	Terminated
CR-001	Curridabat	CR	Mauricio de la Espriella	(5062) 588-8106	Ceased Operations
CR-002	Escazu	CR	Mauricio de la Espriella	(5062) 588-8106	Ceased Operations
FL-008	Naples	FL	Dr. T. Foster Bryant & Rob Finne	(239) 298-0298	Transfer
FL-012	Paim Beach Gardens	FL	Christopher Joyce	(561) 253-8830	Terminated
FL-016	Orlando	FL	Glenn Beard	(407) 242-9158	Ceased Operations
FL-017	Clearwater	FL	Teresa Nisivoccia	(727) 443-1085	Ceased Operations
FL-022	Miami	FL	Eduardo Rodriguez	(305) 298-3838	Agreement Terminated; Never Opened
FL-028	Oriando	FL	Mark Lloyd	(205) 533-2551	Transfer
FL-029	Jacksonville	FL	Wes Greer	(904) 285-3236	Transfer
FL-034	Brandon	FL	John Morgan	(727) 423-4000	Terminated
GA-007	Atlanta	GA	Chris Buckley	(404) 477-3600	Terminated
GA-011	Norcross	GA	Russ Yeager	(404) 935-7645	Ceased Operations
GA-012	Smyrna	GA	Robert Dothard	(770) 436-1381	Terminated
IL-022	Barrington	IL	Lisa & John Shanahan	(847) 304-0505	Terminated
KS-001	Shawnee	KS	Tony Turner & Paul Sterrett	(913) 248-8700	Terminated
KS-006	Lenexa	KS	JR Kuchta	(913) 393-3988	Ceased Operations
KS-008	Lawrence	KS	Tony Turner & Paul Sterrett	(785) 331-2800	Ceased Operations
MA-008	Winchester	MA	Geoff Muller & John Howland	(617) 838-5008	Transfer
MA-018	Newton Centre	MA	Bob Zadrozny, Jr.	(617) 970-7024	Transfer
MA-020	Waltham	MA	Dan McAdam	(781) 642-6545	Transfer
MA-026	Franklin	MA	Scott & Heather Martin	(617) 905-2067	Transfer
MA-045	Middletown	MA	Melanie Braswell	(781) 316-7999	Transfer
MA-046	Burlington	MA	Steve Twombly	(978) 836-9019	Transfer
MA-065	Boston	MA	Norman Rosseau & Larry Post	(617) 908-4001	Transfer
MA-070	Canton	MA	Mark Donnellan	(781) 828-2232	Terminated
MI-015	Ann Arbor	MI	Michael Concannon	(734) 260-9929	Terminated
MI-019	Midland	MI	Kage & Barb Butcher	(989) 631-6748	Ceased Operations
MI-020	Grand Rapids	MI	Steve Vanderberg & Kenneth Hass	(616) 340-7997	Ceased Operations
MO-004	Ladue	MO	Tim Chudy	(314) 909-9565	Ceased Operations

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

### Franchisees Who Left System During Last Fiscal Year

Former Studio No.	Former Studio City	Former Studio State	Former Owner	Former Owner Telephone	Reason for Change
NC-005	Wilmington	NC	Ted & Angela Proctor	(910) 231-1400	Transfer
NC-016	Cornelius	NC	Rob McCleilan & Jeffrey Heal	(704) 443-8889	Ceased Operations
NC-020	Davidson	NC	Preeminent Fitness LLC (Rob McCleilan & Jeffrey Heal)	(704) 443-8889	Transfer
NC-021	Concord Mills	NC	Rob McCleilan & Jeffrey Heal	(704) 443-8889	Agreement Terminated; Never Opened
NC-022	University City	NC	Rob McCleilan & Jeffrey Heal	(704) 443-8889	Agreement Terminated; Never Opened
NC-023	Harrisburg	NC	Rob McCleilan & Jeffrey Heal	(704) 443-8889	Agreement Terminated; Never Opened
NE-001	Lincoln	NE	Joel Harmon	(913) 636-6946	Terminated
NH-001	Salem	NH	Jeff Peterson	(603) 434-9238	Terminated
NH-002	Portsmouth	NH	Patricia Carter	(603) 770-9931	Transfer
NJ-014	Freehold	NJ	Wayne Matus	(732) 431-5555	Terminated
NJ-017	Basking Ridge	NJ	Amit Biswas	(973) 641-0273	Terminated
NY-013	Northport	NY	Joe Melillo	(631) 261-5225	Terminated
NY-028	Brooklyn	NY	Chris & Lisa Flynn	(718) 369-0707	Terminated
NY-031	Latham	NY	Allen Linville	(518) 491-1983	Transfer
OH-004	Cincinnati	OH	Charlie Wilfong	(513) 936-3488	Terminated
OH-011	Solon	OH	Michael Hall, Jonathan Slain & Brad Newc	(216) 870-4219	Ceased Operations
OK-001	Edmond	OK	Bart Breithaupt	(405) 715-1109	Terminated
OR-002	Lake Oswego	OR	Greg & Michelle McMillin	(208) 466-8255	Terminated
OR-005	Salem	OR	RS Duncan, LLC (Rich & Shelly Duncan)	(503) 390-4999	Ceased Operations
OR-008	Salem	OR	RS Duncan, LLC (Rich & Shelly Duncan)	(503) 390-4999	Ceased Operations
OR-009	Eugene	OR	RS Duncan, LLC (Rich & Shelly Duncan)	(503) 390-4999	Ceased Operations
OR-010	Bend	OR	RS Duncan, LLC (Rich & Shelly Duncan)	(503) 390-4999	Agreement Terminated; Never Opened
OR-013	Tualatin	OR	Joshua & Lindsey Dery	(503) 691-8333	Terminated
PA-008	Newton Square	PA	James Borden	(484) 744-0846	Ceased Operations
PA-012	Reading	PA	Ridgewood Fit West, LLC (Sandra Ellmore)	(610) 458-8896	Agreement Terminated; Never Opened
RI-002	Lincoln	RI	Bob Rae & John Miller	(401) 952-1196	Transfer
SC-002	Columbia	SC	Shannon Libel	(864) 297-0272	Agreement Terminated; Never Opened
SC-004	Greenville	SC	Shannon Libel	(864) 297-0272	Terminated
SC-006	Fort Mill	SC	Shannon Libel	(864) 297-0272	Agreement Terminated; Never Opened
SC-007	Greenville	SC	Shannon Libel	(864) 297-0272	Agreement Terminated; Never Opened
SC-008	Columbia	SC	Shannon Libel	(864) 297-0272	Agreement Terminated; Never Opened
SC-010	Simpsonville	SC	Jamie Gordon	(864) 757-9700	Terminated
TN-008	Nashville	TN	Keith Duke	(205) 266-7033	Ceased Operations
TX-004	Keller	TX	Jim Burgess, Paula Burgess & Ryan Robir	(318) 537-0489	Ceased Operations
TX-021	Allen	TX	Bryan Whatley	(214) 497-2032	Transfer

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.



**Franchisees Who Left System During Last Fiscal Year**

<b>Former Studio No.</b>	<b>Former Studio City</b>	<b>Former Studio State</b>	<b>Former Owner</b>	<b>Former Owner Telephone</b>	<b>Reason for Change</b>
WA-015	Woodinville	WA	Brian Wehner & Amy Frank-Lewallen	(253) 632-7767	Transfer
WA-016	Sammamish	WA	Alan Hardwick	(206) 923-1291	Transfer

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

**EXHIBIT C3**

**LIST OF FRANCHISEES SOLD BUT NOT YET OPENED AS OF 12/31/11**

**Exhibit C3**

FT Studio (Unit)  
Ex. C3 – 03/2012 List of Franchises Sold But Not Opened  
1076.001.003/42188

Franchisees Sold But Not Yet Opened as of December 31, 2011

Studio No.	Studio City	Studio State	Studio Owner	Owner Telephone
CA-036	Tustin Ranch	CA	Chad Dennis	(949) 364-5700
CA-037	Irvine	CA	Chad Dennis	(949) 364-5700
CO-019	Denver	CO	GT Fitness Inc. (Todd & Amy Tantillo)	(303) 322-7132
FL-023	Miami	FL	Eddie Rodriguez	(305) 648-2202
FL-024	Miami	FL	Eddie Rodriguez	(305) 648-2202
IL-016	Glenview	IL	David Conine	(414) 502-0122
IRE-002	TBD	IRE	Carl Cautley	011-353-1496-5829
KS-010	Wichita	KS	Shannon Libel	(864) 704-2082
MA-037	West Roxbury	MA	Lifestyle Fitness Corp. (Steve Lichtman)	(781) 461-9300
NJ-019	Caldwell	NJ	RBK Fitness, LLC (Reid Kaufman)	(973) 886-8713
NY-004	Green Lawn	NY	RDM Fitness LLC (Robert Mittleman)	(516) 282-3000
NY-012	Setauket	NY	In the Game Fitness Corp. (Jennifer Lang & Alesha Cirillo)	(631) 473-8200
OH-014	Beachwood	OH	Masseter, Inc. (Jonathan Slain, Michael Hall & Brad Newcomb)	(216) 870-4219
OH-015	Poland	OH	FT Poland L.L.C. (Erin Mellinger)	(330) 692-0017
TN-013	Green Hills	TN	Keith Duke	(615) 377-9550
TX-007	South Lake	TX	Newcomer Young Assoc. Partnership (Paula Burgess & James Young)	(601) 856-7777
TX-024	Round Rock	TX	Frederick H. Jaeger III & Frederick H. Jaeger IV	(920) 287-0554
TX-025	Austin	TX	Miriam Boudreaux	(512) 263-2842
VA-017	Arlington	VA	Dalriada Enterprises DC, LLC (Matt & Paul McKinnis)	(703) 850-0636
VA-018	Chesapeake	VA	Mark Carrier	(757) 502-3970
WI-011	Menomonee	WI	Piranio Fitness System, Inc. (Pete Piranio)	(262) 646-5444
WI-012	New Berlin	WI	Piranio Fitness System, Inc. (Pete Piranio)	(262) 646-5444
WI-017	Grafton	WI	Holly Tamm & Sabrina Domenosky	(414) 962-8889

FT Studio (Unit)

Ex. C3 - 03\_2012 List of Franchises Sold But Not Opened

1076.001.003/42183

**EXHIBIT D**

**AUDITED FINANCIAL STATEMENTS OF  
FITNESS TOGETHER FRANCHISE CORPORATION  
FOR THE YEARS ENDED 2009, 2010, AND 2011**

**Exhibit D**

FT Studio (Unit)  
Ex. D – 03/2012 Financial Statements  
1076.001.003/42173



**1 Client 1 Trainer 1 Goal**

**FITNESS TOGETHER FRANCHISE CORPORATION**

**Consolidated Financial Statements  
and  
Independent Auditors' Report  
December 31, 2011, 2010, and 2009**

**EKS&H**

**EHRHARDT • KEEFE  
STEINER • HOTTMAN PC**

CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS

# FITNESS TOGETHER FRANCHISE CORPORATION

## Table of Contents

	<u>Page</u>
Independent Auditors' Report.....	1
Consolidated Financial Statements	
Consolidated Balance Sheets.....	2
Consolidated Statements of Operations.....	3
Consolidated Statement of Changes in Equity.....	4
Consolidated Statements of Cash Flows.....	5
Notes to Consolidated Financial Statements.....	7

## INDEPENDENT AUDITORS' REPORT

Board of Directors and Stockholder  
Fitness Together Franchise Corporation  
Highlands Ranch, Colorado

We have audited the accompanying consolidated balance sheets of Fitness Together Franchise Corporation (the "Company") as of December 31, 2011, 2010, and 2009, and the related consolidated statements of operations, changes in equity, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fitness Together Franchise Corporation as of December 31, 2011, 2010, and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*Ehrhardt Keefe Steiner + Hottman PC*

Ehrhardt Keefe Steiner & Hottman PC

February 20, 2012  
Denver, Colorado

# FITNESS TOGETHER FRANCHISE CORPORATION

## Consolidated Balance Sheets

	December 31,		
	2011	2010	2009
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	\$ 1,511,693	\$ 2,001,831	\$ 558,491
Accounts receivable, net	292,991	367,373	550,095
Notes receivable, current	29,583	49,117	50,640
Deferred franchise costs, current	60,648	147,612	184,138
Other current assets	73,077	84,316	78,352
<b>Total current assets</b>	<b>1,967,992</b>	<b>2,650,249</b>	<b>1,421,716</b>
<b>Non-current assets</b>			
Restricted cash	10,268	20,392	46,012
Property and equipment, net	86,456	186,887	304,434
Notes receivable, less current portion	330,958	319,703	351,364
Deferred franchise costs, less current portion	151,962	273,524	449,322
Deferred tax asset, net	-	-	477,157
Deferred financing costs, net	184,623	276,687	368,751
Intangible assets, net	2,115,171	2,475,093	2,453,263
Goodwill	13,071,106	13,002,407	12,581,011
<b>Total non-current assets</b>	<b>15,950,544</b>	<b>16,554,693</b>	<b>17,031,314</b>
<b>Total assets</b>	<b>\$ 17,918,536</b>	<b>\$ 19,204,942</b>	<b>\$ 18,453,030</b>
<b>Liabilities and Equity</b>			
<b>Current liabilities</b>			
Accounts payable	\$ 33,879	\$ 19,790	\$ 64,482
Accrued expenses	1,106,198	446,413	757,732
Current portion of long-term debt	1,121,095	1,086,562	738,849
Deferred revenue, current	271,129	430,183	454,247
<b>Total current liabilities</b>	<b>2,532,301</b>	<b>1,982,948</b>	<b>2,015,310</b>
<b>Non-current liabilities</b>			
Due to ETMI	-	591,613	1,070,916
Due to FTHI	1,546	1,927,366	370,240
Deferred revenue, less current portion	929,516	1,543,711	2,641,165
Long-term debt, less current portion	6,601,896	7,160,730	6,504,627
<b>Total non-current liabilities</b>	<b>7,532,958</b>	<b>11,223,420</b>	<b>10,586,948</b>
<b>Total liabilities</b>	<b>10,065,259</b>	<b>13,206,368</b>	<b>12,602,258</b>
<b>Commitments and contingencies</b>			
<b>Equity</b>			
<b>FTFC stockholder's equity</b>			
Class A common stock, \$1 par value, 5,000 shares issued and outstanding	5,000	5,000	5,000
Additional paid-in capital	24,462,252	21,762,252	20,762,252
Accumulated deficit	(16,627,178)	(15,789,022)	(14,968,537)
<b>Total FTFC stockholder's equity</b>	<b>7,840,074</b>	<b>5,978,230</b>	<b>5,798,715</b>
Non-controlling interest	13,203	20,344	52,057
<b>Total equity</b>	<b>7,853,277</b>	<b>5,998,574</b>	<b>5,850,772</b>
<b>Total liabilities and equity</b>	<b>\$ 17,918,536</b>	<b>\$ 19,204,942</b>	<b>\$ 18,453,030</b>

See notes to consolidated financial statements.



# FITNESS TOGETHER FRANCHISE CORPORATION

## Consolidated Statements of Operations

	For the Years Ended		
	December 31,		
	2011	2010	2009
<b>Revenues</b>			
Royalties	\$ 3,738,417	\$ 4,230,671	\$ 4,602,460
Franchise fees	1,011,087	1,635,795	1,670,379
Equipment revenue	204,404	128,488	485,602
Other revenues	<u>524,905</u>	<u>581,373</u>	<u>450,522</u>
<b>Total revenues</b>	<u>5,478,813</u>	<u>6,576,327</u>	<u>7,208,963</u>
<b>Expenses</b>			
Franchise related costs	1,957,058	2,446,638	2,984,058
Payroll	313,983	632,718	1,959,516
Advertising and promotion	138,176	294,859	505,748
General and administrative	558,560	634,511	1,195,387
Rent and occupancy	-	2,446	407,208
Depreciation and amortization	792,523	884,799	797,149
Impairment of goodwill	-	-	8,482,000
Impairment of intangible assets	-	-	1,762,000
Management fee	<u>1,619,204</u>	<u>1,225,127</u>	<u>-</u>
<b>Total expenses</b>	<u>5,379,504</u>	<u>6,121,098</u>	<u>18,093,066</u>
Income (loss) from operations	<u>99,309</u>	<u>455,229</u>	<u>(10,884,103)</u>
<b>Other (expense) income</b>			
Interest expense	(933,980)	(917,096)	(898,594)
Interest income	<u>891</u>	<u>2,347</u>	<u>13,318</u>
<b>Total other (expense) income</b>	<u>(933,089)</u>	<u>(914,749)</u>	<u>(885,276)</u>
Net loss from continuing operations before income taxes	(833,780)	(459,520)	(11,769,379)
Income tax (expense) benefit	<u>(6,509)</u>	<u>(379,618)</u>	<u>1,239,575</u>
Net loss from continuing operations	(840,289)	(839,138)	(10,529,804)
Discontinued operations	<u>-</u>	<u>15,813</u>	<u>(96,711)</u>
Net loss	(840,289)	(823,325)	(10,626,515)
Less net loss attributable to non-controlling interests, net of tax	<u>2,133</u>	<u>2,840</u>	<u>39,986</u>
Net loss attributable to FTFC	<u>\$ (838,156)</u>	<u>\$ (820,485)</u>	<u>\$ (10,586,529)</u>

See notes to consolidated financial statements.

**FITNESS TOGETHER FRANCHISE CORPORATION**

**Consolidated Statement of Changes in Equity  
For the Years Ended December 31, 2011, 2010, and 2009**

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholder's Equity	Non- Controlling Interests	Total Equity
	Shares	Amount					
Balance - December 31, 2008	5,000	\$ 5,000	\$ 13,305,761	\$ (4,382,008)	\$ 8,928,753	\$ 99,083	\$ 9,027,836
Contributions	-	-	7,450,000	-	7,450,000	-	7,450,000
Distribution to non-controlling interest	-	-	6,491	-	6,491	(7,040)	(549)
Net income (loss)	-	-	-	(10,586,529)	(10,586,529)	(39,986)	(10,626,515)
Balance - December 31, 2009	5,000	5,000	20,762,252	(14,968,537)	5,798,715	52,057	5,850,772
Contributions	-	-	1,000,000	-	1,000,000	-	1,000,000
Liquidation of non-controlling interests (FT-Two and FT-Three)	-	-	-	-	-	(28,873)	(28,873)
Net loss	-	-	-	(820,485)	(820,485)	(2,840)	(823,325)
Balance - December 31, 2010	5,000	5,000	21,762,252	(15,789,022)	5,978,230	20,344	5,998,574
Contributions	-	-	2,700,000	-	2,700,000	-	2,700,000
Distribution to non-controlling interest	-	-	-	-	-	(5,008)	(5,008)
Net loss	-	-	-	(838,156)	(838,156)	(2,133)	(840,289)
Balance - December 31, 2011	<u>5,000</u>	<u>\$ 5,000</u>	<u>\$ 24,462,252</u>	<u>\$ (16,627,178)</u>	<u>\$ 7,840,074</u>	<u>\$ 13,203</u>	<u>\$ 7,853,277</u>

See notes to consolidated financial statements.

# FITNESS TOGETHER FRANCHISE CORPORATION

## Consolidated Statements of Cash Flows

	For the Years Ended		
	December 31,		
	2011	2010	2009
Cash flows from operating activities			
Net loss	\$ (840,289)	\$ (823,325)	\$ (10,626,515)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities			
Depreciation and amortization	884,586	976,863	916,981
Impairment of intangibles	-	-	1,762,000
Impairment of goodwill	-	-	8,482,000
Provision for bad debt	65,620	67,092	113,638
Loss on disposal of assets	-	-	14,958
Adjustment to non-controlling interest	(5,008)	(28,873)	-
Payment in kind interest (accrued interest)	146,420	143,488	140,615
Deferred tax provision	-	477,157	(938,878)
Changes in assets and liabilities			
Accounts receivable	36,370	115,630	(23,440)
Other current assets	11,239	(5,964)	(179,277)
Deferred franchise costs	208,526	212,324	203,705
Accounts payable	14,089	(44,692)	(199,858)
Accrued expenses	659,785	(311,319)	42,715
Deferred revenue	(771,749)	(1,171,848)	(1,080,592)
	<u>1,249,878</u>	<u>429,858</u>	<u>9,254,567</u>
Net cash provided by (used in) operating activities	<u>409,589</u>	<u>(393,467)</u>	<u>(1,371,948)</u>
Cash flows from investing activities			
Restricted cash	10,124	25,620	(2,133)
Purchases of property and equipment	-	(13,533)	(214,405)
Proceeds from sale of property and equipment	-	-	6,643
Repurchase of Area Director territories	-	-	(96,250)
Payments on notes receivable	17,671	83,514	95,641
Amounts (repaid) advanced from ETMI	(630,113)	(479,303)	(1,161,982)
Net cash used in investing activities	<u>(602,318)</u>	<u>(383,702)</u>	<u>(1,372,486)</u>
Cash flows from financing activities			
Amounts advanced (to) from FTHI	(1,925,820)	1,557,126	(85,353)
Contributed capital	2,700,000	1,000,000	-
Payments on debt	(1,071,589)	(336,617)	-
Payments of financing costs	-	-	(490)
Net cash (used in) provided by financing activities	<u>(297,409)</u>	<u>2,220,509</u>	<u>(85,843)</u>
Net (decrease) increase in cash and cash equivalents	(490,138)	1,443,340	(2,830,277)
Cash and cash equivalents - beginning of year	<u>2,001,831</u>	<u>558,491</u>	<u>3,388,768</u>
Cash and cash equivalents - end of year	<u>\$ 1,511,693</u>	<u>\$ 2,001,831</u>	<u>\$ 558,491</u>

(Continued on the following page)

See notes to consolidated financial statements.

## **FITNESS TOGETHER FRANCHISE CORPORATION**

### **Consolidated Statements of Cash Flows**

(Continued from the previous page)

**Supplemental disclosure of cash flow information:**

Cash paid for interest for the years ended December 31, 2011, 2010, and 2009 was \$518,868, \$681,569, and \$666,722, respectively.

**Supplemental disclosure of non-cash activity:**

In 2011, the Company repurchased six master franchise agreements for \$400,868 in exchange for notes payable. In 2010, the Company repurchased seven master franchise agreements for \$1,196,945 in exchange for notes payable. In 2009, the Company repurchased one master franchise agreement for \$220,917 in exchange for a note payable.

In 2011, ETMI repurchased one master franchise agreement in exchange for, among other consideration, the rights to receive one franchise agreement for a Fitness Together studio valued at \$19,500, and the option to purchase two studios at a discounted rate valued at \$19,000. The rights to receive franchise agreements are reflected as an addition to deferred revenue and a reduction of amounts due to ETMI.

In 2011, 2010, and 2009, the Company issued \$37,000, \$50,330, and \$10,000, respectively, in notes receivable in exchange for initial franchise fees and other similar fees. Further, in 2011, the Company deemed \$27,608 in notes receivable as uncollectible, which has been reflected in bad debt expense.

In 2009, FTHI made a contribution to the Company of \$7,450,000, which effectively relieved the Company of the related payable due to FTHI. The contribution is reflected in additional paid-in capital.

See notes to consolidated financial statements.

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies

#### Description of Business

Fitness Together Franchise Corporation (the "Company," "Fitness Together," or "FTFC") is in the business of franchising fitness studios featuring one-on-one and small group personal training in the United States and abroad. The Company was incorporated on January 25, 1996 in the state of Arizona under the name Fitness for Life Franchise Corporation. On March 7, 2005, the Company changed its name to Fitness Together Franchise Corporation.

The Company franchises the right to open fitness studios. The Company also enters into master franchise agreements with Area Directors for the right to develop a state. The Area Director pays an initial master franchise fee of varying amounts based upon the state selected. The Area Director is entitled to receive up to half of the initial franchise fees for studios developed in his or her area and half of the royalties received for the term of the franchise. The studio franchisee pays an initial franchise fee for the right to open a studio and pays royalties of 5% or 6% of revenues received, depending on when the franchise agreement was executed. Both the studio franchise agreement and the master franchise agreement provide a term of ten years and are renewable after the initial term. Studio franchise agreements are renewable for an additional fee.

As of December 31, 2011, the Company had 17 Area Director agreements and had 279 open studio franchises. Six Area Director agreements were reacquired during the year ended December 31, 2011.

The Company is a wholly owned subsidiary of Fitness Together Holdings, Inc. ("FTHI" or the "Parent"), which also owns Elements Therapeutic Massage, Inc. ("ETMI"). FTHI has provided commitments to fund any operational needs of the Company for at least the next year. The operating results of this Company could vary significantly if it operated independently of FTHI and ETML. Accordingly, this affiliation and other related party disclosures must be taken into consideration in reviewing the accompanying consolidated financial statements.

The following table summarizes the number of the studios in operation:

	December 31,		
	2011	2010	2009
Studios open at beginning of year	318	354	409
Studios sold and operated during the year	4	8	19
Studios closed during the year	<u>(43)</u>	<u>(44)</u>	<u>(74)</u>
Studios in operation as of the end of the year	<u>279</u>	<u>318</u>	<u>354</u>
Studios sold but not yet operational	<u>23</u>	<u>31</u>	<u>66</u>

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Fitness Together Franchise Corporation and its three corporate co-owned studios. FT-One, LLC ("FT-One"), FT-Two, LLC ("FT-Two"), and FT-Three, LLC ("FT-Three") were formed in 2007. At formation, the Company owned 75%, 87.5%, and 50% of FT-One, FT-Two, and FT-Three, respectively. During 2008, the Company's ownership in FT-Two increased to 90%. During 2009, the Company's ownership in FT-Three increased to 60%. As further discussed in Note 9, during 2010, the Company fully liquidated and discontinued the operations of FT-Two and FT-Three. All intercompany accounts and transactions have been eliminated in consolidation.

#### Use of Estimates

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. As a result, actual results could differ from these estimates.

#### Cash and Cash Equivalents

The Company considers all highly liquid instruments purchased with an original maturity of three months or less to be cash equivalents. The Company continually monitors its positions with, and the credit quality of, the financial institutions with which it invests.

#### Concentrations of Credit Risk

The Company grants credit in the normal course of business to franchisees related to the collection of royalties and other operating revenues. In select cases, credit is issued for initial franchise fees and master franchise fees. The Company periodically performs credit analysis and monitors the financial condition of its franchisees to reduce credit risk.

#### Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable primarily consists of royalties receivable from franchisees. The Company considers a reserve for doubtful accounts based on the creditworthiness of the franchisee. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on specific identification and historical performance that is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ materially in the near term from the amounts estimated in determining the allowance. The Company recognized an allowance for doubtful accounts of \$56,269, \$201,422, and \$172,904 as of December 31, 2011, 2010, and 2009, respectively.

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Deferred Financing Costs

Costs associated with obtaining debt financing are deferred and amortized on a straight-line basis over the term of the debt, which approximates the effective interest method. During 2011, 2010, and 2009, the Company recognized amortization expense of approximately \$92,000. Amortization expense is expected to be approximately \$92,000 for each of the remaining two years.

#### Restricted Cash

The Company maintains a certificate of deposit, in accordance with a requirement of a lease agreement expiring in June 2012. As of December 31, 2011, 2010, and 2009, the Company had \$10,268, \$20,392, and \$46,012, respectively, being held in restricted cash.

#### Property and Equipment

Property and equipment is stated at cost. Depreciation is provided utilizing the straight-line method over the estimated useful lives of the assets, ranging from two to five years, and the related lease terms for leasehold improvements.

#### Intangible Assets

Intangible assets consist primarily of franchise agreements acquired during a reorganization and reacquired rights resulting from the repurchase of master franchise agreements during 2011, 2010, and 2009.

#### *Franchise Agreements*

As part of a reorganization in 2006, the Company acquired franchise agreements that were recorded based upon the fair value of these assets at the date of the reorganization. The agreements are being amortized over their estimated remaining lives at the time of purchase which was approximately ten years. Furthermore, the Company assesses its franchise agreements for impairment whenever events or changes in circumstances indicate that the carrying value may be greater than the fair value. Fair value is determined primarily using the income approach that utilizes projections of undiscounted cash flows expected to be generated by the franchise agreements. As a result, during 2009 the Company recorded an impairment charge of \$1,762,000 as a component of operating expenses. No impairment charges were recognized for 2011 or 2010.

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Intangible Assets (continued)

##### *Reacquired Rights*

During 2011, 2010, and 2009, the Company entered into certain agreements to repurchase select territories held by Area Directors under master franchise agreements. The reacquired master franchise rights are recorded as an intangible asset, measured at the fair value of the remaining contractual term of the rights at the date of acquisition. Any remaining consideration paid over the value of the reacquired right is recorded as goodwill, all of which is expected to be deductible for tax purposes. The reacquired intangible asset is amortized over the remaining life of the contract. If the terms of the contract that give rise to a reacquired right are favorable or unfavorable relative to similar market transactions, a settlement gain or loss is recognized. The Company has determined that the terms of the contracts are consistent with similar market transactions, and, accordingly, no settlement gain or loss was recorded for the years ended December 31, 2011, 2010, and 2009 (Note 5).

##### Goodwill

Goodwill represents the excess of purchase price over the fair value of tangible net assets at the date of the Company's reorganization and the excess of purchase price over the fair value of reacquired rights at the date the master franchise agreements were repurchased. The Company reviews goodwill for impairment annually. The carrying value of goodwill is considered impaired when the anticipated undiscounted cash flows from such assets are separately identifiable and are less than its carrying value. In that event, a loss is recognized based on the amount by which the carrying value exceeds the fair value of goodwill. Fair value is determined primarily using the anticipated cash flows discounted at a rate commensurate with the risk involved (Note 6).

##### Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset. During the Company's assessment for 2009, certain impairments were identified for franchise agreements (Note 1 - Intangible Assets). No impairments were identified for 2011 or 2010.



# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

#### Franchise Fee Revenue Recognition and Related Franchise Costs

The Company's revenues consist of fees from franchisees such as initial fees, royalties, renewal fees, transfer fees, and master franchise fees.

Initial franchise fees received from a franchisee are recognized as revenue when the Company has performed substantially all initial services required by the franchise agreement, which is generally upon the opening of a studio. Royalties are based upon a percentage of franchisee sales and recognized when earned. Renewal fees are recognized when a renewal agreement with a franchisee becomes effective. Transfer fees are recognized when the transfer agreement becomes effective and when the fee has been received. Additionally, the Company recognizes master franchise fee revenues over the life of the master franchise fee agreement and only to the extent that the cash consideration has been received for the master franchise fee. These agreements are normally for a term of ten years.

Deferred franchise costs represent certain costs incurred to develop new franchises and are expensed when the related revenue is recognized, generally upon the opening of a studio. Franchise costs will not be deferred in excess of the amount of revenue to be recognized.

The Company has the right to collect a marketing and production fund fee of up to 1% of the gross receipts of each franchise studio. The Company is currently not collecting this fee.

#### Equipment Revenue

During 2011, the Company began a program whereby franchisees order equipment directly from a Company-specified vendor and the Company receives a rebate from the vendor, which is recorded as equipment revenue when received. Prior to this change, the Company purchased equipment and sold it to the franchisees for a profit. The Company recognized revenue upon the opening of the studio. Shipping and handling charges to customers were included in revenue. Shipping and handling charges incurred by the Company were included in cost of equipment.

#### Income Taxes

The Company files a consolidated return with its Parent. Income tax expense or benefit of the Company is paid or received by the Parent and is reflected as due to/from FTHI on the consolidated balance sheets. The Parent utilizes a method that allocates current and deferred taxes to the Company as if it were a separate taxpayer. The Company recognizes deferred tax liabilities and assets based on the differences between the tax basis of assets and liabilities and their reported amounts in the consolidated financial statements that will result in taxable or deductible amounts in future years. The Company's temporary differences result primarily from net operating loss carryforwards, amortization of franchise agreements, and recognition of revenue.

## FITNESS TOGETHER FRANCHISE CORPORATION

### Notes to Consolidated Financial Statements

#### Note 1 - Description of Business and Summary of Significant Accounting Policies (continued)

##### Income Taxes (continued)

The Company accounts for any uncertainty in income taxes by recognizing the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The Company measures the tax benefits recognized in the consolidated financial statements from such a position based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The application of income tax law is inherently complex. Laws and regulations in this area are voluminous and are often ambiguous. As such, the Company is required to make many subjective assumptions and judgments regarding income tax exposures. Interpretations of and guidance surrounding income tax law and regulations change over time and may result in changes to the Company's subjective assumptions and judgments which can materially affect amounts recognized in the consolidated balance sheets and the consolidated statements of operations. The result of the reassessment of the Company's tax positions did not have an impact on the consolidated financial statements. The Company's federal tax returns for all years after 2008 and the Company's state tax returns after 2006 are subject to future examination by tax authorities for all its tax jurisdictions. The Company recognizes interest and penalties related to income tax matters in other income (expense) and general and administrative expenses, respectively. After evaluating the tax positions taken, none are considered to be uncertain; therefore, no amounts have been recognized as of December 31, 2011, 2010, and 2009.

##### Advertising Costs

The Company expenses advertising costs as incurred. Advertising expenses for the years ended December 31, 2011, 2010, and 2009 were \$74,792, \$152,860, and \$190,586, respectively.

## FITNESS TOGETHER FRANCHISE CORPORATION

### Notes to Consolidated Financial Statements

#### Note 2 - Notes Receivable

Notes receivable consist of the following:

	December 31,		
	2011	2010	2009
Notes receivable for initial franchise fees financed by the Company, at a 0% interest rate, due in monthly payments at various amounts, and maturing on various dates ranging from December 31, 2012 to December 31, 2015.	\$ 57,417	\$ 29,667	\$ 53,386
Notes receivable for initial franchise fees and initial master franchise fees financed by the Company, at a 0% interest rate, and due upon various specified terms in the agreements.	303,124	303,125	321,626
Notes receivable from franchisees, due in monthly payments at various amounts, at a 0%-8% interest rate. These notes matured in 2011.	-	<u>36,028</u>	<u>26,992</u>
Less current portion	<u>(29,583)</u>	<u>(49,117)</u>	<u>(50,640)</u>
	<u>\$ 330,958</u>	<u>\$ 319,703</u>	<u>\$ 351,364</u>

Upon entering into these note agreements, the Company defers the related revenue until payments from the sale of studios within the respective territories are received. The Company has not recognized a discount on notes receivable issued with 0% interest as the amount is not material. The Company reserves an allowance for doubtful collections. The provision for uncollectible amounts is continually reviewed and adjusted to maintain the allowance at a level considered adequate to cover future losses. The allowance is management's best estimate of uncollectible amounts and is determined based on historical performance of the notes, which is tracked by the Company on an ongoing basis. The losses ultimately incurred could differ materially in the near term from the amounts estimated in determining the allowance. As of December 31, 2011, 2010, and 2009, management determined that no allowance was necessary. The Company collateralizes the notes with the related franchise agreement.

**FITNESS TOGETHER FRANCHISE CORPORATION**

**Notes to Consolidated Financial Statements**

**Note 3 - Property and Equipment**

Property and equipment consist of the following:

	December 31,		
	2011	2010	2009
Office equipment	\$ 105,643	\$ 133,392	\$ 130,933
Software	237,291	258,729	243,053
Computer equipment	20,347	66,172	73,397
Leasehold improvements	48,446	48,446	48,446
	411,727	506,739	495,829
Less accumulated depreciation	(325,271)	(319,852)	(191,395)
	<u>\$ 86,456</u>	<u>\$ 186,887</u>	<u>\$ 304,434</u>

Depreciation expense for the years ended December 31, 2011, 2010, and 2009 was \$100,432, \$132,608, and \$118,332, respectively.

**Note 4 - Deferred Financing**

Deferred financing costs consist of the following:

	December 31,		
	2011	2010	2009
Deferred financing fees	\$ 649,007	\$ 649,007	\$ 649,007
Accumulated amortization	(464,384)	(372,320)	(280,256)
	<u>\$ 184,623</u>	<u>\$ 276,687</u>	<u>\$ 368,751</u>

Amortization expense for the years ended December 31, 2011, 2010 and 2009 was \$92,064, \$92,064 and \$71,496, respectively.

**FITNESS TOGETHER FRANCHISE CORPORATION**

**Notes to Consolidated Financial Statements**

**Note 5 - Intangible Assets**

Intangible assets consist of the following:

	<u>December 31, 2011</u>		
		Less	
	<u>Gross Carrying</u>	<u>Accumulated</u>	<u>Net Intangible</u>
	<u>Amount</u>	<u>Amortization</u>	<u>Assets</u>
Franchise agreements	\$ 3,614,761	\$ (2,109,741)	\$ 1,505,020
Reacquired rights	1,294,018	(703,867)	590,151
Other	<u>20,000</u>	<u>-</u>	<u>20,000</u>
	<u>\$ 4,928,779</u>	<u>\$ (2,813,608)</u>	<u>\$ 2,115,171</u>
	<u>December 31, 2010</u>		
		Less	
	<u>Gross Carrying</u>	<u>Accumulated</u>	<u>Net Intangible</u>
	<u>Amount</u>	<u>Amortization</u>	<u>Assets</u>
Franchise agreements	\$ 3,614,761	\$ (1,748,264)	\$ 1,866,497
Reacquired rights	961,849	(373,253)	588,596
Other	<u>20,000</u>	<u>-</u>	<u>20,000</u>
	<u>\$ 4,596,610</u>	<u>\$ (2,121,517)</u>	<u>\$ 2,475,093</u>
	<u>December 30, 2009</u>		
		Less	
	<u>Gross Carrying</u>	<u>Accumulated</u>	<u>Net Intangible</u>
	<u>Amount</u>	<u>Amortization</u>	<u>Assets</u>
Franchise agreements	\$ 3,614,761	\$ (1,367,798)	\$ 2,246,963
Reacquired rights	186,300		186,300
Other	<u>20,000</u>	<u>-</u>	<u>20,000</u>
	<u>\$ 3,821,061</u>	<u>\$ (1,367,798)</u>	<u>\$ 2,453,263</u>

## FITNESS TOGETHER FRANCHISE CORPORATION

### Notes to Consolidated Financial Statements

#### Note 5 - Intangible Assets (continued)

Amortization expense in the amount of \$692,091, \$753,719, and \$678,817 was recognized on the intangible assets during 2011, 2010, and 2009, respectively. Amortization expense for the next five years is expected to be as follows:

#### Year Ending December 31,

2012	\$	686,784
2013		536,811
2014		446,222
2015		366,238
2016		<u>59,116</u>
Total	\$	<u>2,095,171</u>

#### Reacquired Rights

During 2011, 2010, and 2009, the Company repurchased six, seven, and two, territories, respectively, held by Area Directors under master franchise agreements. These master franchise agreements entitled the Area Directors to a portion of certain revenues generated in the territories, which will now be retained wholly by the Company. The valuation technique utilized in the acquisitions considered the trailing 12 months' royalties from the territory, less certain fees and expenses.

The Georgia territory was acquired on August 25, 2011 for \$100,000 in exchange for a note payable, which will be paid in thirty-six equal monthly installments. The fair value of the remaining contractual term of the agreement is \$100,000, which was recognized as a reacquired right.

The Kansas/Missouri territory was acquired on June 14, 2011 for \$110,089 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$110,089, which was recognized as a reacquired right.

The Nebraska territory was acquired on June 14, 2011 for \$18,078 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$18,078, which was recognized as a reacquired right.

The Pennsylvania territory was acquired on June 14, 2011 for \$65,473 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$6,236, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The Missouri territory was acquired on June 14, 2011 for \$57,557 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$57,557, which was recognized as a reacquired right.

## FITNESS TOGETHER FRANCHISE CORPORATION

### Notes to Consolidated Financial Statements

#### Note 5 - Intangible Assets (continued)

##### Reacquired Rights (continued)

The Oregon territory was acquired on June 12, 2011 for \$49,672 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$40,211, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of acquisition.

The Florida/Alabama territory was acquired on February 3, 2010 for \$519,800 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$470,297, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The Utah territory was acquired on January 31, 2010 for \$16,951 in exchange for a note payable, which will be paid in forty-two equal monthly installments. The fair value of the remaining contractual term of the agreement is \$16,951, which was recognized as a reacquired right.

The Oklahoma/Arkansas territory was acquired on January 26, 2010 for \$336,953 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$34,841, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The Michigan/Virginia territory was acquired on January 7, 2010 for \$323,241 in exchange for a note payable, which will be paid from ongoing royalties received in the territory acquired. The fair value of the remaining contractual term of the agreement is \$253,460, which was recognized as a reacquired right. The remainder of the purchase price was recorded as goodwill at the date of the acquisition.

The southern California territory was acquired on December 31, 2009 for \$220,917, in exchange for a note payable. The fair value of the remaining contractual term of the agreement is \$26,300, which was recognized as a reacquired right. The remainder of the purchase price is recorded as goodwill at the date of acquisition.

The New York territory was acquired on July 9, 2009 for a lump-sum payment of \$160,000. The fair value of the remaining contractual term of the agreement is \$160,000, which was recognized as a reacquired right.

Any unearned revenue existing at the date of acquisition for these master franchise agreements is recognized as revenue. Total unearned revenue released as a result of these acquisitions was approximately \$166,000, \$199,000, and \$98,000 for the years ended December 31, 2011, 2010, and 2009, respectively.

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 6 - Goodwill

The Company reviews goodwill at the end of each year. The impairment test is a two-step process. The first step identifies potential impairments by comparing the calculated fair value of a Company's net assets with the related book values. If the fair value of the Company's net assets exceeds the book value, goodwill is not impaired, and the second step is not necessary. If the carrying value exceeds the fair value, the second step includes determining the implied fair value through further market research. Specifically, the estimated fair value of the Company determined in the first step is allocated to recognized and unrecognized net assets, including allocations to intangible assets. The implied fair value of goodwill is then compared with the carrying amount to determine if an impairment loss is recorded.

During 2009, the first step of the impairment test showed that the fair value of the Company's net assets was less than the book value amount, indicating a potential impairment. The second step of the impairment test concluded that the implied fair value of goodwill was reduced to \$12,581,011. This resulted in an impairment of goodwill totaling \$8,482,000. During 2011 and 2010, management's first step of the analysis did not indicate an impairment.

The fair value of the Company calculated in the first step was determined primarily using the anticipated cash flows discounted at a rate commensurate with the risk involved. As part of the second step, the Company assigned fair value to the franchise agreement intangible assets based on an income approach that utilizes projections of undiscounted cash flows expected to be generated by the franchise agreements. This resulted in the aforementioned impairment loss of \$1,762,000.

Goodwill acquired during the years ended December 31, 2011, 2010, and 2009 resulted from the repurchase of certain master franchise agreements.

The rollforward of goodwill is as follows:

	December 31,		
	2011	2010	2009
Goodwill balance, beginning of the year	\$ 13,002,407	\$ 12,581,011	\$ 20,768,387
Goodwill acquired during the year	68,699	421,396	294,624
Impairment losses	-	-	(8,482,000)
Goodwill balance, end of year	<u>\$ 13,071,106</u>	<u>\$ 13,002,407</u>	<u>\$ 12,581,011</u>



# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 7 - Long-Term Debt

Long-term debt consists of the following:

	December 31,		
	2011	2010	2009
Note payable to a former equity partner, bearing interest of 9.5% currently payable and 2.0% of payment-in-kind interest (i.e., interest accrued to the principal of the note) per annum, matures November 2013. The note is collateralized by substantially all assets of the Company and is guaranteed by the Company's Parent.	\$ 6,626,218	\$ 7,166,047	\$ 7,022,559
Subordinated, unsecured notes payable due to former Area Directors. Payments are made monthly consistent with 50% of the royalty revenues received in the Area Directors' former territory, with the total balances due on or before specified due dates ranging from December 31, 2013 to December 31, 2015.	<u>1,096,773</u>	<u>1,081,245</u>	<u>220,917</u>
	7,722,991	8,247,292	7,243,476
Less current portion	<u>(1,121,095)</u>	<u>(1,086,562)</u>	<u>(738,849)</u>
	<u>\$ 6,601,896</u>	<u>\$ 7,160,730</u>	<u>\$ 6,504,627</u>

Maturities of long-term obligations are estimated as follows:

#### Year Ending December 31,

2012	\$ 1,121,095
2013	6,222,907
2014	264,905
2015	<u>114,084</u>
	<u>\$ 7,722,991</u>

### Note 8 - Income Taxes

The Company recognizes deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the consolidated financial statements or consolidated tax returns. Deferred tax liabilities and assets are determined based on the differences between the financial statement and tax basis of assets and liabilities using the enacted tax rates in effect for the year in which the differences are expected to reverse. The measurement of deferred tax assets is reduced, if necessary, by the amount of any tax benefits that are not expected to be realized based on available evidence.

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 8 - Income Taxes (continued)

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the relative impact of negative and positive evidence, including historical losses and projections of future taxable income. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are deductible, the Company concluded that it no longer meets the accounting criteria for recognizing a portion of its deferred tax asset; that is, estimated future taxable income no longer constitutes sufficient positive evidence to conclude that it is more likely than not that its net deferred tax assets would be realizable in the foreseeable future. Therefore, during the year ended December 31, 2010, the Company increased to 100% its valuation allowance against its deferred tax assets. The effect of the valuation allowance adjustment was to increase the Company's provision for income taxes by approximately \$527,000 for the year ended December 31, 2010. As of December 31, 2011, the Company has maintained a full valuation allowance against its deferred tax assets.

The net current and long-term deferred tax assets and liabilities in the accompanying consolidated balance sheets include the following:

	December 31,		
	2011	2010	2009
Net long-term deferred taxes			
Deferred tax asset - net operating loss	\$ 875,000	\$ 458,000	\$ 444,000
Deferred tax asset - deferred franchise fees	338,000	589,000	826,000
Deferred tax asset - reacquired rights	206,000	115,000	-
Deferred tax asset - allowance for doubtful accounts	21,000	75,000	65,000
Deferred tax liability - amortization of franchise agreements	<u>(598,000)</u>	<u>(710,000)</u>	<u>(858,000)</u>
Net deferred tax asset	842,000	527,000	477,000
Less valuation allowance	<u>(842,000)</u>	<u>(527,000)</u>	<u>-</u>
Net long-term deferred tax asset (liability)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 477,000</u>

At December 31, 2011, the Company had net operating losses of approximately \$2,347,000 related to U.S. federal, foreign, and state jurisdictions. Utilization of the net operating losses may be subject to certain limitations under Section 382 of the Internal Revenue Code of 1986, as amended, and other limitations under state and foreign tax laws and expire in years through 2031.

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 8 - Income Taxes (continued)

Components reflected in the consolidated statements of operations are as follows:

	For the Years Ended December 31,		
	2011	2010	2009
Current tax expense (benefit)	\$ 6,509	\$ (97,539)	\$ (300,604)
Deferred tax expense (benefit)	-	477,157	(938,971)
	<u>\$ 6,509</u>	<u>\$ 379,618</u>	<u>\$ (1,239,575)</u>

The following is a reconciliation of the statutory federal income tax rate applied to pre-tax accounting net loss compared to the income taxes in the consolidated statements of operations:

	For the Years Ended December 31,		
	2011	2010	2009
Income tax benefit at the statutory rate	\$ (283,485)	\$ (149,895)	\$ (4,020,875)
Change resulting from			
State and local income taxes, net of federal income tax	(27,729)	(14,751)	(390,168)
Permanent differences	2,240	1,861	3,171,468
Change in valuation allowance	315,425	527,099	-
Other, net	58	15,304	-
	<u>\$ 6,509</u>	<u>\$ 379,618</u>	<u>\$ (1,239,575)</u>

As of December 31, 2011 and 2010, the Company had a tax-related receivable due from its Parent of \$403,386. As of December 31, 2009 there was no tax-related balance due to or from affiliates filing under the consolidated tax return.

### Note 9 - Discontinued Operations

FT-Two and FT-Three were formerly operated as corporate-owned studios and consolidated into the accompanying consolidated financial statements. During 2010, the Company fully liquidated and ceased the operations of the two subsidiaries. Accordingly, the consolidated financial statements reflect the results of operations and financial position of FT-Two and FT-Three as discontinued operations. Operating results of the discontinued operations are as follows:

# FITNESS TOGETHER FRANCHISE CORPORATION

## Notes to Consolidated Financial Statements

### Note 9 - Discontinued Operations (continued)

The condensed balance sheets of FT-Two and FT-Three prior to intercompany eliminations, are as follows for the year ended December 31, 2009:

Current assets	\$	6,831
Non-current assets		<u>122,427</u>
Total assets	\$	<u>129,258</u>
Liabilities	\$	258
Equity		<u>129,000</u>
Total liabilities and equity	\$	<u>129,258</u>

Details of condensed discontinued operations of FT-Two and FT-Three prior to intercompany eliminations, are as follows:

	For the Years Ended	
	December 31,	
	<u>2010</u>	<u>2009</u>
Revenue	\$ -	\$ 116,404
Operating expenses	(7,048)	(195,524)
Other expense	<u>22,861</u>	<u>(17,591)</u>
Net income (loss)	<u>\$ 15,813</u>	<u>\$ (96,711)</u>

### Note 10 - Commitments and Contingencies

#### Litigation

In the normal course of business, the Company is party to litigation from time to time. The Company maintains insurance to cover certain actions and believes that resolution of such litigation will not have a material adverse effect on the Company.

#### Letter-of-Credit

The Company maintains an irrevocable standby letter-of-credit with a bank to support the studio lease of its majority-owned subsidiary, FT-One, LLC. The letter-of-credit is supported by a certificate of deposit and subject to annual reductions of \$10,000 until the letter matures in June 2012. As of December 31, 2011, the outstanding balance on the letter-of-credit is \$10,000.

## FITNESS TOGETHER FRANCHISE CORPORATION

### Notes to Consolidated Financial Statements

#### Note 10 - Commitments and Contingencies (continued)

##### Termination of Master Franchise Agreement

During 2009, the Company entered into a mutual termination agreement of the master franchise agreement held by an Area Director. Under the terms of the termination agreement, the Company agreed to pay an aggregate amount of \$45,000, payable only upon consummation of new franchise sales in the Area Director's former territory. The termination fee will be paid from the proceeds of initial franchise fees received from franchise sales. During 2011, \$5,000 was paid under this agreement. No amounts were paid under this agreement in 2010 or 2009.

#### Note 11 - Related Party Transactions

The Company is a wholly owned subsidiary of FTHI, which also owns ETMI. Based on the cash needs of each company, cash may transfer amongst the companies. The amounts transferred are recorded as an intercompany asset or liability depending upon the amount owed to or from related entities. The intercompany balance due to FTHI as of December 31, 2011, 2010, and 2009 was \$1,546, \$1,927,366, and \$370,240 respectively. The intercompany balance due to ETMI as of December 31, 2011, 2010, and 2009 was \$0, \$591,613, and \$1,070,916, respectively.

During the years ended December 31, 2011 and 2010, FTHI contributed cash of \$2,700,000 and \$1,000,000, respectively, to the Company. During the year ended December 31, 2009, FTHI contributed \$7,450,000 to the Company, in effect contributing to equity the majority of amounts due to FTHI. The contributions are recorded as such in the consolidated statement of changes in equity.

##### Management Fees

Effective January 1, 2010, the Company entered into a servicing agreement with FTHI, whereby FTHI will provide certain executive, legal, administrative, and marketing services on behalf of the Company. The adoption of this agreement modified management's methodology used to allocate these overhead costs from FTHI to the Company and ETMI. The new allocation methodology is based on estimated time and effort spent on the Company, and the resulting costs to the Company are reported as a management fee on the accompanying consolidated statements of operations for the years ended December 31, 2011 and 2010. The allocation of overhead costs from FTHI to the Company in 2009 was reported in the relative expense line items on the accompanying consolidated statement of operations based on the nature of the underlying costs.

#### Note 12 - Subsequent Events

The Company has evaluated events subsequent to December 31, 2011 through February 20, 2012, which is the date the financial statements were available to be issued.

**EXHIBIT E**  
**LIST OF STATE AGENTS/AGENTS FOR SERVICE OF PROCESS**

**Exhibit E**

FT Studio (Unit)  
Ex. E - ~~11/30/10~~03/2012 List of State Agents  
~~1076.001.001/13308~~  
1076.001.003/41962

**EXHIBIT E**

**STATE AGENCIES/AGENTS FOR SERVICE OF PROCESS**

Listed here are the names, addresses and telephone numbers of the state agencies having responsibility for the franchising disclosure/registration laws. We may not yet be registered to sell franchises in any or all of these states. There may be states in addition to those listed below in which we have appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

**CALIFORNIA**

Department of Corporations:  
1 (866) 275-2677

***Los Angeles***

Suite 750  
320 West 4<sup>th</sup> Street  
Los Angeles, California 90013  
(213) 576-7505

***Sacramento***

1515 K Street, Suite 200  
Sacramento, California 95814-4052  
(916) 445-7205

***San Diego***

1350 Front Street  
San Diego, California 92101  
(619) 525-4044

***San Francisco***

One Sansome Street, Suite 600  
San Francisco, California 94104  
(415) 972-8559

**HAWAII**

(agent for service of process)

Commissioner of Securities of the  
Department of Commerce and Consumer  
Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813  
(808) 586-2722

(for other matters)  
Business Registration Division  
Securities Compliance Branch  
Department of Commerce  
and Consumer Affairs  
P.O. Box 40  
Honolulu, Hawaii 96810  
(808) 586-2722

**ILLINOIS**

Franchise Bureau  
Office of the Attorney General  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-4465

**INDIANA**

(state administrator)

Indiana Secretary of State  
Securities Division, E-111  
302 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6681

(agent for service of process)

Indiana Secretary of State  
201 State House  
200 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-6531

**MARYLAND**

(state administrator)

Office of the Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202-2021  
(410) 576-6360

(agent for service of process)

Maryland Securities Commissioner  
at the Office of the Attorney General  
Securities Division  
200 St. Paul Place  
Baltimore, Maryland 21202-2021  
(410) 576-6360

**MICHIGAN**

(state administrator)

Michigan Attorney General's Office  
Consumer Protection Division  
Attn: Franchise Section  
G. Mennen Williams Building, 1<sup>st</sup> Floor  
525 West Ottawa Street  
Lansing, Michigan 48933  
(517) 373-7117

(agent for service of process)

Michigan Department of Commerce,  
Corporations and Securities Bureau  
P.O. Box 30054  
6546 Mercantile Way  
Lansing, Michigan 48909

**MINNESOTA**

Commissioner of Commerce  
Minnesota Department of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101  
(651) 296-6328

**NEW YORK**

(state administrator)

New York State Department of Law  
Bureau of Investor Protection  
and Securities  
120 Broadway  
New York, New York 10271  
(212) 416-8000

(agent for service of process)

Secretary of State of New York  
41 State Street  
Albany, New York 12231  
(518) 474-4752

**NORTH DAKOTA**

North Dakota Securities Department  
600 East Boulevard Avenue  
State Capitol - Fifth Floor  
Bismarck, North Dakota 58505  
(701) 328-4712



**OREGON**

Department of Insurance and Finance  
Corporate Securities Section  
Labor and Industries Building  
Salem, Oregon 97310  
(503) 378-4387

**RHODE ISLAND**

Division of Securities  
1511 Pontiac Avenue  
Cranston, Rhode Island 02920  
(401) 462-9582

**SOUTH DAKOTA**

Department of Revenue and Regulation  
Division of Securities  
445 East Capitol  
Pierre, South Dakota 57501  
(605) 773-4013

**VIRGINIA**

(state administrator)

State Corporation Commission  
Division of Securities  
and Retail Franchising  
1300 East Main Street, Ninth Floor  
Richmond, Virginia 23219  
(804) 371-9051

(agent for service of process)

Clerk, State Corporation Commission  
1300 East Main Street  
Richmond, Virginia 23219  
(804) 371-9672

**WASHINGTON**

(state administrator)

Department of Financial Institutions  
Securities Division  
P.O. Box 9033  
Olympia, Washington 98507-9033  
(360) 902-8760

(agent for service of process)

Director  
Department of Financial Institutions  
Securities Division  
150 Israel Road, S.W.  
Tumwater, Washington 98501

**WISCONSIN**

Securities and Franchise Registration  
Wisconsin Securities Commission  
345 West Washington Avenue, 4th Floor  
Madison, Wisconsin 53703  
(608) 266-3431

**EXHIBIT F**

**LIST OF AREA DIRECTORS AS OF 12/31/11**

**Exhibit F**

FT Studio (Unit)  
Ex. F - 03/2012 List of Area Directors  
1076.001.003/42176

**EXHIBIT F**

**AREA DIRECTORS AS OF DECEMBER 31, 2011**

Area	Name	Principal(s)	Business Address	City	State	Zip	Phone
CT	FT Connecticut LLC	Pete Piranio Matt Gagliano	101 Pleasant View Rd.	Warwick	RI	02888	(401) 289-2330
DC	Dalriada Enterprises, LLC	Paul McKinnis Matt McKinnis	107 King Henry Court	Alexandria	VA	22314	(703) 898-7607
IL	Fitquest, Inc.	David Conine	6914 N. Belmont Lane	Fox Point	WI	53217	(414) 331-5547
KY	Supraspinams, Inc.	Jonathan Slain, Michael Hall, Brad Newcomb	6025 Kruse Drive, #152	Solon	OH	44139	(216) 870-4219
MD	Dalriada Enterprises, LLC	Paul McKinnis Matt McKinnis	107 King Henry Court	Alexandria	VA	22314	(703) 898-7607
MA	Mid Atlantic Fitness Inc	Benjie Moser	8609 Rayburn Road	Bethesda	MD	20817	(202) 213-1070
MN	Piranio Fitness Systems	Pete Piranio	524 Milwaukee St Suite301	Delafield	WI	53018	(262) 646-5444
NC	Fimess Together NC, LLC	Forrest Walden Rick Anderson	3002 Roxbury Road	Homewood	AL	35209	(205) 868-1898
OH	Opportunitas, Inc.	Jonathan Slain, Michael Hall, Brad Newcomb	6025 Kruse Drive, #152	Solon	OH	44139	(216) 870-4219
RI	Fimess Partners, Inc.	Matt Gagliano	101 Pleasant View Rd.	Warwick	RI	02888	(401) 289-2330
TN	Spidle Master I, LLC	Jonathan Spidle	3100 Independence Dr Suite 101	Homewood	AL	35209	(205) 868-1898
TX	Craig Day	Craig Day	9010 Memorial Tr. Dr.	Spring	TX	77379	(281) 685-7681
WI	Fitquest, Inc.	David Conine	6914 N. Belmont Lane	Fox Point	WI	53217	(414) 331-5547

**EXHIBIT HG**  
**CONSENT TO TRANSFER**

Exhibit HG

FT Studio (Unit)  
Ex. HG - 11/201103/2012 Consent to Transfer  
1076.001.001/13313  
1076.001.003/41250

## AGREEMENT AND CONDITIONAL CONSENT TO TRANSFER

Location: \_\_\_\_\_ (Studio No.: \_\_\_\_\_)

This Agreement and Conditional Consent to Transfer ("Agreement~~Consent~~") is made by and among FITNESS TOGETHER FRANCHISE CORPORATION, an Arizona corporation ("Franchisor"); \_\_\_\_\_ ("Seller"); \_\_\_\_\_ ("Seller Guarantors") and \_\_\_\_\_ ("Buyer")—and, if any, the undersigned Guarantors, effective as of the Effective Date. All terms capitalized in this Consent and not otherwise defined herein shall have the meanings ascribed to them in the Seller Franchise Agreement (defined below) or the Buyer Franchise Agreement (defined below), as the case may be.

### Recitals

- A. Seller is the franchisee under that certain franchise agreement dated \_\_\_\_\_, as it may have been amended by subsequent addendum or addenda (the "Seller Franchise Agreement"), governing the operation of the Fitness Together studio located at \_\_\_\_\_ (the "Studio").
- B. Seller has notified Franchisor that it and Buyer have entered into a purchase and sale agreement dated \_\_\_\_\_ (the "Purchase Agreement"), pursuant to which Seller has agreed to sell, and Buyer has agreed to purchase, all of the rights, obligations and assets relating to the Studio (the "Interests").
- C. Buyer has also agreed to (1) assume the lease obligations for the Studio premises, and (2) enter into Franchisor's current form of franchise agreement (the "Buyer Franchise Agreement") (the transfer of Interests under the Purchase and Sale Agreement, the assumption by Buyer of the Studio's lease obligations and the execution of the Buyer Franchise Agreement, collectively referred to as the "Transfer").
- D. Franchisor has agreed not to exercise its right of first refusal as set forth in the Seller Franchise Agreement and has agreed to approve the Transfer of the Studio in accordance with the terms, and subject to the conditions, set forth in this Conditional Consent.

### Agreement

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein and other valuable consideration, receipt and sufficiency of which are acknowledged, the Parties~~parties~~ agree as follows:

1. **Effective Date.** The "Effective Date" will be the date on which Franchisor signs this Agreement~~Consent~~ acknowledging its consent to the proposed Transfer, which date shall be consistent with the effective date of the Buyer Franchise Agreement.

2. **Purchase Agreement.** Seller and Buyer represent and warrant that the form of Purchase Agreement provided to Franchisor is the final version of the Purchase Agreement and is the version which has been, or will be, executed by them to effectuate the Transfer. The Purchase Agreement will not be amended, and the terms set forth in the Purchase Agreement will not be changed, except with the prior written consent of Franchisor.

3. Conditional Consent; Release of Guaranty. As of the ~~effective date of the Buyer Franchise Agreement and this Agreement~~ Closing Date, the Seller Franchise Agreement will terminate and operation of the Studio will thereafter be governed by the Buyer Franchise Agreement. Upon termination of the Seller Franchise Agreement, neither Seller nor any ~~of the guarantors under the Seller Franchise Agreement~~ (“Seller Guarantors”) shall have any further rights or obligations thereunder, except that neither Seller nor any Seller Guarantor shall be released from (i) any obligations to pay money owed to Franchisor under the Seller Franchise Agreement or the guaranty prior to the date of this Agreement Consent or as set forth herein; or (ii) the provisions of the Seller Franchise Agreement that, either expressly or by their nature, survive termination of the Seller Franchise Agreement (including, without limitation, the post-termination restrictive covenants; dispute resolution and notice, and confidentiality provisions of the Seller Franchise Agreement). Notwithstanding anything in this Agreement Consent to the contrary, the consent and release set forth herein are expressly contingent upon compliance with the following terms and conditions on or before the date of the closing of the Transfer (“Closing Date”):

- a. Franchise Agreement. The Seller Franchise Agreement will terminate as of the Closing Date in accordance with the terms set forth in Section ~~67~~ below, and the operation of the Studio will thereafter be governed by the Buyer Franchise Agreement.
- b. Payment of Amounts Due. Seller will pay all amounts due and owing from Seller (or an affiliate of Seller) to Franchisor through the Closing Date ~~including but not limited to past due royalty, software, website and other fees~~.
- c. Transfer Fee. Upon execution of this Agreement Consent by Seller and Buyer, a transfer fee in the amount of { \$ \_\_\_\_\_ } (“Transfer Fee”) shall be paid to Franchisor ~~as provided in the Seller Franchise Agreement.~~ Except as described in Section 6 below, Seller and Buyer acknowledge and agree that Franchisor has earned the Transfer Fee upon receipt thereof and that the Transfer Fee is not refundable.
- d. Training. Buyer and/or Buyer’s designated representative(s) shall have satisfactorily completed the initial training program as described in the Buyer Franchise Agreement prior to the Closing Date.
- e. Right to Possession. Buyer will provide satisfactory evidence to Franchisor that Buyer has the right to possession of the premises for the Studio by way of lease assignment and/or assumption or otherwise (with all required landlord consents), as more fully described in Section ~~57~~ below.
- f. Site Selection Assistance. Buyer acknowledges and agrees that Franchisor has complied with and satisfied its obligations under the Buyer Franchise Agreement to provide site selection and development assistance.
- g. Purchase Agreement. The Purchase Agreement will not be amended and the terms of the purchase transaction will not be changed except with the prior written consent of Franchisor.
- h. Studio Possession. Prior to the Closing Date and changing possession and/or ownership of the Studio, Seller and Buyer shall obtain the written consent and authorization of Franchisor.
- i. Seller Financing. Regardless of any provision of the Purchase Agreement (or any other agreement) to the contrary, if Seller provides financing to Buyer for any portion of the purchase price for the Studio and such financing is secured by any assets of the Studio, Seller acknowledges and agrees that Seller does not and will not have any interests or

rights, revisionary or otherwise, to operate the Studio after the Closing Date pursuant to the Seller Franchise Agreement or Buyer Franchise Agreement.

4. Studio Upgrades/Renovations. Within sixty (60) days following the Closing Date, Buyer will complete the upgrades and renovations of the Studio, at Buyer's expense, as required to improve the condition and appearance of the Studio consistent with Franchisor's current System Standards and other Franchise System requirements.

5. 4-Waiver of Right of First Refusal. Franchisor hereby waives its right of first refusal to purchase the Interests, as set forth in the Seller Franchise Agreement.

6. Contingency. This Consent and/or the Buyer Franchise Agreement may be terminated if:

- a. The Transfer between Seller and Buyer is cancelled, or otherwise not approved by Franchisor;
- b. Seller and/or Buyer fail to meet any of the conditions and/or requirements set forth in this Consent, the Seller Franchise Agreement, and/or the Buyer Franchise Agreement; or
- c. Seller and Buyer fail to change possession and/or ownership of the Studio within ninety (90) days following receipt of Franchisor's written consent and authorization (as described in Section 3,h above).

In the event of such termination, Seller and Buyer will execute a termination and release agreement (in a form acceptable to Franchisor) pursuant to which Franchisor will refund the transfer fee, without interest; provided, however, if Buyer and/or Buyer's designated representative(s) have attended any portion of the initial training program, Franchisor will only be obligated to refund fifty percent (50%) of the transfer fee.

7. 5-Assignment/Assumption of Premises Lease. Buyer and Seller and Buyer acknowledge that one of the requirements of Franchisor's consent is that the Studio premises lease be assigned to and/or otherwise assumed by the Buyer and that the lease for the Studio premises may require consent of and/or notice to the landlord with respect to such assignment and/or assumption. Provided Buyer takes an assignment of the lease for the Studio and the terms of such lease are not amended, Franchisor waives the requirement for lease review and approval (and the associated lease-review-fee) set forth in the Buyer Franchise Agreement. If the lease terms are amended or Buyer enters into a new lease for the Studio, all lease review and approval requirement set forth in the Buyer Franchise Agreement shall remain applicable. Buyer acknowledges and agrees that Franchisor's approval of the Studio location and waiver of the lease review requirement or approval of the lease terms do not constitute a recommendation, endorsement, or guarantee by Franchisor of the suitability of the Studio location or the lease, and Buyer acknowledges that it has taken all steps necessary to ascertain whether the Studio location and lease are acceptable to Buyer.

8. 6-Termination of Seller Franchise Agreement and Guaranties. Franchisor and Seller acknowledge and agree that, as of the Closing Date and upon the Transfer and compliance with the conditions set forth in Section 3 above, the Seller Franchise Agreement and the guaranties (if any) will automatically terminate and neither Seller nor Seller Guarantors shall have any further rights or obligations thereunder except that neither Seller nor any Seller Guarantor shall be released from:

- a. any obligations to pay money to Franchisor owed under the Seller Franchise Agreement, the guaranty, or otherwise prior to the Closing Date; or
- b. the provisions of the Seller Franchise Agreement that, either expressly or by their nature, survive termination of the Seller Franchise Agreement (including without limitation the post-termination restrictive covenants (as modified herein), dispute resolution and notice, and confidentiality provisions of the Seller Franchise Agreement).

9. ~~7.~~ Release of Franchisor. Seller, the Seller Guarantors and the Buyer, and each of them, ~~for on behalf of~~ themselves and their respective affiliates current and former owners, agents, principals, officers, directors, shareholders, members, principals, ~~owners, partners,~~ employees, officers, ~~directors,~~ successors, ~~assigns, agents, representatives, partners, and attorneys,~~ spouses, parent companies, predecessors, affiliates, subsidiaries, successors and assigns, hereby fully and forever unconditionally release and discharge Franchisor and its affiliates, ~~and its and their shareholders, members~~ current and former owners, agents, principals, owners officers, directors, officers ~~shareholders, members, partners,~~ employees, successors, ~~assigns, agents, representatives,~~ attorneys, franchisees, area directors ~~and insurance carriers, parent companies, predecessors, affiliates, subsidiaries, successors, and assigns~~ (the "Released Parties"), from any and all claims, demands, obligations, actions, liabilities and damages of every kind or nature whatsoever, in law or in equity, whether known or unknown to them, which they may have against the Released Parties as of the date of this Agreement Consent, or which may thereafter be discovered, accrued, or sustained in connection with, as a result of, or in any way arising from, any relations or transactions with the Released Parties, however characterized or described, including but not limited to, any claims arising from the Seller Franchise Agreement, the Buyer Franchise Agreement, the Purchase Agreement or the transactions described herein.

IF THE STUDIO IS LOCATED IN CALIFORNIA OR IF ~~EITHER SELLER, SELLER GUARANTORS OR BUYER OR SELLER~~ IS A RESIDENT OF CALIFORNIA, THE FOLLOWING SHALL APPLY:

SECTION 1542 ACKNOWLEDGMENT. IT IS THE INTENTION OF SELLER, SELLER GUARANTORS AND BUYER IN EXECUTING THIS AGREEMENT CONSENT THAT THIS INSTRUMENT BE AND IS A GENERAL RELEASE WHICH SHALL BE EFFECTIVE AS A BAR TO EACH AND EVERY CLAIM, DEMAND OR CAUSE OF ACTION RELEASED BY SELLER, SELLER GUARANTORS, AND/OR BUYER. ~~EACH OF SELLER, SELLER GUARANTORS,~~ AND BUYER RECOGNIZES RECOGNIZE THAT HE, SHE OR IT MAY HAVE SOME CLAIM, DEMAND OR CAUSE OF ACTION AGAINST FRANCHISOR OR THE RELEASED PARTIES OF WHICH HE, SHE, OR IT IS TOTALLY UNAWARE AND UNSUSPECTING, WHICH HE, SHE OR IT IS GIVING UP BY EXECUTING THIS AGREEMENT CONSENT. IT IS THE INTENTION OF ~~EACH OF SELLER, SELLER GUARANTORS~~ AND BUYER IN EXECUTING THIS INSTRUMENT THAT IT WILL DEPRIVE HIM, HER OR IT OF SUCH CLAIM, DEMAND OR CAUSE OF ACTION AND PREVENT HIM, HER OR IT FROM ASSERTING IT AGAINST FRANCHISOR OR THE RELEASED PARTIES. IN FURTHERANCE OF THIS INTENTION, SELLER, SELLER GUARANTORS AND BUYER EXPRESSLY WAIVE ANY RIGHTS OR BENEFITS CONFERRED BY THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."



~~EACH OF SELLER, SELLER GUARANTORS AND BUYER~~  
~~ACKNOWLEDGES~~ACKNOWLEDGE AND ~~REPRESENTS~~REPRESENT THAT HE, SHE, OR IT HAS CONSULTED WITH LEGAL COUNSEL BEFORE EXECUTING THIS ~~AGREEMENT~~CONSENT AND THAT HE, SHE, OR IT UNDERSTANDS ITS MEANING, INCLUDING THE EFFECT OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND EXPRESSLY CONSENTS THAT THIS ~~AGREEMENT~~CONSENT SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH AND ALL OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO THE RELEASE OF UNKNOWN AND UNSUSPECTED CLAIMS, DEMANDS AND CAUSES OF ACTION.

If the Studio is located in Maryland or if either Buyer or Seller is a resident of Maryland, the following shall apply:

Any general release provided for hereunder shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

~~10.~~ 8-Non-Disparagement. In consideration of the accommodations provided to Seller, the Seller Guarantors and Buyer, and the concessions made by Franchisor and its affiliates under this ~~Agreement~~Consent, Seller, the Seller Guarantors and Buyer agree not to, and to use their best efforts to cause their respective current and former ~~shareholders, members~~owners, agents, principals, ~~owners~~, officers, directors ~~principals, agents~~shareholders, members, partners, employees, representatives, attorneys, spouses, and ~~parent companies, predecessors, affiliates, subsidiaries~~, successors and assigns not to, disparage, impugn or otherwise speak or write negatively, directly or indirectly, of Franchisor or the Released Parties ~~or their respective current and former agents, principals, officers, directors, shareholders, members, employees, franchisors, representatives, area directors, attorneys, parents, predecessors, affiliates, subsidiaries, and successors and assigns~~, the Fitness Together brand, the Fitness Together franchise system, or any other service-marked or trademarked concept of Franchisor or the Released Parties, or take any other action which would subject the Fitness Together brand to ridicule, scandal, reproach, scorn, or indignity or which would negatively impact the goodwill of Franchisor ~~or its~~, the Released Parties or the Fitness Together brand.

~~11.~~ 9-Acknowledgment. Buyer and Seller acknowledge that although Franchisor or its affiliates, employees, officers, directors, successors, assigns, and other representatives may have been involved in Buyer's purchase of the Interests from Seller, Buyer and Seller have assumed sole and full responsibility for making the final decision to purchase and sell the Interests and each has consulted, or has had the opportunity to consult but, of its own accord, elected not to consult, with its own legal and financial advisors. Buyer further understands that as part of analyzing the purchase of the Interests from Seller, it is Buyer's responsibility to meet with or otherwise gather necessary information from the appropriate parties which may or may not affect Buyer's purchase of the Interests from Seller.

~~12.~~ 10-Additional Documents. Buyer and Seller agree to execute such additional documents as may be necessary to complete the Transfer as contemplated by the Purchase Agreement, the Seller Franchise Agreement and the Buyer Franchise Agreement.

~~13.~~ 11-Miscellaneous Provisions.

(a) Governing Law. This ~~Agreement~~Consent will be construed and enforced in accordance with, and governed by, the laws of the state set forth in the Buyer Franchise Agreement.

- (b) Amendment. This AgreementConsent may not be modified or amended or any term hereof waived or discharged except in a writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced.
- (c) Headings. The headings of this AgreementConsent are for convenience and reference only and will not limit or otherwise affect the meaning hereof
- (d) Controlling Provisions. In the event of any conflict between the terms of this AgreementConsent and the terms of the Seller Franchise Agreement or the Buyer Franchise Agreement, the terms of this AgreementConsent shall control.
- (e) Counterpart Signatures. This AgreementConsent may be executed in any number of counterparts and sent via facsimile or other electronic transmission, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

*(The rest of this page is intentionally left blank)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Conditional Consent to Transfer as of the Effective Date.

**FRANCHISOR:**

**FITNESS TOGETHER FRANCHISE CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*This is the Effective Date*

**SELLER(S):**

~~If Seller is a legal entity, name of entity:~~

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Forwarding Address: \_\_\_\_\_  
Forwarding Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Date: \_\_\_\_\_

**SELLER GUARANTORS:**

By:  
Print Name: \_\_\_\_\_

By:  
Print Name: \_\_\_\_\_

By:  
Print Name: \_\_\_\_\_

**BUYER(S):**

~~If Buyer is a legal entity, name of entity:~~

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT II**

**FORM OF CONVERSION PROGRAM ADDENDUM TO FRANCHISE AGREEMENT**

**CONVERSION ADDENDUM TO  
FITNESS TOGETHER FRANCHISE CORPORATION  
FRANCHISE AGREEMENT**

THIS ADDENDUM (the "Addendum") is made effective as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") between FITNESS TOGETHER FRANCHISE CORPORATION, an Arizona corporation ("we," "us" or "our"), and \_\_\_\_\_, a \_\_\_\_\_ ("you" or "your").

**RECITALS**

- A. WHEREAS, you operate an existing business that is based on a model similar to our Franchise System (the "Existing Business") located at \_\_\_\_\_ (the "Studio Location");
- B. WHEREAS, you desire to convert your Existing Business to a Fitness Together studio ("Studio") using our Franchise System and the Proprietary Assets in accordance with the terms and conditions of the franchise agreement that you are entering into with us as of even date herewith (the "Franchise Agreement"); and
- C. WHEREAS, you and we have agreed to amend certain terms of the Franchise Agreement as set forth below. Capitalized terms that are used but not defined in this Addendum will have the meanings ascribed to them in the Franchise Agreement.

**AGREEMENT**

FOR AND IN CONSIDERATION of the foregoing Recitals and the undertakings and commitments set forth in this Addendum, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Franchise. Section 1.1 of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

Grant of Franchise. We hereby grant to you, and you accept from us, the right to use the Marks and Proprietary Assets to convert your Existing Business into a Studio to be operated at the Studio Location. You agree to use the Marks and Proprietary Assets, and conform to the System Standards, as they are periodically changed, improved and further developed by us and our affiliates, only in accordance with the terms, and subject to the conditions, of this Agreement. You do not have any right to sublicense or sub-franchise your Franchise Agreement or the Studio.

2. Territory. Section 2.1 and Exhibit 1 of the Franchise Agreement are hereby deleted in their entirety.

3. Site Selection. The second paragraph of Section 2.2 of the Franchise Agreement is hereby deleted in its entirety. The first sentence of Section 2.2 of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

You will operate your Studio from the Studio Location.

4. Initial Franchise Fee. The first sentence of Section 4.1 of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

You must pay to us, at the time you enter into the Franchise Agreement, in the form of a lump sum payment, by cashier's check or wire transfer, the amount of Nineteen Thousand Five Hundred Dollars (\$19,500), in payment of one-half the current initial Franchise Fee and, upon conversion of your Existing Business, you must pay us Nineteen Thousand Five Hundred Dollars (\$19,500).

5. Royalty. The first sentence of Section 4.2 of the Franchise Agreement is hereby deleted and replaced in its entirety with the following:

On the fifth (5<sup>th</sup>) day of the first full calendar month after the Effective Date and on the 5<sup>th</sup> day of each month after that date during the term of this Agreement, you must pay to us a continuing monthly royalty of six percent (6%) of your gross monthly receipts (as defined below) (the "Monthly Royalty").

6. Computer Software Technology Fee. The two sentences of Section 4.7 of the Franchise Agreement are hereby deleted and restated in their entirety with the following:

You must use software we designate in the operation of your Studio. Within thirty (30) days after the Effective Date (or such other date we may approve), you will be required to pay us a software set up fee (currently \$940-50516) and a monthly fee, which is currently \$78,160, in each case, payable by ACH.

7. ~~Marketing Spend Requirement. Section 4.13 of the Franchise Agreement is hereby deleted and restated in its entirety with the following:~~

~~Marketing Spend Requirement. Throughout the term of this Agreement, you must spend a minimum of 5% of your gross receipts on advertising, marketing and promotional programs for your Studio (the "Marketing Spend Requirement"). Your Marketing Spend Requirement may in the future include any contributions you make to a Marketing and Production Fund (if we establish a Marketing and Production Fund) and any contributions you make to a Marketing Cooperative. If those contributions are established or exist and are subsequently adjusted, you must adjust your other advertising, marketing and promotional expenditures so that the Marketing Spend Requirement does not drop below the minimum 5% of gross receipts you are required to spend to meet your Marketing Spend Requirement. Your required Marketing and Production Fund and Marketing Cooperative contributions could, by themselves, exceed the minimum Marketing Spend Requirement. In addition, we have the right to collect any funds constituting the minimum Marketing Spend Requirement that are not otherwise being contributed to the Marketing and Production Fund or Marketing Cooperatives and use those funds for local, regional or national advertising or promotional programs that reach your Studio's local trade area.~~

~~7.~~ 8-Initial Training. The first two sentences of Section 5.2 of the Franchise Agreement are hereby deleted and replaced in their entirety with the following:

Within 180 days after the Effective Date, we or our designee will provide initial training to you or one of your co-owners, and one of your managers and/or employees. Initial training consists of a comprehensive program that provides you with the methods, procedures and techniques you need to operate your Studio ("Initial Training"). Two designated individuals must complete Initial Training within 180 days after the Effective Date.

~~8.~~ 9-Studio Design. Section 5.5 of the Franchise Agreement is hereby amended by adding the phrase "within 180 days after the Effective Date" to the end of the last sentence.

~~9.~~ 10-Lease Approval. The first paragraph of Section 7.2 of the Franchise Agreement (excluding the list of (a) through (f)) is hereby deleted and restated in their ~~its~~ entirety with the following:

Lease Approval. You must deliver to us a copy of your lease for your Studio Location on or prior to the Effective Date and we must approve or not approve the lease within 30 days after the Effective Date. You acknowledge and agree that any review and approval of any lease is for our sole benefit and the benefit of the Franchise System, and is not intended to imply or guarantee the success or profitability of any Studio Location. Unless we otherwise agree, you must obtain an addendum to the lease for your Studio Location which shall contain the following terms and provisions:

~~10.~~ 11-Converting Your Franchise. Section 7.3(a) of the Franchise Agreement is hereby deleted and restated in its entirety as follows:

(a) Conversion of Your Existing Business. You must perform the following actions to convert your Existing Business to your Studio:

1. prepare (or cause to be prepared) and submit to us for our approval, a site remodeling plan with any proposed modifications to our conceptual designs and specifications (not including construction) including, but not limited to, modifications to our required dimensions, exterior and interior design, materials, layout, equipment, fixtures, furniture, and signs and décor; provided, however, that modifications are permitted only if required to comply with applicable ordinances, building codes and permit requirements and are subject to our prior written approval;
2. obtain all permits and licenses for the lawful remodeling construction and operation of the Studio (if not previously obtained or maintained), together with all certifications from government authorities having jurisdiction over the Studio Location that all requirements for construction and operations have been met, including, but not limited to, zoning, access, sign, health, fire, and safety requirements, building and other required construction permits, licenses to do business, fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearances;

3. obtain all customary contractors' sworn statements and partial and final lien waivers for remodeling construction, decorating and installation services;
4. purchase or lease equipment, furniture, fixtures and signs as provided under this Agreement or in the Operations Manual, or retain such items from your Existing Business with our prior written approval;
5. complete the construction and remodeling of the Studio Location, including installing equipment, fixtures, furniture and signs, and decorating your Studio, in full and strict compliance with the plans and specifications we have approved, and in accordance with all applicable ordinances, building codes and permit requirements; and
6. remove from the Studio Location and cease using all signs and marks identified with your Existing Business that we have not authorized, change all telephone directory listings to the name of your Studio and otherwise complete all other aspects of the conversion of your Existing Business to your Studio as we may reasonably require.

**11.** ~~42-Conversion of Operations.~~ Section 7.3(b) of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

(b) Conversion of Operations. You must convert your Existing Business in accordance with our System Standards and Franchise System and pursuant to Section 7.3(a) of this Agreement within 180 days after the Effective Date.

**12.** ~~43-Insurance.~~ The first sentence of Section 7.4 of the Franchise Agreement is hereby deleted and replaced in its entirety with the following:

Provided you maintain insurance on your Existing Business, within sixty (60) days after the Effective Date, you must purchase insurance coverage from a responsible carrier with a performance rating of A+ or higher as rated in the most recent edition of Best Insurance Reports (or comparable criteria as we may specify). If you do not maintain insurance on your Existing Business, then you must take such action within thirty (30) days of the Effective Date.

**13.** ~~44-Insurance.~~ The first sentence of the second paragraph of Section 7.4 of the Franchise Agreement is hereby deleted and replaced in its entirety with the following:

Provided you maintain insurance on your Existing Business, within sixty (60) days after the Effective Date, and then annually, you must provide to us a certificate of insurance (including those of each of your employees if required) reflecting the following minimum coverage limits: (a) \$1,000,000 per occurrence comprehensive general liability; (b) \$60,000.00 business interruption; (c) worker's compensation; (d) property insurance in amounts that protect your Studio's personal property, fixtures, and improvements; (e) at least \$1,000,000 per occurrence professional liability coverage due to errors or omissions in the performance of services at your Studio, including a minimum limit of \$50,000 for abuse and molestation coverage; and (f) at least \$1,000,000 per occurrence hired and non-owned auto insurance. If you do not maintain insurance on your Existing



Business, then you must take such action within thirty (30) days of the Effective Date.

~~14.~~ ~~15. Conversion Advertising~~Initial Marketing Spend Requirement. Section 8.2 of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

~~Conversion Advertising. We will provide you with recommendations and guidelines for advertising and promoting your Studio. You are required to purchase a static entry start-up kit and we recommend that you also purchase a press kit and other advertising and promotional materials. If you choose to create your own advertising and promotional materials, you must obtain our written approval of the materials before using them. You are required to spend at least \$3,000 to \$6,000 on marketing activities no later than sixty (60) days prior to converting your Existing Business to a Studio.~~

~~15.~~ ~~16. Ongoing Marketing Spend Requirement.~~ The first sentence of Section 8.5(b) of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

Within ninety (90) days prior to conversion of your Existing Business to a Studio, you must submit to us for approval an advertising and marketing plan describing your advertising plan and your plan for marketing before and after completion of the Studio conversion.

~~16.~~ ~~17. Gift Cards, Certificates and Checks.~~ Section 8.7 of the Franchise Agreement is hereby amended by adding the following to the end of Section 8.7:

Notwithstanding the foregoing, your Studio may redeem all gift cards and gift certificates purchased from your Existing Business; provided that all gift card and gift certificate amounts redeemed on or after the Effective Date shall be treated as gross monthly receipts pursuant to Section 4.3 of this Agreement.

~~17.~~ ~~18. Default; Termination.~~ Section 10.1(i) of the Franchise Agreement is hereby deleted and restated in its entirety with the following:

~~(i) if Training/Commencement of Operations. If you and any of your owners is discovered to be cheating at Initial Training or fails to complete Initial Training to our satisfaction, or if you fail to convert your Existing Business to a Studio pursuant to Section 7.3(a) of this Agreement within 180 days after the Effective Date;~~

~~18.~~ ~~19. The Recitals of this Addendum are hereby incorporated by reference herein.~~

~~19.~~ ~~20. The terms of this Addendum form an integral part, and are incorporated into and made a part, of the Franchise Agreement. In the event of a conflict between the terms contained in the Franchise Agreement and this Addendum, the terms and conditions of this Addendum shall govern, control, and supersede any inconsistent or conflicting terms of the Franchise Agreement.~~

~~20.~~ 21.—Except as amended by this Addendum, the terms and conditions of the Franchise Agreement are hereby confirmed, ratified and approved in their entirety, and shall continue in full force and effect, as amended and modified by this Addendum.

~~21.~~ 22.—This Addendum may be signed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile is hereby authorized and shall have the same force and effect as an original. References to the Franchise Agreement shall mean the Franchise Agreement as amended and modified by this Addendum.

*(Signature Page Follows)*

IN WITNESS WHEREOF, you and we have signed this Addendum effective as of the Effective Date.

FRANCHISOR:

FITNESS TOGETHER FRANCHISE CORPORATION

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

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

Its: \_\_\_\_\_

FRANCHISEE:

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

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

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

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

**EXHIBIT I**  
**FORM OF RENEWAL ADDENDUM**

**Exhibit I**

FT Studio (Unit)  
Ex. 1 -- 03/2012 Form of Renewal Addendum  
1076.001.003/41960

## RENEWAL ADDENDUM TO FRANCHISE AGREEMENT

**THIS RENEWAL ADDENDUM** (“Addendum”) is dated as of the Effective Date (as defined below) and is attached to and made part of that certain Franchise Agreement (the “Agreement”) dated as of the same date herewith, by and between **FITNESS TOGETHER FRANCHISE CORPORATION**, an Arizona corporation (“we” “us” or “our”), and \_\_\_\_\_ (“you” or “your”). We and you shall collectively be referred to as the “Parties.” All capitalized terms set forth in this Addendum and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and other valuable consideration, receipt and sufficiency of which are acknowledged, the Parties agree as follows:

### Amendment of Agreement.

1. Studio Location. We have previously approved the Studio Location as required pursuant to Section 2.2. The Studio Location is: \_\_\_\_\_
2. Initial Franchise Fees. Section 4.1 is deleted in its entirety.
3. Computer Software. We acknowledge that you have previously paid the software set-up fee described in Section 4.7.
4. On-Going Support and Assistance. You acknowledge and agree that we have complied with our obligation under the Agreement to provide you opening support as set forth in Section 5.6(a).
5. Lease Approval. We have previously approved the lease for the Studio premises as required pursuant to Section 7.2 and therefore waive the requirement for lease review and approval; provided, however, if the lease terms are amended or you enter into a new lease for the Studio premises during the term of the Agreement, all lease review and approval requirements set forth in the Agreement shall remain applicable.
6. Build-Out. The Parties acknowledge that the build-out of the Studio, as described in Section 7.3(a), has previously been completed.
7. Commencement of Operations. The Parties acknowledge that the Studio has commenced operations as required pursuant to Section 7.3(b).
8. Initial Marketing Spend Requirement. Section 8.2 is deleted in its entirety.

9. Ongoing Marketing Spend Requirement. Section 8.5(b) is deleted in its entirety and replaced with the following:

“During the term of this Agreement, you must prepare and execute an advertising and marketing plan that you must provide to us upon our request. You must also provide to us upon request information about the results achieved from implementing your advertising and marketing plan and meeting your Ongoing Marketing Spend Requirement.”

10. Renewal Fee. Concurrently with signing the Agreement and this Addendum, you agree to pay us a renewal fee of \$ \_\_\_\_\_, in the form of a lump sum payment, by cashier’s check or wire transfer.

11. Studio Upgrades/Renovations. Within sixty (60) days following the Effective Date, you will complete the upgrades and renovations of the Studio, at your expense, as required to improve the condition and appearance of your Studio consistent with our current System Standards and other Franchise System requirements.

12. Release of Franchisor. You, on behalf of yourself and your respective current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, spouses, parent companies, predecessors, affiliates, subsidiaries, successors and assigns, hereby fully and forever unconditionally release and discharge us and our current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, franchisees, area directors, parent companies, predecessors, affiliates, subsidiaries, successors, and assigns (the “Released Parties”), from any and all claims, demands, obligations, actions, liabilities and damages of every kind or nature whatsoever, in law or in equity, whether known or unknown to you, which you may have against the Released Parties as of the date of this Addendum, or which may thereafter be discovered, accrued, or sustained in connection with, as a result of, or in any way arising from, any relations or transactions with the Released Parties, however characterized or described.

IF THE STUDIO IS LOCATED IN CALIFORNIA OR IF YOU ARE A RESIDENT OF CALIFORNIA, THE FOLLOWING SHALL APPLY:

SECTION 1542 ACKNOWLEDGMENT. IT IS YOUR INTENTION IN EXECUTING THIS ADDENDUM THAT THIS INSTRUMENT BE AND IS A GENERAL RELEASE WHICH SHALL BE EFFECTIVE AS A BAR TO EACH AND EVERY CLAIM, DEMAND OR CAUSE OF ACTION RELEASED BY YOU, AND YOU RECOGNIZE THAT YOU MAY HAVE SOME CLAIM, DEMAND OR CAUSE OF ACTION AGAINST US OR THE RELEASED PARTIES OF WHICH YOU ARE TOTALLY UNAWARE AND UNSUSPECTING, WHICH YOU ARE GIVING UP BY EXECUTING THIS ADDENDUM. IT IS YOUR INTENTION IN EXECUTING THIS INSTRUMENT THAT IT WILL DEPRIVE YOU OF SUCH CLAIM, DEMAND OR CAUSE OF ACTION AND PREVENT YOU FROM ASSERTING IT AGAINST US OR THE RELEASED PARTIES. IN FURTHERANCE OF THIS INTENTION, YOU EXPRESSLY WAIVE ANY RIGHTS OR BENEFITS CONFERRED BY THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF

**EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”**

YOU ACKNOWLEDGE AND REPRESENT THAT YOU HAVE CONSULTED WITH LEGAL COUNSEL BEFORE EXECUTING THIS ADDENDUM AND THAT YOU UNDERSTAND ITS MEANING, INCLUDING THE EFFECT OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND EXPRESSLY CONSENT THAT THIS ADDENDUM SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH AND ALL OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO THE RELEASE OF UNKNOWN AND UNSUSPECTED CLAIMS, DEMANDS AND CAUSES OF ACTION.

If the Studio is located in Maryland or if either Buyer or Seller is a resident of Maryland, the following shall apply:

Any release provided for hereunder shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

13. Non-Disparagement. You agree not to, and to use your best efforts to cause your respective current and former owners, agents, principals, officers, directors, shareholders, members, partners, employees, representatives, attorneys, spouses, parent companies, predecessors, affiliates, subsidiaries, successors and assigns not to, disparage, impugn or otherwise speak or write negatively, directly or indirectly, of us or the Released Parties, the Fitness Together brand, the Fitness Together system, or any other service-marked or trademarked concept of us or the Released Parties, or take any other action which would subject the Fitness Together brand to ridicule, scandal, reproach, scorn, or indignity or which would negatively impact the goodwill of us, the Released Parties, or the Fitness Together brand.

14. Miscellaneous Provisions.

- (a) Governing Law. This Addendum will be construed and enforced in accordance with, and governed by, the laws of the state set forth in the Agreement.
- (b) Amendment. This Addendum may not be modified or amended or any term hereof waived or discharged except in a writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced.
- (c) Headings. The headings of this Addendum are for convenience and reference only and will not limit or otherwise affect the meaning hereof
- (d) Controlling Provisions. This Addendum modifies the Agreement. In the event of any conflict between a provision of the Agreement and this Addendum, the provisions of this Addendum shall control. Except as amended by this Addendum, the Agreement is unmodified and in full force and effect in accordance with its terms.
- (e) Counterpart Signatures. This Addendum may be executed in any number of counterparts and sent via facsimile or other electronic transmission, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

*(Signature page follows)*

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Addendum on the date first set forth above, to be effective as of the date signed by us set forth in the signature section below.

**FRANCHISOR:**  
**FITNESS TOGETHER FRANCHISE**  
**CORPORATION**

**FRANCHISEE:**

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

*\*This is the Effective Date of this Addendum*



**EXHIBIT J**  
**(TO FRANCHISE DISCLOSURE DOCUMENT)**

**SAMPLE GENERAL RELEASE**

**FITNESS TOGETHER FRANCHISE CORPORATION**

**GRANT OF FRANCHISOR CONSENT AND FRANCHISEE RELEASE**

Fitness Together Franchise Corporation ("we," "us," or "our") and the undersigned franchisee or franchisee owner, \_\_\_\_\_  
\_\_\_\_\_ ("you" or "your"), currently are parties to a certain franchise agreement (the "Franchise Agreement") dated \_\_\_\_\_, 20\_\_\_\_. You have asked us to take the following action or to agree to the following request: [insert as appropriate for renewal or transfer situation] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_. We have the right under the Franchise Agreement to obtain a general release from you (and, if applicable, your owners) as a condition of taking this action or agreeing to this request. Therefore, we are willing to take the action or agree to the request specified above if you (and, if applicable, your owners) give us the release and covenant not to sue provided below in this document. You (and, if applicable, your owners) are willing to give us the release and covenant not to sue provided below as partial consideration for our willingness to take the action or agree to the request described above.

Consistent with the previous introduction, you, on your own behalf and on behalf of your successors, heirs, executors, administrators, personal representatives, agents, assigns, partners, shareholders, members, directors, officers, principals, employees, and affiliated entities (collectively, the "Releasing Parties"), hereby forever release and discharge us and our current and former officers, directors, members, shareholders, principals, employees, agents, representatives, affiliated entities, successors, and assigns (collectively, the "Fitness Together Parties") from any and all claims, damages (known and unknown), demands, causes of action, suits, duties, liabilities, and agreements of any nature and kind (collectively, "Claims") that you and any of the other Releasing Parties now has, ever had, or, but for this document, hereafter would or could have against any of the Fitness Together Parties, including without limitation, Claims (1) arising out of or related to the Fitness Together Parties' obligations under the Franchise Agreement or (2) otherwise arising from or related to your and the other Releasing Parties' relationship, from the beginning of time to the date of your signature below, with any of the Fitness Together Parties. You, on your own behalf and on behalf of the other Releasing Parties, further covenant not to sue any of the Fitness Together Parties on any of the Claims released by this paragraph and represent that you have not assigned any of the Claims released by this paragraph to any individual or entity who is not bound by this paragraph.

We also are entitled to a release and covenant not to sue from your owners. By his, her, or their separate signatures below, your owners likewise grant to us the release and covenant not to sue provided above.

**IF THE STUDIO YOU OPERATE UNDER THE FRANCHISE AGREEMENT IS LOCATED IN CALIFORNIA OR IF YOU ARE A RESIDENT OF CALIFORNIA, THE FOLLOWING SHALL APPLY:**

**SECTION 1542 ACKNOWLEDGMENT. IT IS YOUR INTENTION, ON YOUR OWN BEHALF AND ON BEHALF OF THE RELEASING PARTIES, IN EXECUTING THIS RELEASE THAT THIS INSTRUMENT BE AND IS A GENERAL RELEASE WHICH SHALL BE EFFECTIVE AS A BAR TO EACH**

AND EVERY CLAIM, DEMAND, OR CAUSE OF ACTION RELEASED BY YOU OR THE RELEASING PARTIES. YOU RECOGNIZE THAT YOU OR THE RELEASING PARTIES MAY HAVE SOME CLAIM, DEMAND, OR CAUSE OF ACTION AGAINST THE FITNESS TOGETHER PARTIES OF WHICH YOU, HE, SHE, OR IT IS TOTALLY UNAWARE AND UNSUSPECTING, WHICH YOU, HE, SHE, OR IT IS GIVING UP BY EXECUTING THIS RELEASE. IT IS YOUR INTENTION, ON YOUR OWN BEHALF AND ON BEHALF OF THE RELEASING PARTIES, IN EXECUTING THIS INSTRUMENT THAT IT WILL DEPRIVE YOU, HIM, HER, OR IT OF EACH SUCH CLAIM, DEMAND, OR CAUSE OF ACTION AND PREVENT YOU, HIM, HER, OR IT FROM ASSERTING IT AGAINST THE FITNESS TOGETHER PARTIES. IN FURTHERANCE OF THIS INTENTION, YOU, ON YOUR OWN BEHALF AND ON BEHALF OF THE RELEASING PARTIES, EXPRESSLY WAIVE ANY RIGHTS OR BENEFITS CONFERRED BY THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM/HER MUST HAVE MATERIALLY AFFECTED HIS/HER SETTLEMENT WITH THE DEBTOR.”

YOU ACKNOWLEDGE AND REPRESENT THAT YOU HAVE CONSULTED WITH LEGAL COUNSEL BEFORE EXECUTING THIS RELEASE AND THAT YOU UNDERSTAND ITS MEANING, INCLUDING THE EFFECT OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND EXPRESSLY CONSENT THAT THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH AND ALL OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO THE RELEASE OF UNKNOWN AND UNSUSPECTED CLAIMS, DEMANDS, AND CAUSES OF ACTION.

If the Studio you operate under the Franchise Agreement is located in Maryland or if you are a resident of Maryland, the following shall apply:

Any general release provided for hereunder shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date stated below.

Fitness Together Franchise Corporation,  
an Arizona corporation

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

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

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

Dated: \_\_\_\_\_

**FRANCHISEE:**

**(IF YOU ARE A CORPORATION,  
LIMITED LIABILITY COMPANY, OR  
PARTNERSHIP):**

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

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

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

**(IF YOU ARE AN INDIVIDUAL AND  
NOT A LEGAL ENTITY):**

\_\_\_\_\_  
[Signature]

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

\_\_\_\_\_  
[Signature]

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

**OWNER:**

\_\_\_\_\_  
[Signature]

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

\_\_\_\_\_  
[Signature]

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

**EXHIBIT K**

**TABLE OF CONTENTS TO OPERATIONS MANUAL**

**Exhibit K**

FT Studio (Unit)  
Ex. K – 03/2012 Ops. Manual TOC  
1076.001.003/42480

Fitness Together Franchise Corporation  
Operations Manual  
Table of Contents

Table of Contents .....	6 pages
Introduction .....	10 pages
Start-up .....	71 pages
Client Relations .....	14 pages
Studio Operations .....	8 pages
Managing Your Business .....	15 pages
Sales Process .....	36 pages
Accounting and Bookkeeping Overview .....	25 pages
Human Resources .....	55 pages
Marketing .....	24 pages
Safety and Security .....	20 pages
TOTAL .....	284 pages

**EXHIBIT L**

**RECEIPTS**

**Exhibit L**

FT Studio (Unit)  
Ex. L - ~~11/2014~~03/2012 Receipts  
~~1076.001.001/43317~~  
1076.001.003/41963



RECEIPT  
(OUR COPY)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Fitness Together Franchise Corporation offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable law. Under Iowa law, we must give you this Disclosure Document at the earlier of our 1<sup>st</sup> personal meeting or 14 calendar days before you sign an agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale. Under California, Michigan and Washington law, we must give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first. Under Rhode Island law, we must provide this Disclosure Document at the earlier of the 1<sup>st</sup> personal meeting or 10 business days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale.

If Fitness Together Franchise Corporation does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit E.

The franchisor is Fitness Together Franchise Corporation, 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, (877) 663-0880. The franchise seller for this offering is:

<input type="checkbox"/>	_____	<input type="checkbox"/>	_____	<input type="checkbox"/>	Name of Franchised Seller:
	Fitness Together Franchise Corporation		Fitness Together Franchise Corporation		_____
	9092 South Ridgeline Boulevard		9092 South Ridgeline Boulevard		Principal Business Address:
	Suite A		Suite A		_____
	Highlands Ranch, CO 80129		Highlands Ranch, CO 80129		_____
	(877) 663-0880		(877) 663-0880		

Issuance Date: ~~March 24, 2011, as amended November 5, 2011~~ 30, 2012. (The effective dates in the franchise registration states are noted on the fourth page of this disclosure document.)

See Exhibit E for our registered agents authorized to receive service of process.

I have received a disclosure document issued on ~~March 24, 2011, as amended November 5, 2011~~ 30, 2012 that included the following Exhibits:

- |              |                                       |             |  |
|--------------|---------------------------------------|-------------|--|
| Exhibit A -  | State Addenda                         | Exhibit G - | <del>Representations and Acknowledgment Statement</del> <u>Consent to Transfer</u>                   |
| Exhibit B -  | Franchise Agreement                   | Exhibit H - | <del>Consent</del> <u>Form of Conversion Program Addendum</u> to Transfer <u>Franchise Agreement</u> |
| Exhibit C1 - | List of Franchisees                   | Exhibit I - | Form of Conversion Program <u>Renewal Addendum</u> to Franchise Agreement                            |
| Exhibit C2 - | Franchisees Who Left the System       | Exhibit J - | Form of General Release  |
| Exhibit C3 - | Franchises Sold But Not Yet Opened    | Exhibit K - | Table of Contents of Operations Manual   |
| Exhibit D -  | Financial Statements                  | Exhibit L - | Receipts   |
| Exhibit E -  | State Agencies for Service of Process |             |  |
| Exhibit F -  | List of Area Directors                |             |  |

PROSPECTIVE FRANCHISEE:

If a business entity:

\_\_\_\_\_  
Name of Business Entity

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Print Name): \_\_\_\_\_

Dated: \_\_\_\_\_  
(Do not leave blank)

If an individual:

\_\_\_\_\_  
(Print Name): \_\_\_\_\_

Dated: \_\_\_\_\_  
(Do not leave blank)

Please sign this copy of the receipt, print the date on which you received this disclosure document, and return it, by mail to Fitness Together Franchise Corporation, 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, or by faxing it to (303) 663-1617.

RECEIPT  
(YOUR COPY)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Fitness Together Franchise Corporation offers you a franchise, it must provide this Disclosure Document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable law. Under Iowa law, we must give you this Disclosure Document at the earlier of our 1<sup>st</sup> personal meeting or 14 calendar days before you sign an agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale. Under California, Michigan and Washington law, we must give you this Disclosure Document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first. Under Rhode Island law, we must provide this Disclosure Document at the earlier of the 1<sup>st</sup> personal meeting or 10 business days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale.

If Fitness Together Franchise Corporation does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the appropriate state agency identified on Exhibit E.

The franchisor is Fitness Together Franchise Corporation, 9092 South Ridgeline Boulevard, Suite A, Highlands Ranch, Colorado 80129, (877) 663-0880. The franchise seller for this offering is:

<input type="checkbox"/>	_____	<input type="checkbox"/>	_____	<input type="checkbox"/>	Name of Franchised Seller: _____
	Fitness Together Franchise Corporation 9092 South Ridgeline Boulevard Suite A Highlands Ranch, CO 80129 (877) 663-0880		Fitness Together Franchise Corporation 9092 South Ridgeline Boulevard Suite A Highlands Ranch, CO 80129 (877) 663-0880		Principal Business Address: _____

Issuance Date: ~~March 24, 2011, as amended November 5, 2011~~ 31, 2012. (The effective dates in the franchise registration states are noted on the fourth page of this disclosure document.)

See Exhibit E for our registered agents authorized to receive service of process.

I have received a disclosure document issued on ~~March 21, 2011, as amended November 5, 2011~~ 30, 2012 that included the following Exhibits:

- |              |                                       |             |  |
|--------------|---------------------------------------|-------------|--|
| Exhibit A -  | State Addenda                         | Exhibit G - | Representations and Acknowledgment<br>Statement <u>Consent to Transfer</u>                   |
| Exhibit B -  | Franchise Agreement                   | Exhibit H - | Gensent <u>Farm of Conversion Program</u><br><u>Addendum to Transfer Franchise Agreement</u> |
| Exhibit C1 - | List of Franchisees                   | Exhibit I - | Form of Conversion-Program <u>Renewal</u> Addendum<br>to Franchise Agreement                 |
| Exhibit C2 - | Franchisees Who Left the System       | Exhibit J - | Form of General Release  |
| Exhibit C3 - | Franchises Sold But Not Yet Opened    | Exhibit K - | Table of Contents of Operations Manual   |
| Exhibit D -  | Financial Statements                  | Exhibit L - | Receipts   |
| Exhibit E -  | State Agencies for Service of Process |             |  |
| Exhibit F -  | List of Area Directors                |             |  |

PROSPECTIVE FRANCHISEE:

If a business entity:

\_\_\_\_\_

Name of Business Entity

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

Its: \_\_\_\_\_

(Print Name): \_\_\_\_\_

Dated: \_\_\_\_\_

(Do not leave blank)

If an individual:

\_\_\_\_\_

(Print Name): \_\_\_\_\_

Dated: \_\_\_\_\_

(Do not leave blank)

PLEASE SIGN THIS COPY OF THE RECEIPT, PRINT THE DATE ON WHICH YOU RECEIVED THIS DISCLOSURE DOCUMENT AND KEEP IT FOR YOUR RECORDS.