

**Fill in this information to identify the case:**

Debtor 1 Gold's Gym Franchising, LLC

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 20-31322-hdh11

E-Filed on 09/09/2020  
Claim # 364

## Official Form 410

## Proof of Claim

**04/19**

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>		<u>Fitness AZ 1, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
		Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>		<b>Where should payments to the creditor be sent? (if different)</b>
	<u>Mesch Clark Rothschild</u> Name <u>c/o Isaac D. Rothschild 259 N. Meyer Avenue</u> Number Street <u>Tucson AZ 85701</u> City State ZIP Code Contact phone <u>(520) 624-8886</u> Contact email <u>irothschild@mcratzlaw.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		_____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
<b>4. Does this claim amend one already filed?</b>		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

**Part 2:** Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 2,493,853.31. Does this amount include interest or other charges?  
☒ No  
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Fraud in inducement

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.  
**Nature of property:**  
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☒ No  
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ 0.00

11. Is this claim subject to a right of setoff? ☒ No  
☐ Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ 0.00

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ 0.00

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ 0.00

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ 0.00

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ 0.00

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ 0.00

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 09/09/2020  
MM / DD / YYYY

Jad Awale  
Signature

Print the name of the person who is completing and signing this claim:

Name Jad Awale  
First name Middle name Last name  
Title Managing Member  
Company Fitness AZ 1, LLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.  
Address 4540 N. Quartz Hill Drive  
Number Street  
Tucson AZ 85750  
City State ZIP Code  
Contact phone (520) 904-7348 Email jawale03@yahoo.com

Attachment 1 - Awale - Proof of Claim.pdf

Description -

**Fill in this information to identify the case:**

Debtor 1 GGI Holdings, LLC ; Gold's Gym Franchising, LLC

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas

Case number 20-31318-hdh11; 20-31322

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**Proof of Claim**

04/19

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<p><b>3. Where should notices and payments to the creditor be sent?</b></p> <p><small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small></p>	<p><b>Where should notices to the creditor be sent?</b></p> <p><u>Mesch Clark Rothschild c/o Isaac Rothschild</u></p> <p><small>Name</small></p> <p><u>259 N. Meyer Avenue</u></p> <p><small>Number Street</small></p> <p><u>Tucson</u> <u>AZ</u> <u>85701</u></p> <p><small>City State ZIP Code</small></p> <p><small>Contact phone</small> <u>(520) 624-8886</u></p> <p><small>Contact email</small> <u>irothschild@mcrailaw.com</u></p> <p><small>Uniform claim identifier for electronic payments in chapter 13 (if you use one):</small></p> <p>_____</p>	<p><b>Where should payments to the creditor be sent? (if different)</b></p> <p><small>Name</small> _____</p> <p><small>Number Street</small> _____</p> <p><small>City State ZIP Code</small> _____</p> <p><small>Contact phone</small> _____</p> <p><small>Contact email</small> _____</p>
<p><b>4. Does this claim amend one already filed?</b></p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____</p> <p style="text-align: right;"><small>Filed on</small> _____ <small>MM / DD / YYYY</small></p>	
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Limit disclosing information that is entitled to privacy, such as health care information.  
Fraud in the inducement and negligent misrepresentation

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.
- Nature of property:**  
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☐ Other. Describe: \_\_\_\_\_
- Basis for perfection:** \_\_\_\_\_  
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☒ No

☐ Yes. Check one:

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☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 09/09/2020  
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name	Jad	Awale	
	First name	Middle name	Last name
Title	Managing Member		
Company	Fitness AZ 1, LLC		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	4540 N Quartz Hill Drive		
	Number	Street	
	Tucson	AZ	85750
	City	State	ZIP Code
Contact phone	(520) 904-7348		Email jawale03@yahoo.com



Attachment 2 - Awale - Claim Narrative.pdf

Description - Claim Narrative



Claim Against: Gold's Gym Franchising

Case Number: 20-31318-hdh-11; 20-31322

Claim Amount: \$2,493,853.31

#### Overview of Claim

Fitness AZ 1, LLC ("Creditor") was either fraudulently induced or negligently represented by Gold's Gym ("Debtor") in his investment to enter into the franchise agreement for Gold's Gym in the Phoenix Metro area.

Creditor was given two weeks to sign a franchise agreement, which was done through capital investments and loans of not less than \$2,493,853.31.00 ("Claim Amount"). Creditor's Gold's Gym opened on May 17, 2019 and closed on October 25, 2019. Creditor invested \$80,000.00 for the franchise fee. The Debtor signed the attached contract which Creditor was told was non-negotiable. (Exhibit A). Upon information and belief, Gold's Gym knew a competitor was moving across the street but did not disclose this information to the Creditor.

While Debtor showed the success of certain California operations, it was only after his failure did the Creditor discover that Debtor's franchisees had a 30% attrition rate.

Debtor stated that after re-branding the Phoenix market was perfect for a Debtor franchise. Only after the failure of the location did a vendor refer to a former Phoenix franchisee who experienced a similar failure.

The Debtor assisted in projecting a budget for improvements to the facility at approximately \$500,000.00, but the actual cost was in excess of \$1,300,000.00. Debtor promised to provide marketing support for three months during the pre-membership sale and specifically budgeted \$40,000.00 while Gold's Gym projected that would create 5,000 members. Creditor spent over \$60,000.00 on marketing and opened with 300 members.

Gold's Gym promised training opportunities for Creditor's employees, specifically the Manager, and none was provided. The failure to provide training was a factor in the franchise failing after five months.

As a result of the failure of the franchise, a \$209,009.95 judgment was obtained against the Creditor by its Landlord (Judgment attached as Exhibit B) for past-due rent. The Landlord has reserved the right to seek additional rent from Creditor based on the Landlord's mitigation efforts. The Creditor also attaches a summary of income and expenses from the opening of Creditor's Gold Gym (Attached as Exhibit C). The Creditor is in the process of gathering additional expenses incurred. The Creditor's claim is still subject to further amendment.

Debtor intended or reasonably could foresee the statements would be relied on by the Creditor. Debtor either knew the statements were false or failed to exercise reasonable care in communicating this

information to Creditor. Creditor relied on these statements. Creditor's reliance was justified and caused Creditor to lose its entire investment.

27L2887

Attachment 3 - Awale - Exhibit A Contract.pdf

Description - Exhibit A

# Exhibit A



**GOLD'S GYM® FACILITY**

**FRANCHISE AGREEMENT**

FITNESS AZ 1 LLC

**Franchisee Name**

4950 West Ray Road

Chandler, AZ 85226

**Address of Facility**

Gold's Gym – Chandler

**Facility Name**

1963

**Gold's Gym Number**

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## GOLD'S GYM® FACILITY FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** (the “**Agreement**”) is made and entered into as of 10/19/2018 | 12:45 AM EDT, (the “**Agreement Date**”), regardless of the date of the parties’ signatures, between **GOLD’S GYM FRANCHISING LLC**, a Delaware limited liability company with its principal business address at 4001 Maple Avenue, Suite 200, Dallas, Texas 75219 (“**we**”), and **FITNESS AZ 1 LLC**, whose principal business address is 4540 N Quartz Hill Dr., Tucson, AZ 85750 (“**you**”).

### 1. Preambles and Grant Of Franchise Rights.

#### 1.A. Preambles.

(1) We and our affiliates claim ownership of and may further create and revise methods of developing and operating Gold’s Gym Facilities. “**Gold’s Gym Facilities**” are health clubs that use certain business systems, business formats, methods, procedures, signs, designs, layouts, trade dress, standards, and specifications that we specify from time to time (collectively, the “**System**”) and that are primarily identified by the trademark Gold’s Gym® and certain other trademarks, service marks and other commercial symbols that we specify from time to time (collectively, the “**Marks**”).

(2) We grant franchises for the ownership and operation of Gold’s Gym Facilities (each a “**Franchise**”) to persons we, in our discretion, approve to be our franchisees. You or your owners have applied for a Franchise and, in support of your or their application, have provided us with certain information regarding your or their desires, experience, skills, financial status and ability to develop, own and operate a Gold’s Gym Facility (the “**Information**”). In reliance on the Information, we have approved your application and are willing to grant you a Franchise on the terms and conditions contained in this Agreement.

1.B. Grant of Franchise and Term. Subject to the terms of this Agreement, we grant you the Franchise to develop, own and operate a Gold’s Gym Facility (the “**Facility**”) at the location specified on Exhibit A (the “**Site**”), which is located within the territory also described on Exhibit A (the “**Territory**”). (If the Site and Territory are not determined as of the Agreement Date, they will be determined in accordance with Sections 2.A and 2.B.) The term of the Franchise (the “**Term**”) begins on the Agreement Date and ends on the date which is 10 years after the Actual Opening Date, unless sooner terminated in accordance with this Agreement. The “**Actual Opening Date**” is the date on which the Facility first opens, as permitted or required under this Agreement, for member workouts of any kind, regardless of the date on which the Facility’s “grand opening” occurs. If the Facility is open and operating under the Marks on the Agreement Date, then the Actual Opening Date is the Agreement Date. If the Facility is not open and operating on the Agreement Date, then we will send you an amended and restated Exhibit A or other communication identifying the Actual Opening Date.

1.C. Best Efforts. Only you are authorized to operate the Facility. You must at all times faithfully, honestly and diligently perform your obligations and fully exploit the rights granted



Facilities located outside the Site Selection Area. We will use our reasonable efforts to review and either accept or reject a site you propose within 15 days after receiving the complete site report and other materials we request.

Despite any assistance, information or recommendations that we provide (whether before or after the Agreement Date) with respect to the Site, and despite our acceptance of the Site, we make no representations or warranties of any kind, express or implied, of the Site's suitability for a Gold's Gym Facility or any other purpose or of the likelihood that we ultimately will accept a proposed Site. Applying criteria that have appeared effective for other sites might not accurately reflect the potential for all sites, and, after we accept a Site, demographic and/or other factors included in or excluded from our site criteria could change, thereby altering a site's potential. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if the Site fails to meet our or your expectations. Your decision to move forward with the Site is and will be based on your own independent investigation and acceptance of the Site without giving any weight to, and without relying on, our acceptance of the Site in making your decision.

2.B. Lease and Designation of Territory. You must obtain our prior written acceptance of any lease or sublease for the Site (the "**Lease**") before you sign it. The Lease must contain terms and provisions that are acceptable to us, including provisions to protect our rights as your franchisor. Our acceptance of the Lease is not a guarantee or warranty, express or implied, of or representation as to the likely performance or profitability of a Gold's Gym Facility operated at the Site or as to the favorability of the Lease terms. Our acceptance of the Lease indicates only that we believe the Lease's terms meet our then-acceptable criteria that have been developed entirely for our own purposes. You must give us a copy of the fully signed Lease within 5 days after you and the landlord have signed it. You may not sign any renewal or amendment of the Lease that we have not accepted.

Subject to your obligation to develop and open the Facility on or before the Opening Deadline, you must sign a Lease that we have accepted, for a Site that we have accepted, within 9 months after the Agreement Date. After you sign a Lease, we will define the Territory as a circle with a radius of a specified distance that we determine from the Facility's main front entrance. We will determine that distance based on the factors that we deem relevant, which might include demographics, the character of the Site and nearby residences and businesses (including the Facility's proximity both to other existing or potential sites for Gold's Gym Facilities located outside the Territory). We will insert the Site's address and the Territory's description on Exhibit A. Once we define the Territory, you will have no further territorial or other rights in those portions of the Site Selection Area that are outside the Territory.

2.C. Developing and Equipping Facility. We will provide you mandatory and suggested specifications and layouts for a Gold's Gym Facility, which might include recommendations and/or requirements for dimensions, design, image, interior layout, decor, Operating Assets, and color scheme. "**Operating Assets**" means all required furniture; computer equipment (including all hardware, software and connectivity components and Gym Management System components); exercise features, facilities and equipment; lighting components; and fixtures and other equipment, furnishings and signs that we periodically require for the Facility. "**Gym Management System**" means the integrated, computer-based systems and services that we periodically specify for administering the management and operation of your Facility, which might include any one or

have conducted a pre-opening inspection and certified the Facility for opening. Our determination that you have met all of our pre-opening requirements will not constitute a waiver of your non-compliance or of our right to demand full compliance with those requirements.

2.F. Relocation. If you lease the Site from a lessor who is not your affiliate and you choose not to, or do not have the right to, renew the Lease or otherwise remain in possession of the Site after the Lease term expires (a “**Lease Expiration**”), or if the Site or Facility is destroyed, condemned or otherwise rendered unusable, you may relocate the Facility to a new location that we accept in advance. You must comply with our then-applicable relocation policies and reimburse us for all out-of-pocket expenses that we incur in connection with the relocation. If you are relocating the Facility because of a Lease Expiration, then (1) you acknowledge that we typically will not accept a proposed new location unless we and you determine, in each of our and your respective sole judgments, that the Facility operating at the new location is likely to retain at least 75% of the Facility’s then existing members (although our acceptance of the new location is not a representation or warranty as to the likelihood of retaining those members); and (2) you must develop and open the Facility for member workouts at the new location, in accordance with this Agreement, before the Lease expires.

### 3. **Your Rights in Territory and Rights We Maintain.**

3.A. No Gold’s Gym Facilities in Site Selection Area or Territory. Except as provided below, if you are complying with this Agreement, then neither we nor our affiliates will, during the Term, operate or authorize any other party to operate a Gold’s Gym Facility the physical premises of which are located within (i) the Site Selection Area (until we designate the Territory under Section 2.B) or (ii) the Territory (once we have designated the Territory under Section 2.B). Notwithstanding the foregoing, we and our affiliates may:

(1) operate, and/or authorize any other party to operate, a Gold’s Gym Facility located at any hotels, motels or similar operations (“**Hotels**”) located within the Site Selection Area or Territory, but they will be authorized to sell goods and provide services only to guests of the Hotel; and

(2) acquire the assets or Ownership Interests of an Entity (in either case, regardless of the form of transaction) that operates, and/or grants rights to other persons to operate, one or more health and fitness center(s) within the Site Selection Area or Territory, as applicable. If any of those health and fitness center(s) are located or are under development within the Site Selection Area (prior to our designation of the Territory) or the Territory (after the designation of the Territory) on the date upon which that acquisition closes, then we and our affiliates may, following that acquisition, convert or authorize the conversion of any or all of those health and fitness center(s) to Gold’s Gym Facilities, and those health and fitness center(s) may continue to operate as Gold’s Gym Facilities throughout the remaining Term (and after that).

3.B. Rights We Maintain. The exclusivity granted under Section 3.A is the only restriction on our and our affiliates’ activities. You do not acquire any rights through innuendo, extrapolation or inference. We and our affiliates reserve all rights to engage, and are not prohibited

attend additional training programs at your expense (for which we may charge reasonable fees). If you and your personnel satisfactorily complete our initial training program and you do not expressly inform us at the end of the initial training program that you feel that you or they have not been adequately trained, then you and they will be deemed to have been trained sufficiently to operate a Gold's Gym Facility.

4.B. Ongoing Training and Conventions. During the Term, we may require you and/or your personnel, including newly hired managers and previously trained and experienced employees at the Facility, to attend and satisfactorily complete various training courses and programs that we choose to provide periodically at the times and locations we designate. We also may require you to conduct periodic training for Facility personnel using the formats and procedures that we periodically specify. You (or, if you are an Entity, one of your Owners) or the Facility's general manager must attend each annual convention that we (at our sole option) organize for Gold's Gym Facility operators. We may charge reasonable fees for these training courses, programs and conventions. We may authorize third parties to provide the ongoing training described in this Section 4.B. If you (or a required attendee) fail to attend a mandatory annual convention, you will still be required to pay the full-price convention fee that we assess for other attendees.

4.C. Expenses During Training. You will be responsible for your and your personnel's travel, living and other expenses (including local transportation expenses) and compensation incurred in connection with attendance at any training courses and programs, conventions or work at any Gold's Gym Facility that is part of their development.

4.D. General Guidance. We will advise you from time to time regarding the Facility's operation, including with respect to:

- (1) standards, specifications, operating procedures and methods that Gold's Gym Facilities use;
- (2) purchasing required or recommended Operating Assets and other products;
- (3) employee training methods and procedures (although you are solely responsible for the terms and conditions of employment of your employees); and
- (4) administrative, bookkeeping and accounting procedures.

Our guidance may be provided in whatever form we determine to be appropriate, including via our operating manual and/or other written or electronic manuals (including memos and information posted from time to time on our intranet or any other electronic platform we make accessible to you) (the "**Operations Manual**"), bulletins or other written materials, electronic media, telephone consultation, and/or at our office or the Facility. If you request and we agree to provide additional or special guidance, assistance or training, you must pay our then applicable charges, including our personnel's per diem charges and any travel and living expenses. Any specific ongoing training, conventions, advice or assistance that we provide does not create an obligation to continue providing that specific training, convention, advice or assistance, all of which we may discontinue and modify at any time.

derive from operating the Facility, whether from cash, check, credit and debit card, barter, exchange, trade credit, or other credit transactions, and regardless of collection or when you actually provide the products or services in exchange for that revenue. If you receive any proceeds from any business interruption insurance applicable to loss of revenue at the Facility, an amount equal to the imputed gross revenue that the insurer used to calculate those proceeds will be considered Gross Revenue. However, "Gross Revenue" shall exclude (a) sales taxes, use taxes, and other similar taxes added to the sales price, collected from the customer and paid to the appropriate taxing authority; and (b) any bona fide refunds and credits that are actually provided to customers during the month in which the Gross Revenue is calculated.

5.D. Automatic Debit. You must sign and deliver to us the documents we periodically require to authorize us to debit your bank account automatically for the Royalty, Marketing Contribution (defined in Section 7.A) and other amounts due under this Agreement or any related agreement between us (or our affiliates) and you. You agree to make the funds available for withdrawal by electronic transfer before each due date and until all amounts owed are withdrawn. If you fail to report the Facility's Gross Revenue, we may debit your account for 150% of the last Royalty and Marketing Contribution that we debited. Once we have determined the Facility's actual Gross Revenue, we will debit from your account on the day we specify any additional amounts owed (including amounts owed under Section 5.E) or, if we debited more than you actually owe us, we will apply the excess (without interest and less any amounts owed under Section 5.E) as a credit against the amounts owed to us during the following month(s). We may periodically change the mechanism for your payments of Royalties, Marketing Contributions and other amounts you owe to us and our affiliates under this Agreement or any related agreement.

5.E. Administrative Fee and Interest on Late Payments. All amounts that are not timely paid will bear interest beginning on their due date at 1.5% per month or the highest commercial contract interest rate the law allows, whichever is less. In addition, to cover the increased costs and expenses we will incur as a result of your failure to pay the amounts when due, you will owe us a \$100 administrative fee for each payment that is not timely made (or for each dishonored payment). If we institute an automatic debit program for the Facility, we may debit your account automatically for these amounts. You acknowledge that this Section 5.E is not our agreement to accept any payments after they are due or our commitment to extend credit to, or otherwise finance your operation of, the Facility. Your failure to pay all amounts that you owe us when due constitutes grounds for our terminating this Agreement under Section 15, notwithstanding this Section 5.E.

## **6. Facility Operation and System Standards.**

6.A. Condition and Appearance of Facility. You may not use the Facility or any part of the Site (including any parking area) for any purpose other than operating a Gold's Gym Facility in compliance with this Agreement. You must place or display at the Site (interior and exterior) only those signs, emblems, designs, artwork, lettering, logos and display and advertising materials that we require or authorize. You must maintain the condition and appearance of your Facility, its Operating Assets and the Site (including any parking area) in accordance with our System Standards. Without limiting that obligation, you agree, at your expense, to: (1) thoroughly clean, repaint and redecorate the interior and exterior of the Site at intervals that we may periodically designate and at our direction; (2) repair the interior and exterior of the Site as needed; and (3)

distributor on requirements relating to product quality, prices, consistency, warranty, reliability, financial capability, labor relations, customer relations, frequency of delivery, concentration of purchases, standards of service (including prompt attention to complaints) and/or other criteria. We have the right to inspect the proposed supplier's or distributor's facilities and to require the proposed supplier or distributor to deliver product samples or items, at our option, either directly to us or to any independent laboratory which we designate for testing. Either you or the proposed supplier or distributor must pay us a fee (not to exceed the reasonable cost of the inspection and the actual cost of the test) to make the evaluation. We reserve the right periodically to re-inspect the facilities, products and services of any approved supplier or distributor and to revoke our approval of any supplier, distributor, product or service that does not continue to meet our criteria. Notwithstanding the foregoing, you agree that we may limit the number of approved suppliers with whom you may deal, designate sources that you must use, and/or refuse any of your requests for any reason, including if we have already designated an exclusive source (which might be our affiliate) for the applicable product or service or if we believe that doing so is in the best interests of the Gold's Gym Facility network.

6.D. Management of the Facility. You must at all times retain and exercise direct management control over all aspects of the Facility's business and all amenities and other products and services it offers. You may not enter into any management agreement, subcontracting arrangement or other arrangement under which any other party (including your affiliate) provides or exercises management control over any aspect of the Facility's operations or the amenities or other products and services it offers. Only your employees may provide services at the Facility, and neither you nor your Owner may engage consultants or independent contractors to provide any products or services at or relating to the Facility. Without limiting the foregoing, neither you nor your Owners may engage or contract with any consultant or independent contractor (including your affiliate) to provide personal training services, massage services or any other health-related services to Facility members or guests (whether those services are provided at the Facility or any other location), or to operate any retail location providing any products or services that are ancillary to the Facility's business to Facility members or guests (such as, for example, a juice or smoothie bar) which is located in the Facility or at or near the Site. The Facility must be managed by an individual who devotes his or her full working time and best efforts to the day-to-day, on-premises operation of the Facility, has satisfactorily completed our management training program, and is not engaged in any other business endeavor except passive investments which do not interfere with the performance of his or her duties as manager. At our option, you must ensure that all of your Facility's managers and other employees having access to Confidential Information sign agreements in a form we reasonably specify under which they agree to comply with the restrictions in Sections 11.A, 11.C and 12.

6.E. Gym Management System. You agree to obtain, maintain and use in operating the Facility the Gym Management System that we periodically specify. The Gym Management System shall permit twenty-four (24) hours per day, seven (7) days per week electronic communications between us and you, including allowing us continuous independent access to all Member Information (defined in Section 11.B) and other information in the Gym Management System. We may, at our option, periodically change the Gym Management System or components of the Gym Management System that we designate or approve for all similarly situated Gold's Gym Facilities. If we do, you agree to acquire the components and other products and services

issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality which might adversely affect your operation or financial condition or that of the Facility; and (3) any notice of violation of any law, ordinance or regulation relating to the Facility.

6.I. Insurance. During the Term you must maintain in force at your sole expense (1) all insurance coverages required by applicable law, (2) all insurance coverages you determine to be necessary and appropriate for your business, and (3) all insurance coverage in at least the amounts, covering the risks, containing only the exceptions and exclusions that we periodically specify for all similarly situated Gold's Gym Facilities, and issued by carriers who satisfy our minimum criteria. Our specific requirements regarding the minimum insurance we require will be described in our Operations Manual. You agree to send us a valid certificate of insurance or duplicate insurance policy evidencing that you have maintained the required coverage and paid the applicable premiums. If you fail to obtain or maintain (or to prove that you have obtained or maintained) the insurance we specify, in addition to our other remedies, we may (but need not) obtain such insurance for you and the Facility on your behalf, in which event you shall cooperate with us and reimburse us for all premiums, costs and expenses we incur in obtaining and maintaining the insurance.

6.J. Compliance with System Standards. Operating and maintaining the Facility according to System Standards, as we may periodically modify and supplement them, are essential to preserve the goodwill of the Marks and all Gold's Gym Facilities. Therefore, you will at all times operate and maintain the Facility according to each and every such System Standard. System Standards may, in our discretion, regulate any aspect of the Facility's development, operation and maintenance, including any one or more of the following:

- (1) staffing levels for the Facility, dress/appearance and uniforms for your employees, standards and requirements for training Facility employees, insurance requirements for staff, and standards for providing competent and courteous service to Facility members and guests (provided that you are solely responsible for all of your hiring decisions and your employees' terms and conditions of employment);
- (2) evaluation, quality-assurance, and customer-satisfaction programs used to evaluate the quality of the experience that Gold's Gym Facility members and guests have at their facilities, including all equipment, processes and systems used in those programs;
- (3) participation in and requirements for sales, promotional, public relations, advertising and/or marketing programs and materials and media used in these programs;
- (4) the design and appearance of the Facility and its Operating Assets, including the Facility's branding and cleanliness and schedules for the maintenance, repair and replacement of equipment;
- (5) minimum and required standards and specifications for products, equipment, materials, supplies and services that your Facility uses and/or sells;
- (6) participation in and requirements for group purchasing programs for certain Operating Assets and/or other products and services that Gold's Gym Facilities use or sell;

(16) any other aspects of developing, operating and maintaining the Facility that we determine to be useful to preserve or enhance the efficient operation, image or goodwill of the Marks and Gold's Gym Facilities.

You acknowledge that our modification of the System Standards (including to accommodate changes to the Gym Management System and the Marks), including those we make to accommodate regional and/or local variations, may obligate you to invest additional capital in the Facility and incur higher operating costs, and you agree to comply with those obligations within the time period we specify. Although we retain the right to establish and modify the System and System Standards that you have agreed to follow, you retain the responsibility for the day-to-day management and operation of the Facility and implementing and maintaining System Standards at the Facility.

6.K. Modification of System. Because complete and detailed uniformity under many varying conditions might not be possible or practical, we reserve the right to vary the System and/or System Standards for any Gold's Gym Facility or group of Gold's Gym Facilities based upon the peculiarities of any conditions or factors that we consider important to its operations. You have no right to require us to grant you a similar variation or accommodation.

## 7. Marketing.

7.A. Marketing Fund and Marketing Contribution. We have established, and (subject to this Section 7.A) will administer and control, a marketing fund (the "**Marketing Fund**") for the advertising, marketing, promotional, customer relationship management, public relations and other brand-related programs and materials for all or a group of Gold's Gym Facilities that we deem appropriate. You agree to pay us each month, via electronic funds transfer or another payment method we specify and together with each payment of the Royalty, a "**Marketing Contribution**" equal to the greater of: (1) 2% of the Facility's Gross Revenue during the previous month, or (2) \$1,000. The first Marketing Contribution payment is due when your first Royalty payment is due and will include all Gross Revenue derived at any time prior to the Actual Opening Date (including Gross Revenue derived during presale).

We may periodically increase your Marketing Contribution by any amount if at least  $\frac{2}{3}$  of the owners of all Gold's Gym Facilities located in the United States (including those operated by us, our affiliates, and our franchisees and licensees) vote for the increase, with each owner receiving 1 vote for each Gold's Gym Facility that it owns. However, we will give you at least 30 days' prior written notice of any such increase.

We will designate and direct all programs that the Marketing Fund finances, with sole control over the creative and business concepts, materials and endorsements used and their geographic, market and media placement and allocation. The Marketing Fund may pay for preparing, producing and placing materials; electronic media and Social Media; developing, maintaining and administering one or more System Websites, including online membership capabilities, lead management and customer retention programs; administering international, national, regional, multi-regional and local marketing, advertising, promotional and customer relationship management programs, including purchasing advertising and advertising space and using advertising, promotion, and marketing agencies and other advisors to provide assistance;



You acknowledge that other Gold's Gym Facility operators (including our affiliates) might contribute to the Marketing Fund or to another advertising, marketing or promotion fund, and/or make contributions toward advertising, marketing, promotional, customer relationship management, public relations and other brand-related programs and materials, at a rate that is different from the Marketing Contribution. You agree that we have the right, but no obligation, from time to time to allocate some or all of your Marketing Contributions for programs, materials or other uses (consistent with this Section 7.A) that are designed primarily to benefit you and other Gold's Gym Facility operators (including us and our affiliates, if applicable) that make marketing contributions or similar payments at the same or a similar rate as you. This might include allocating some Marketing Contributions to one or more separate accounts or funds designed (in our judgment) primarily to benefit those Gold's Gym Facility operators (including us and our affiliates, if applicable) that contribute to those separate accounts or funds. We may allocate costs for such programs, materials and other uses, and allocate such contributions, on any reasonable basis and may periodically change the allocation and other methods of utilizing Marketing Contributions. You agree that our determinations are final.

**7.B. Advertising Cooperatives.** We may designate geographic areas as areas for an advertising or marketing cooperative (a "**Cooperative**"). The Cooperative's members in any area are the owners of all of the Gold's Gym Facilities located and operating in that area (including us and our affiliates, if applicable) that we have the right to require to participate in the Cooperative. Each Cooperative will be organized and governed in a form and manner, and begin operating on a date, that we determine. We may change, dissolve and merge Cooperatives. Each Cooperative's purpose is, with our approval, to develop, administer or implement advertising, marketing and promotional materials and programs for the area that the Cooperative covers. If, as of the Agreement Date, we have established a Cooperative for the geographic area in which the Facility is located, or if we establish a Cooperative in that area during the Term, you agree to sign the documents that we require to become a member of the Cooperative and to participate in the Cooperative as those documents require. In addition to the Marketing Contribution, you agree to contribute to the Cooperative the amounts that the Cooperative determines, subject to our approval and the Marketing Spending Requirement (defined below).

All material decisions of the Cooperative, including contribution levels (which also require our approval), will require the affirmative vote of more than 50% of all Gold's Gym Facilities that are required to participate in the Cooperative (including, if applicable, those operated by us or our affiliate), with each Gold's Gym Facility receiving 1 vote. You agree to send us and the Cooperative any reports that we or the Cooperative periodically requires. The Cooperative will operate solely to collect and spend Cooperative contributions for the purposes described above. The Cooperative and its members may not use any advertising, marketing or promotional programs or materials that we have not approved.

**7.C. Local Marketing.** You agree at your expense to participate in the manner we specify in all advertising, marketing, promotional, customer relationship management, public relations and other brand-related programs that we designate for the Facility, subject to the Marketing Spending Requirement. You must also list the Facility with the online directories and subscriptions we periodically prescribe (such as Yelp® and Google®). You must ensure that all of your advertising, marketing, promotional, customer relationship management, public relations and

We own all intellectual property and other rights in the System Website and all information it contains, including the domain name or URL for the System Website and all subsidiary websites, the log of “hits” by visitors, and any personal or business data that visitors (including you and your personnel) supply. We may use the Marketing Fund’s assets and your Marketing Contributions to develop, maintain, support and update the System Website. We may implement and periodically modify System Standards relating to the System Website and, at our option, may discontinue the System Website, or any services offered through the System Website, at any time.

All Local Marketing that you develop for the Facility must contain notices of the URL of the System Website in the manner that we periodically designate. Except for using Social Media according to our System Standards, you may not develop, maintain or authorize any other website, other online presence or other electronic medium (such as mobile applications, kiosks and other interactive properties or technology-based programs) that mentions or describes you or the Facility or displays any of the Marks. Except for the System Website and using Social Media according to our System Standards, you may not conduct commerce or directly or indirectly offer or sell any products or services using any website, another electronic means or medium, or otherwise over the Internet or using any other technology-based program without our approval.

With regard to Social Media, you will adhere to any Social Media policies that we establish from time to time and will require all of your employees to do so as well. Use of Social Media must be in compliance with the Operations Manual and System Standards, including our then-current take-down policy. You acknowledge that we reserve the right to maintain administrative privileges over any Social Media associated with your Facility (for instance, by acting as the administrator of Facebook’s “Locations” functionality or any similar “parent-child” functionality for any other Social Media site).

Nothing in this Section 7.E shall limit our right to maintain websites other than the System Website or to offer and sell products or services under the Marks from the System Website, another website or otherwise over the Internet without payment or obligation of any kind to you.

## **8. Records, Reports and Financial Statements.**

You agree to establish and maintain at your own expense a bookkeeping, accounting and recordkeeping system conforming to the requirements and formats that we periodically specify. We may require you to use the Gym Management System to maintain certain sales and expense data, financial statements, Member Information (defined in Section 11.B) and other information, in the formats that we periodically specify, and to transmit that data and information to us on a schedule that we periodically specify. You also must, at your expense, purchase and maintain the computer system we designate in order to allow us unlimited, independent access to, and the ability to download, all information in your computer system at any time.

You also agree to give us in the manner and format that we periodically specify:

- (1) on or before the 10th day of each month, a report on the Facility’s Gross Revenue during the previous month;

9.B. Audits. We may at any time during your business hours, and without prior notice to you, examine the Facility's business, bookkeeping and accounting records, sales and income tax records and returns, and other records. You agree to fully cooperate with our representatives and/or any independent accountants we hire to conduct any such inspection or audit. If any inspection or audit discloses an understatement of the Facility's Gross Revenue, you must pay us, within 15 days after receiving the inspection or audit report, the Royalties, Marketing Contributions and any other amounts due on the amount of the understatement, plus interest and administrative fees (in the amount described in Section 5.E) from the date originally due until the date of payment. If we reasonably determine that an inspection or audit is necessary due to your failure to furnish reports, supporting records or other information as required, or to furnish these items on a timely basis, or if our examination reveals a Royalty or Marketing Contribution understatement exceeding 2% of the amount that you actually reported to us for the period examined, you agree to reimburse us for the cost of our examination, including legal fees and independent accountants' fees, plus the travel expenses, room and board, and compensation of our employees. These remedies are in addition to our other remedies and rights under this Agreement and applicable law.

## 10. Marks.

10.A. Ownership and Goodwill of Marks. Your right to use the Marks is derived only from this Agreement and is limited to your operating the Facility according to this Agreement and all System Standards we implement during the Term. Your unauthorized use of the Marks is a breach of this Agreement and infringes our and our licensor's rights in the Marks. Your use of the Marks and any goodwill established by that use are for our and our licensor's exclusive benefit, and this Agreement does not confer any goodwill or other interests in the Marks upon you (other than the right to operate the Facility under this Agreement). All provisions of this Agreement relating to the Marks apply to any additional and substitute trademarks and service marks that we periodically authorize you to use. You may not at any time during or after the Term contest or assist any other person or Entity in contesting the validity, or our and our licensor's ownership, of the Marks.

10.B. Limitations on Your Use of Marks. You agree to use the Marks as the Facility's sole identification, subject to the notices of independent ownership that we periodically designate. You may not use any Mark (1) as part of any corporate or legal business name, (2) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos we have licensed to you), (3) in selling any unauthorized services or products, (4) as part of any domain name, electronic address, metatag or otherwise in connection with any website or other electronic medium without our consent, or (5) in any other manner we have not expressly authorized in writing. You may not use any Mark in advertising the transfer, sale or other disposition of the Facility or any direct or indirect Ownership Interest in you without our prior written consent, which we will not unreasonably withhold. You may not manufacture, use, sell, or distribute, or contract with any party other than our or our affiliate's authorized licensees to manufacture, use, sell, or distribute, any products, merchandise, or equipment bearing any of the Marks. Subject to our approval of the form of the proposed use, which we will not unreasonably withhold, you may include in your fictitious name filing and in the references to your Facility a geographic reference relating to the Facility's location that we approve, as long as the reference does not interfere with

(3) marketing research and promotional, marketing, advertising, public relations, customer relationship management and other brand-related materials and programs for Gold's Gym Facilities;

(4) knowledge of specifications for and suppliers of, and methods of ordering, certain Operating Assets and other products that Gold's Gym Facilities use and/or sell;

(5) knowledge of the operating results and financial performance of Gold's Gym Facilities;

(6) Member Information (defined below), customer communication and retention programs, along with data used or generated in connection with those programs;

(7) graphic designs and related intellectual property; and

(8) any other information we reasonably designate from time to time as confidential or proprietary.

You acknowledge and agree that by entering into this Agreement and/or acquiring the Facility you will not acquire any interest in Confidential Information, other than the right to use certain Confidential Information that we periodically designate in operating the Facility during the Term and according to the System Standards and this Agreement's other terms and conditions, and that your use of any Confidential Information in any other business would constitute an unfair method of competition with us and our franchisees. We and our affiliates own all right, title and interest in and to the Confidential Information. You further acknowledge and agree that the Confidential Information is proprietary, includes our trade secrets, and is disclosed to you only on the condition that you and your Owners agree, and you and they do agree, that you and your Owners:

(a) will not use any Confidential Information in any other business or capacity, whether during or after the Term;

(b) will keep the Confidential Information absolutely confidential, both during Term and thereafter for as long as the information is not in the public domain;

(c) will not make unauthorized copies of any Confidential Information disclosed in written or other tangible or intangible form;

(d) will adopt and implement all reasonable procedures that we periodically designate to prevent unauthorized use or disclosure of Confidential Information, including restricting its disclosure to Facility personnel and others needing to know such Confidential Information to operate the Facility, and using confidentiality and non-competition agreements with those having access to Confidential Information. We have the right to regulate the form of agreement that you use and to be a third party beneficiary of that agreement with independent enforcement rights; and

(e) will not sell, trade or otherwise profit in any way from the Confidential Information, except during the Term using methods we approve.

11.C. Innovations. All ideas, concepts, techniques or materials relating to a Gold's Gym Facility (collectively, "**Innovations**"), whether or not protectable intellectual property and whether created by or for you or your Owners, employees or contractors, must be promptly disclosed to us and will be deemed to be our sole and exclusive property, part of the System, and works made-for-hire for us. To the extent any Innovation does not qualify as a work made-for-hire for us, by this paragraph you assign ownership of that Innovation, and all related rights to that Innovation, to us and agree to sign (and to cause your Owners, employees and contractors to sign) whatever assignment or other documents we request to evidence our ownership or to help us obtain intellectual property rights in the Innovation. We and our affiliates have no obligation to make any payments to you or any other person with respect to any Innovations. You may not use any Innovation in operating the Facility or otherwise without our prior approval.

## 12. Exclusive Relationship.

12.A. In-Term. We have granted you the Franchise in consideration of and reliance upon your and your Owners' agreement to deal exclusively with us in connection with health clubs and related services during the Term. You therefore agree that, during the Term, neither you nor any of your Owners, directors or officers, nor any members of your or their Immediate Families (defined below), will:

(a) have any direct or indirect, controlling or non-controlling Ownership Interest – whether of record, beneficial or otherwise – in a Competitive Business (defined below), wherever located or operating, provided that this restriction will not apply to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market and quoted on a national inter-dealer quotation system that represent less than 3% of the number of shares of that class of securities issued and outstanding;

(b) perform services as a director, officer, manager, employee, consultant, lessor, representative or agent for a Competitive Business, wherever located or operating;

(c) directly or indirectly loan any money or other thing of value to, or guarantee any other person's loan to, or lease any real or personal property to, any Competitive Business or any owner, director, officer, manager, employee or agent of any Competitive Business, wherever located or operating;

(d) employ or seek to employ any person who is, or within 6 months of such employment or solicitation was, an employee of us, our affiliates or our or their franchisees or licensees, or otherwise directly or indirectly induce that person to leave the employment, without obtaining that person's and the employer's prior written permission; or

(e) divert or attempt to divert any actual or potential business or customer of the Facility to another Competitive Business.

The term "**Competitive Business**" means any gymnasium, an athletic or fitness center, a health club, an exercise or aerobics facility, or one or more similar facilities or businesses, or an entity that grants franchises or licenses for any of these types of businesses, other than a Gold's Gym Facility operated under a franchise agreement with us. The term "**Immediate Family**" includes

or indirectly through a transfer of Ownership Interests in any Owner that is an Entity. References to a “**Controlling Ownership Interest**” in you mean either (a) 20% or more of your direct or indirect Ownership Interests, or (b) an interest the acquisition of which grants the power (whether directly or indirectly) to direct or cause the direction of management and policies of you or the Facility to any individual or Entity, or group of individuals or Entities, that did not have that power before that acquisition.

In this Agreement, the term “**transfer**,” whether or not capitalized, includes any voluntary, involuntary, direct or indirect assignment, sale, gift or other disposition and includes the following events, whether they impact you (or your Owners) directly or indirectly:

(1) transfer of record or beneficial ownership of any Ownership Interest or the right to receive all or a portion of your profits or losses or any capital appreciation relating to you or the Facility (whether directly or indirectly);

(2) a merger, consolidation or exchange of Ownership Interests, or issuance of additional Ownership Interests or securities representing or potentially representing Ownership Interests, or a redemption of Ownership Interests;

(3) any sale or exchange of voting interests or securities convertible to voting interests, or any management agreement or other agreement granting the right to exercise or control the exercise of the voting rights of any Owner or to control your or the Facility’s operations or affairs;

(4) transfer of a direct or indirect Ownership Interest or other interest in you, this Agreement, the Operating Assets, all or any material part of the Membership Arrangements or the Facility in a divorce, insolvency or entity dissolution proceeding, or otherwise by operation of law;

(5) if you or one of your Owners dies, transfer of a direct or indirect Ownership Interest or other interest in you, this Agreement, the Operating Assets, all or any material part of the Membership Arrangements or the Facility by will, declaration of or transfer in trust, or under the laws of intestate succession; or

(6) the grant of a mortgage, charge, pledge, collateral assignment, lien or security interest in any Ownership Interest or other interest in you, this Agreement, the Facility, the Operating Assets, or all or any material part of the Membership Arrangements; foreclosure upon or attachment or seizure of the Facility, any of its Operating Assets or all or any material part of the Membership Arrangements; or your transfer, surrender or loss of the possession, control or management of all or any material portion of the Facility (or its operation) or you. If we consent to a transfer described in this Section 13.B(6), we may condition such consent on the financial institution or other party that provides financing signing our then-current form of lender consent to protect our rights under this Agreement, the current form of which is Exhibit D to this Agreement.

13.C. Conditions for Approval of Non-Control Transfer. We will not unreasonably withhold our approval of a Non-Control Transfer if:

as applicable, and a general release, in a form satisfactory to us, of any and all claims against us and our affiliates and our and their respective owners, officers, directors, employees, representatives, agents, successors and assigns;

(6) you or the transferee pays us a transfer fee of \$10,000 to partially cover our costs and expenses, including attorneys', accountants' and similar fees and costs, incurred in evaluating the transferee and the transfer;

(7) we have determined that the purchase price and payment terms will not adversely affect the operation of the Facility, and if you or your Owners finance any part of the purchase price, you and they agree that all obligations under promissory notes, agreements or security interests reserved in the Facility are subordinate to the transferee's obligation to pay all amounts due to us and our affiliates and otherwise to comply with this Agreement; and

(8) beginning when the transfer closes, you (if the transfer is of this Agreement) and/or your transferring Owners agree to comply with Section 16.B(3).

If the proposed transfer is to or among your Owners or Immediate Family members, then Subsection (6) will not apply, although you must reimburse us for the costs we incur in the transfer, up to the amount of the transfer fee described in Subsection (6). At our sole option, we may review all information regarding the Facility that you give the transferee and give the transferee copies of any reports that you have given us or we have made regarding the Facility. You acknowledge that we have legitimate reasons to evaluate the qualifications of potential transferees (and their direct and indirect owners) and the terms of the proposed transfer, and that our contact with potential transferees (and their direct and indirect owners) to protect our business interests will not constitute tortious, improper or unlawful conduct.

13.E. Transfer to a Wholly Owned Entity. Despite Section 13.D, if you are in full compliance with this Agreement, then upon at least 10 days' prior written notice to us, you may transfer this Agreement, together with the Operating Assets, the Membership Arrangements and all other assets associated with the Facility, to an Entity which conducts no business other than the Facility and, if applicable, other Gold's Gym Facilities and of which you own and control 100% of the equity and voting power of all Ownership Interests, provided that all of the Facility's assets are owned, and the Facility's business is conducted, only by that single Entity. Transfers of Ownership Interests in that Entity are subject to all of the restrictions in this Section 13. You (including, if you are a group of individuals, any individual who will not have an Ownership Interest in the transferee Entity), your Owners, and the transferee Entity must sign the form of agreement and related documents (including, as applicable pursuant to Section 1.D, Full Guarantees) that we then specify to reflect the assignment of this Agreement to the transferee Entity and a general release, in a form satisfactory to us, of any and all claims against us and our affiliates and our and their respective owners, officers, directors, employees, representatives, agents, successors and assigns.

13.F. Death or Disability. Upon your or your Owner's death or disability, your or the Owner's executor, administrator, conservator, guardian or other personal representative (the "**Representative**") must transfer your interest in this Agreement, the Operating Assets and the



proposed buyer on the original offer's terms, but only if we approve the transfer as provided in this Section 13. If you do not complete the sale to the proposed buyer (with our approval) within 60 days after we notify you that we do not intend to exercise our right of first refusal, or if there is a material change in the terms of the offer (which you must tell us promptly), we will have an additional right of first refusal during the 30-day period following either the expiration of the 60-day period or our receipt of notice of the material change in the offer's terms, either on the terms originally offered or the modified terms, at our option.

We may assign our right of first refusal under this Section 13.H to any Entity (who may be our affiliate), and that Entity will have all of the rights and obligations under this Section 13.H.

#### **14. Successor Franchise Rights.**

14.A. Right to a Successor Franchise Agreement. When this Agreement expires if:

(1) you (and your Guarantors) have substantially complied with this Agreement during the Term and are, both on the date you give us written notice of your election to exercise the Successor Franchise Right (as defined below) and on the date on which the term of the successor franchise commences, in full compliance with this Agreement, including all System Standards;

(2) you and your Owners then meet our then applicable standards for franchisees and owners of franchisees of Gold's Gym Facilities; and

(3) either (i) you maintain possession of the Site for the 10-year successor franchise term and agree (regardless of cost) to renovate, remodel, and/or expand the Facility, add or replace Operating Assets, and otherwise modify the Facility as we require to comply with the System and System Standards then applicable for new similarly situated Gold's Gym Facilities; or (ii) at your option, or if we determine (using our reasonable judgment, based on changed market and economic conditions then in effect in the Facility's market) that the Facility should be relocated, you secure possession of a substitute site that we accept within the Territory for the 10-year successor franchise term and agree to construct and develop that site according to the System and System Standards then applicable for new similarly situated Gold's Gym Facilities,

we will offer you the right to enter into a successor franchise agreement to operate the Facility as a Gold's Gym Facility for a term commencing immediately upon the expiration of this Agreement and expiring 10 years after that date (the "**Successor Franchise Right**") in accordance with Section 14.C. If you (and each Guarantor) are not, both on the date you give us written notice of your election to exercise the Successor Franchise Right and on the date on which the term of the successor franchise agreement is scheduled to commence, in full compliance with this Agreement, including all System Standards, you acknowledge that we need not enter into a successor franchise agreement with you, whether or not we had, or chose to exercise, the right to terminate this Agreement during the Term.

14.B. Grant of a Successor Franchise. You agree to give us written notice of your election to exercise or not to exercise the Successor Franchise Right no more than 15 months, and no less

(ii) notice of our decision not to enter into a successor franchise agreement with you at least 60 days before this Agreement expires, if this notice is required,

then we may unilaterally extend the Term for the time period necessary to give you (at our option) either reasonable time to correct deficiencies or the 60 days' notice of our refusal to grant a successor franchise. If you fail to notify us of your election to enter into a successor franchise agreement within the prescribed time period, we will deem this to be your decision not to exercise the Successor Franchise Right.

14.C. Agreements/Releases. If you satisfy all of the other conditions for a successor franchise agreement, you and your Owners (as applicable) agree to sign the form of franchise agreement and any ancillary agreements we then customarily use in granting franchises for Gold's Gym Facilities (modified as necessary to reflect the fact that it is for a successor franchise and that there will be no further renewal or successor franchise rights), which may contain provisions (including the Territory and territorial rights) that differ materially from any and all of those contained in this Agreement, except that we will not charge an initial or successor franchise fee that exceeds 50% of the initial franchise fee that we are then charging to new Gold's Gym Facility franchisees signing their first franchise agreement with us. You and your Owners further agree to sign a general release, in a form satisfactory to us, of any and all claims against us and our affiliates and our and their respective owners, officers, directors, employees, representatives, agents, successors, and assigns. We will consider your or your Owners' failure to sign these agreements and releases and to deliver them to us for acceptance and execution within 30 days after their delivery to you to be an election not to enter into a successor franchise agreement.

## **15. Termination of Agreement.**

15.A. Termination by You. You may terminate this Agreement if we commit a material breach of any of our obligations under this Agreement and fail to correct such breach within 30 days after your delivery of written notice to us of such breach; provided, however, that if we cannot reasonably correct the breach within this 30-day period but provide you, within this 30-day period, with reasonable evidence of our effort to correct the breach within a reasonable time period, then the cure period shall run through the end of such reasonable time period. Your termination of this Agreement (including by taking steps to de-identify the Facility or otherwise cease operations under this Agreement) other than in accordance with this Section 15.A is a termination without cause and a breach of this Agreement.

15.B. Termination by Us. We may, at our option, terminate this Agreement, effective upon delivery of written notice of termination to you, if:

- (1) you or any of your Owners has made or makes a material misrepresentation or omission in acquiring any of the rights under this Agreement or operating the Facility;
- (2) you, your Owner or other Facility personnel that we required to attend our initial training program do not satisfactorily complete that training;
- (3) you fail to sign a Lease that we have accepted, for a Site that we have accepted, within 9 months after the Agreement Date or you fail to open the Facility for

(14) you fail to pay when due any federal, state or local income, service, sales or other taxes due on the Facility's operation, or repeatedly fail to make or delay making payments to your suppliers or lenders, unless you are in good faith contesting your liability for these taxes or payments;

(15) you or any of your Guarantors fails on 3 or more separate occasions within any 12-consecutive-month period to comply with any one or more obligations under this Agreement, whether or not any of these failures are corrected after we deliver written notice to you and whether these failures involve the same or different obligations under this Agreement;

(16) you or any of your Guarantors fails on 2 or more separate occasions within any 6 consecutive month period, or on 3 or more separate occasions within any 36 consecutive month period, to comply with the same obligation under this Agreement, whether or not any of these failures are corrected after we deliver written notice to you;

(17) you or any Guarantor makes an assignment for the benefit of creditors or admits in writing your or its insolvency or inability to pay your or its debts generally as they become due; you or any Guarantor consents to the appointment of a receiver, trustee or liquidator of all or the substantial part of your or its property; the Facility or any of the Operating Assets is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant or levy is vacated within 30 days; or any order appointing a receiver, trustee or liquidator of you, any Guarantor or the Facility is not vacated within 30 days following the order's entry;

(18) you fail to pay us (or our affiliates) any amounts due, whether arising under this Agreement or any other agreement, and do not correct the failure within 5 days after we deliver written notice of that failure to you; or

(19) you fail to comply with any other provision of this Agreement or any mandatory System Standard and do not correct the failure within 30 days after we deliver written notice of the failure to you.

15.C. Our Other Remedies Upon Default. In addition to and without limiting our other rights and remedies under this Agreement, any other agreement and applicable law, upon the occurrence of any of the events that give rise to our right to terminate this Agreement under Section 15.B, we may, at our sole option and upon delivery of written notice to you, elect to take any or all of the following actions without terminating this Agreement:

(1) temporarily or permanently reduce the size of the Territory, in which event the restrictions on us and our affiliates under Section 3.A will not apply in the geographic area that was removed from the Territory;

(2) temporarily remove information concerning the Facility from the System Website and/or stop your or the Facility's participation in any other programs or benefits offered on or through the System Website;

have become due had the Agreement not been terminated, from the date of termination to the scheduled expiration of the then-current Term of this Agreement (the “**Measurement Period**”). For this purpose, Termination Damages shall be calculated by multiplying (1) the number of calendar months in the Measurement Period by (2) the aggregate of the percentages of Royalty fees and Marketing Contributions, by (3) the average monthly Gross Revenue of the Facility during the 12 full calendar months immediately preceding the termination date; however, if as of the termination date, the Facility has not been operating for at least 12 months, Termination Damages will be calculated based on the average monthly Gross Revenue during our previous fiscal year immediately preceding the termination date of all units operating under the Marks during the entirety of that fiscal year.

(2) You acknowledge that, in addition to lost future Royalties and Marketing Contributions (as described in paragraph (1) above), we will suffer additional damages if (x) the Facility operates at its existing location as a Competitive Business at any time during the 6-month period following termination or (y) any Competitive Business that is located in the Territory and has then been in operation for at least 12 months gains access, by any means, to the Operating Assets or Membership Arrangements of the Facility. These additional damages include loss of market penetration and goodwill relating to the Marks, loss of representation by the Gold’s Gym® brand in the market, a diminished base of Gold’s Gym Facilities from which to leverage benefits in relationships with actual and potential vendors, franchisees and other parties, confusion of the public (especially Facility members), and lost business opportunities and other opportunity costs (collectively, “**Brand Damages**”). To compensate us for these additional Brand Damages, if either of the circumstances described in clause (x) or (y) exist, “**Termination Damages**” means an amount equal to (a) the average monthly Royalties and Marketing Contributions that you owed us during the 12-month period before the month of termination (or for such lesser period that the Facility has been open, if less than 12 months); multiplied by (b) 150%; multiplied by (c) the number of calendar months in the Measurement Period.

You agree that the Termination Damages calculated under this Section 16.A represent the best estimate of our damages for lost future Royalties and Marketing Contributions and, as applicable, Brand Damages arising from any termination of this Agreement before the Term expires. The Termination Damages are not a penalty. Your payment of the Termination Damages is compensation to us only for lost future Royalties and Marketing Contributions and, as applicable, Brand Damages, is in addition to, and not in lieu of, your obligation to pay other amounts owed to us and our affiliates and otherwise to comply with the post-termination obligations under this Agreement, nor does it relieve or replace any other obligations under this Agreement that arise from the Agreement’s termination.

16.B. De-Identification. When this Agreement expires or is terminated for any reason:

(1) you must take any actions that are required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any of the Marks and, at our option, to assign to us (or our designee) or cancel any electronic address, domain name or website, or rights maintained in connection with any search engine, that directly or

(6) within 3 days after the De-identification Date, in addition to any procedures that applicable law requires, you must notify all of the Facility's members of the termination or expiration of this Agreement and offer each of them the option to terminate their membership and receive a pro rata refund of all membership fees and other charges that they prepaid related to any period after the effective date of termination or expiration of this Agreement. You also agree to provide us a copy of, or access to, all Member Information existing when this Agreement expires or is terminated.

You must provide us written evidence (including pictures, as applicable) of your compliance with this Section 16.B upon our request. If you fail to comply with any of your obligations under this Section 16.B, then, without limiting our other rights and remedies under this Agreement or applicable law, we or our designee may take any action that this Section 16.B requires on your behalf and at your expense, including by entering the Facility and adjacent areas, without prior notice or liability, to remove the items and/or make the alterations that this Section 16.B requires. The **"De-identification Date"** means: (i) the closing date of our (or our assignee's) purchase of the Purchased Assets; or (ii) if that closing does not occur, the date upon which the option under Section 16.E expires or the date upon which we provide you written notice of our decision not to exercise, or to withdraw our previous exercise, of that option, whichever occurs first. If we or our assignee acquires the Purchased Assets under Section 16.E, then the De-identification Date will not occur and your obligations under this Section 16.B that apply only on or after the De-identification Date will be of no force or effect.

16.C. Confidential Information. You agree that, when this Agreement expires or is terminated, you will immediately cease using any Confidential Information in any business or otherwise and return to us all copies of the Operations Manual and any other confidential materials that we have loaned you. You may not sell, trade or otherwise profit in any way from any Confidential Information at any time following the expiration or termination of this Agreement.

16.D. Compliance with Post-Term Non-Compete. On expiration or termination of this Agreement, you, your directors and officers, your Owners and your and their Immediate Family members must comply with the obligations regarding Competitive Businesses as described in Section 12.B above.

#### 16.E. Our Right to Purchase Facility Assets.

(1) **Exercise of Option.** Upon termination of this Agreement for any reason (other than your termination in accordance with Section 15.A) or expiration of this Agreement without our and your signing a successor franchise agreement, we have the option, exercisable by giving you written notice within 15 days after the date of termination or expiration (the **"Exercise Notice"**), to purchase those Operating Assets, Membership Arrangements and other assets used in the operation of the Facility that we designate (the **"Purchased Assets"**). We have the unrestricted right to exclude any assets we specify relating to the Facility from the Purchased Assets and not acquire them. You agree to provide us the financial statements and other information we reasonably require, and to allow us to inspect the Facility and its assets, to determine whether to exercise our option under this Section 16.E. If you or one of your affiliates owns the Site, we may elect to include a fee simple interest in the Site as part of the Purchased Assets or, at our option,

purchase price, and reduce the purchase price by, any and all amounts you owe us or our affiliates. We are entitled to all customary representations, warranties and indemnities in our asset purchase, including representations and warranties as to ownership and condition of, and title to, assets, liens and encumbrances on assets, validity of contracts and agreements, and liabilities affecting the assets, contingent or otherwise, and indemnities for all actions, events and conditions that existed or occurred in connection with the Facility or your business prior to the closing of our purchase. At the closing, you agree to deliver instruments transferring to us: (a) good and merchantable title to the Purchased Assets, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us), with all sales and transfer taxes paid by you; and (b) all of the Facility's licenses and permits which may be assigned or transferred. If you cannot deliver clear title to all of the Purchased Assets, or if there are other unresolved issues, the sale will be closed through an escrow. You and your Owners further agree to sign general releases, in a form satisfactory to us, of any and all claims against us and our affiliates and our and their respective owners, officers, directors, employees, agents, representatives, successors and assigns.

(6) **Assignment.** We may assign our rights under this Section 16.E to any Entity (who may be our affiliate), and that Entity will have all of the rights and obligations under this Section 16.E.

16.F. Continuing Obligations. All of our and your (and your Owners') obligations under this Agreement which expressly or by their nature survive this Agreement's expiration or termination will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until these obligations are satisfied in full or by their nature expire.

## **17. Relationship of the Parties/Indemnification.**

17.A. Independent Contractors. This Agreement does not create a fiduciary relationship between you and us. You have no authority, express or implied, to act as the agent of us or any of our affiliates for any purpose. You are, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Facility and its business, including any personal property, equipment, fixtures or real property and for all claims or demands based on damage or destruction of property or based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the Facility. Further, we and you are not and do not intend to be partners, associates, or joint employers in any way, and we shall not be construed to be jointly liable for any of your acts or omissions under any circumstances. We have no relationship with your employees and you have no relationship with our employees. You agree to identify yourself conspicuously in all dealings with members, prospective members, customers, employees, suppliers, public officials and others as the Facility's owner under a franchise we have granted and to place notices of independent ownership on the forms, business cards, stationery, advertising and other materials we require from time to time.

17.B. No Liability for Acts of Other Party. We and you agree not to make any express or implied agreements, warranties, guarantees or representations, or incur any debt, in the name or on behalf of the other or represent that our respective relationship is other than franchisor and

(3) Despite Section 17.D(1), you have no obligation to indemnify or hold harmless an Indemnified Party for, and we will reimburse you for, any Losses (including costs of defending any Proceeding under Section 17.D(2)) to the extent they are determined in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction to have been caused solely and directly by the Indemnified Party's willful misconduct or gross negligence, so long as the claim to which those Losses relate is not asserted on the basis of theories of vicarious liability (including agency, apparent agency, or employment) or our failure to compel you to comply with this Agreement. However, nothing in this Section 17.D(3) limits your obligation to defend us and the other Indemnified Parties under Section 17.D(2).

## **18. Enforcement.**

18.A. Severability and Substitution of Valid Provisions. Except as expressly provided to the contrary in this Agreement (including in Section 18.F), each Section, Subsection, paragraph, term and provision of this Agreement is severable, and if, for any reason, any part 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 arbitrator with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, you and we agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity. If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of termination or of our refusal to enter into a successor franchise agreement, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any System Standard is invalid, unenforceable or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and we may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. You agree to be bound by any promise or covenant imposing the maximum duty the law permits which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

18.B. Waiver of Obligations and Force Majeure. We and you may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or another effective date stated in the notice of waiver. But, no interpretation, change, termination or waiver of any of this Agreement's provisions shall be binding upon us unless in writing and signed by one of our officers, and which is specifically identified as an amendment to this Agreement. No modification, waiver, termination, rescission, discharge or cancellation of this Agreement shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, rescission, discharge or cancellation. Any waiver we grant will be without prejudice to any other rights we have, will be subject to our



18.F. Arbitration. All controversies, disputes or claims between us (and our affiliates and our and their respective owners, officers, directors, managers, agents and employees, as applicable) and you (and your affiliates and your and their respective owners, officers, directors, managers, agents and employees, as applicable) arising out of or related to:

- (1) this Agreement or any other agreement between you and us or any provision of any of such agreements (including this Section 18.F);
- (2) our relationship with you;
- (3) the scope and validity of this Agreement or any other agreement between you and us or any provision of any of such agreements (including the scope and validity of the arbitration obligations under this Section 18.F, which you and we acknowledge is to be determined by an arbitrator and not a court); or
- (4) any System Standard

will be submitted for arbitration to the office of the American Arbitration Association closest to our then current principal business address. Except as otherwise provided in this Agreement, such arbitration proceedings shall be heard by 1 arbitrator in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall be held at a suitable location to be chosen by the arbitrator which is within 10 miles of our principal business address at the time that the arbitration action is filed. The arbitrator has no authority to establish a different hearing locale. All matters within the scope of the Federal Arbitration Act (9 U.S.C. Sections 1 et seq.) will be governed by it and not by any state arbitration law.

The arbitrator shall have the right to award or include in his or her award any relief which he or she deems proper in the circumstances, including money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief and attorneys' fees and costs, provided that: (1) the arbitrator shall not have authority to declare any Mark generic or otherwise invalid; and (2) except for punitive, exemplary and other forms of multiple damages available to any party under federal law or owed to third parties which are subject to indemnification under Section 17.D, we and you waive to the fullest extent permitted by law any right to or claim for any punitive, exemplary or other forms of 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. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto and judgment upon the award may be entered in any court of competent jurisdiction.

We and you agree to be bound by the provisions of any limitation on the period of time by which claims must be brought under this Agreement or applicable law, whichever expires first. We and you further agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by the then current Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed in such proceeding shall be barred. The arbitrator may not consider any settlement discussions or offers that might have been

preliminary injunctive relief, or to enforce an arbitration award, in any federal or state court in the state in which you or any of your Owners resides or the Facility is located.

18.I. Waiver of Punitive Damages and Jury Trial. EXCEPT FOR PUNITIVE, EXEMPLARY AND OTHER FORMS OF MULTIPLE DAMAGES AVAILABLE TO ANY PARTY UNDER FEDERAL LAW OR OWED TO THIRD PARTIES WHICH ARE SUBJECT TO INDEMNIFICATION UNDER SECTION 17.D, WE AND YOU (AND YOUR OWNERS) WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM FOR ANY PUNITIVE, EXEMPLARY OR OTHER FORMS OF 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.

WE AND YOU (AND YOUR OWNERS) IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER US OR YOU.

18.J. Binding Effect. This Agreement is binding upon us and you and our and your respective executors, administrators, heirs, beneficiaries, permitted assigns and successors in interest. Subject to our rights to modify the Operations Manual, System Standards and System, and our right to modify Exhibit A to reflect the Site's address and Territory pursuant to Section 2.B, this Agreement may not be modified except by a written agreement signed by both you and us.

18.K. Limitations of Claims. EXCEPT FOR CLAIMS ARISING FROM YOUR NON-PAYMENT OR UNDERPAYMENT OF AMOUNTS YOU OWE US, ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OUR RELATIONSHIP WITH YOU WILL BE BARRED UNLESS AN ARBITRATION OR JUDICIAL PROCEEDING IS COMMENCED IN THE PROPER FORUM WITHIN 1 YEAR FROM THE DATE ON WHICH THE PARTY ASSERTING THE CLAIM KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THE CLAIM.

18.L. Construction. The preambles and exhibits are a part of this Agreement which, together with any riders or addenda signed at the same time as this Agreement, constitutes our and your entire agreement and supersedes all prior and contemporaneous oral or written agreements and understandings between us and you relating to the subject matter of this Agreement. There are no other oral or written representations, warranties, understandings or agreements between us and you relating to the subject matter of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require you to waive reliance on any representation that we made in the most recent disclosure document (including its exhibits and amendments) that we delivered to you or your representative. Any policies that we adopt and implement from time to time to guide us in our decision-making are subject to change, are not a part of this Agreement and are not binding on us. Except as provided in Sections 17.D and 18.F, nothing in this Agreement is intended nor deemed to confer any rights or remedies upon any person or Entity not a party to this Agreement.

(3) 1 business day after being placed in the hands of a commercial courier service for next business day delivery; or

(4) 3 business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid;

and must be addressed to the party to be notified at its most current principal business address of which the notifying party has notice and/or, with respect to any approvals or notices that we provide to you or your Owners, at the Facility's address. Any required payment or report which we do not actually receive during regular business hours on the date due (or postmarked by postal authorities at least 2 days before then) will be deemed delinquent.

**[The remainder of this page is intentionally left blank.]**

**EXHIBIT A**  
**to the**  
**GOLD'S GYM FACILITY FRANCHISE AGREEMENT**

**BASIC TERMS; OWNERS**

1. The Site is 4950 West Ray Road, Chandler, AZ 85226.
2. If you have not yet located an approved Site as of the Agreement Date, the Site will not be identified until you find and we accept the Site, as provided in Section 2.B, but you may look for the Site within the following Site Selection Area: \_\_\_\_\_  
\_\_\_\_\_.
3. The Territory is a circle with a radius of three and one half (3.5) mile(s) from the Facility's main front entrance.
4. The Facility's Actual Opening Date is TBD, 201  .
5. The initial franchise fee is \$40,000.
6. If you are not an individual, you are a limited liability company formed on June 1, 2018 under the laws of the State of Arizona, and your Owners as of the Agreement Date are as follows:

Name: Jad Awale % of Total Shares/Units: 100%  
Address: 4540 N Quartz Hill Dr., Tucson, AZ 85750

**FRANCHISOR:**  
**GOLD'S GYM FRANCHISING LLC**

By: [Signature]  
Name: Brandon Bean  
Title: CEO  
Date: 10-22-18

By: [Signature]  
Name: EDUARDO M. AFONSO  
Title: SR. DIRECTOR, FRANCHISE ADMIN  
Date: 10-22-18

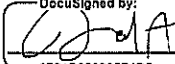
**FRANCHISEE:**  
**FITNESS AZ 1 LLC**

By: [Signature]  
Name: Jad Awale  
Title: President  
Date: 10/19/2018 | 12:45 AM EDT

she must submit to us suitable credit and financial information to allow us to make a reasonable decision as to the undersigned's creditworthiness and financial position including, without limitation, a personal net worth statement and such other information which would reasonably be considered relevant to us in determining whether or not the undersigned has the ability to satisfy his or her obligations under this Guaranty; and (7) for so long as any performance is or might be owed under the Agreement by Franchisee or any of its owners or guarantors, and for so long as we have any actual or potential cause of action against Franchisee or any of its owners or guarantors, we (and/or any third party authorized by us) are authorized to conduct a credit investigation of him or her and obtain credit reports on him or her.

Each of the undersigned waives: (i) all rights to payments and claims for reimbursement or subrogation that any of the undersigned may have against Franchisee arising as a result of the undersigned's execution of and performance under this Guaranty, for the express purpose that none of the undersigned shall be deemed a "creditor" of Franchisee under any applicable bankruptcy law with respect to Franchisee's obligations to us; (ii) all rights to require us to proceed against Franchisee for any payment required under the Agreement, proceed against or exhaust any security from Franchisee, take any action to assist any of the undersigned in seeking reimbursement or subrogation in connection with this Guaranty or pursue, enforce or exhaust any remedy, including any legal or equitable relief, against Franchisee; (iii) any benefit of, or any right to participate in, any security now or hereafter held by us; and (iv) acceptance and notice of acceptance by us of his, her or its undertakings under this Guaranty, all presentments, demands and notices of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed, protest, notices of dishonor, notices of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed, and any other notices and legal or equitable defenses to which he, she or it may be entitled. We shall have no present or future duty or obligation to the undersigned under this Guaranty, and each of the undersigned waives any right to claim or assert any such duty or obligation, to discover or disclose to the undersigned any information, financial or otherwise, concerning Franchisee, any other guarantor, or any collateral securing any obligations of Franchisee to us. Without affecting the obligations of the undersigned under this Guaranty, we may, without notice to the undersigned, extend, modify, supplement, waive strict compliance with, or release all or any provisions of the Agreement or any indebtedness or obligation of Franchisee, or settle, adjust, release, or compromise any claims against Franchisee or any other guarantor, make advances for the purpose of performing any obligations of Franchisee under the Agreement, and/or assign the Agreement or the right to receive any sum payable under the Agreement, and the undersigned each hereby jointly and severally waive notice of same. The undersigned expressly acknowledge that the obligations hereunder survive the expiration or termination of the Agreement.

In addition, the undersigned each waive any defense arising by reason of any of the following: (a) any disability, counterclaim, right of set-off or other defense of Franchisee, (b) any lack of authority of Franchisee with respect to the Agreement, (c) the cessation from any cause whatsoever of the liability of Franchisee, (d) any circumstance whereby the Agreement shall be void or voidable as against Franchisee or any of Franchisee's creditors, including a trustee in bankruptcy of Franchisee, by reason of any fact or circumstance, (e) any event or circumstance that might otherwise constitute a legal or equitable discharge of the undersigned's obligations hereunder, except that the undersigned do not waive any defense arising from the due performance

GUARANTOR(S)
<b>#1: Jad Awale</b>
Sign: <small>DocuSigned by:</small>  <small>0781D023295F4D5...</small>
<b>Address: <u>4540 N Quartz Hill Dr., Tucson,</u></b> <b><u>AZ 85750</u></b>

Principal pursuant to this Agreement, regardless of whether those obligations (as they appear in the Franchise Agreement) are imposed upon Franchisee, its Owners, or both, as if Principal were the Franchisee under the Franchise Agreement. The liabilities and obligations arising under Section 2 are independent liabilities and obligations of each Principal and are not contingent or conditioned upon GGF's pursuit of any remedies against Franchisee, any other Principal, or any other person or entity. The liabilities and obligations arising under Section 2 will not be diminished, relieved, or otherwise affected by any extension of time or credit, the acceptance of any partial payment or performance, or the compromise or release of any claims. Each Principal waives all rights to payments and claims for reimbursement or subrogation that any of the undersigned may have against Franchisee arising as a result of the signing of and performance under this Agreement.

4. Each provision of this Agreement is severable, and if any provision or part of a provision is held to be invalid or in conflict with any applicable present or future law or regulation, the other portions of this Agreement that remain otherwise intelligible will continue to be given full force and effect and bind the parties. If any covenant is deemed unenforceable by virtue of its scope, but would be enforceable by reducing any part or all of it, the parties agree that such covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity. Any waiver of any Principal's obligations under this Agreement must be in writing to be enforceable and will be without prejudice to any other rights GGF may have. GGF's failure to enforce any of the provisions of this Agreement is not a waiver of such provision.

6. This Agreement, together with the Franchise Agreement, supersedes all prior agreements and understandings, whether oral and written, among the parties relating to its subject matter, and there are no oral or other written understandings, representations, or agreements among the parties relating to the subject matter of this Agreement. This Agreement may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument. The provisions of this Agreement may be amended or modified only by written agreement signed by the party to be bound.

7. If any party incurs any costs or expenses, including, without limitation, attorneys' fees, as a result of another party's non-compliance with this Agreement, the non-compliant party must promptly reimburse the other party for costs and expenses incurred in connection with any judicial or arbitration proceeding or action if such other party prevails in such proceeding or action.

**EXHIBIT D**  
**to the**  
**GOLD'S GYM FACILITY FRANCHISE AGREEMENT**

**LENDER CONSENT**

DATE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Loan to \_\_\_\_\_

Dear \_\_\_\_\_:

You have advised us that \_\_\_\_\_ ("Franchisee") has applied for a loan in an aggregate principal amount not to exceed \$ \_\_\_\_\_ (the "Loan") pursuant to a loan agreement (together with any promissory notes, security agreements, guarantees, forms of UCC-1 Financing Statements, and any other related agreements, documents and instruments, as amended, supplemented or otherwise modified, collectively, the "Loan Agreement," a copy of which is attached hereto as Attachment A) between Franchisee and \_\_\_\_\_ (the "Lender"). We understand that the Loan will be secured in part by a lien (the "Lien") on some of Franchisee's business assets including, but not limited to, all furniture and fixtures, machinery and equipment, inventory, raw material, work in process, and permits now owned or hereinafter acquired by Franchisee and the products and proceeds thereof (subject to the provisions of this Lender Consent, collectively, the "Collateral"), relating to the Franchisee's health and fitness facility located at \_\_\_\_\_ and commonly known as Gold's Gym \_\_\_\_\_ (the "Facility").

Gold's Gym Franchising LLC ("Company") has entered into the Franchise Agreement attached to this Lender Consent as Attachment B (as amended, supplemented or otherwise modified, collectively, the "Franchise Agreement") pursuant to which Franchisee will operate the Facility under the "Gold's Gym®" name and other Marks. All capitalized terms not defined herein shall have the meanings set forth in the Franchise Agreement.

Subject to the terms of this Lender's Consent, Company consents to the existence of Lender's Lien on the Collateral. However, notwithstanding the forgoing or anything to the contrary in the Loan Agreement, the Lien does not apply to, and the Collateral shall not include, any direct or indirect, beneficial or legal right or title to, or interest in, (i) the Ownership Interests in Franchisee, (ii) the Franchise Agreement or any rights of Franchisee thereunder, or (iii) any Company Property (defined below). "Company Property" includes all right and title to and interest



example, through foreclosure or conveyance in lieu of foreclosure) (a “Foreclosure”). Any Foreclosure constitutes a Transfer requiring Company’s prior written consent pursuant to Section 13 of the Franchise Agreement. If Lender desires to operate the Facility under the Marks following the Foreclosure, then, before the Foreclosure, either (a) Lender and/or Franchisee shall comply with the appropriate provisions of Section 13 of the Franchise Agreement, or (b) Lender shall comply with Company’s then current procedures and requirements concerning the grant of new franchises. Nothing in this Lender Consent is a warranty or guaranty, express or implied, that Company will consent to any transfer or grant a new franchise to Lender (or its designee).

If, at any time after a Foreclosure, Lender decides to sell its interest in the Facility or its direct or indirect Ownership Interests in Franchisee, Lender shall notify Company in a writing that describes the interest proposed to be sold and the terms of the proposed sale. Company shall have a right of first refusal, exercisable at any time within thirty (30) days after Company’s receipt of Lender’s notice, to acquire such interest on the same terms and conditions as those agreed to between Lender and the prospective buyer.

Nothing in this Lender Consent shall limit Company’s ability to enforce any of its rights or remedies under the Franchise Agreement (whether before or after a default thereunder) or applicable law.

Lender agrees and consents that any or all of Company’s rights and obligations under this Lender Consent may be assigned to any affiliate of Company or to any successor or assign of Company under the Franchise Agreement, and that following such assignment, Company will have no liability, contingent or otherwise, hereunder. Company agrees and consents that any or all of Lenders’ rights and obligations under this Lender Consent may be assigned to any affiliate of Lender and that following such assignment, Lender will have no liability, contingent or otherwise, hereunder. This Lender Consent is binding upon the parties hereto and their respective permitted successors and assigns and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

All notices, request or demands hereunder shall be in writing and deemed delivered at the time delivered by hand; or one (1) business day after being placed in the hands of a nationally recognized commercial courier service for next business day delivery; or three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid; and must be addressed to the party to be notified at its most current principal business address of which the notifying party has been notified and/or, with respect to any notices to Franchisee, at the Facility’s address.

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_

This Lender Consent may be executed in any number of counterparts, each of which when executed and delivered, will be deemed an original, but all counterparts together will constitute but one and the same instrument.

Very truly yours,

GOLD'S GYM FRANCHISING LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREED TO AND ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_:

\_\_\_\_\_ (Lender)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREED TO AND ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_:

\_\_\_\_\_ (Franchisee)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT B**  
**FRANCHISE AGREEMENT**  
**(Attached)**

**GOLD'S GYM® FACILITY  
DEVELOPMENT RIGHTS AGREEMENT**

**THIS DEVELOPMENT RIGHTS AGREEMENT** (the “**Agreement**”) is made and entered into as of 10/19/2018 | 12:45 AM EDT (the “**Agreement Date**”), regardless of the date of the parties’ signatures, between **GOLD’S GYM FRANCHISING LLC**, a Delaware limited liability company with its principal business address at 4001 Maple Avenue, Suite 200, Dallas, Texas 75219 (“**we**,” “**us**” or “**our**”), and **JAD AWALE**, whose address is 4540 N. Quartz Hill Drive, Tucson, AZ 85750 (“**you**” or “**your**”).

1. **Background.** We and you (or your affiliate) are signing or have signed a Franchise Agreement dated as of October \_\_, 2018 (the “**Existing Agreement**”) under which you (or your affiliate) will operate a Gold’s Gym® facility in/at 4950 West Ray Road, Chandler, AZ 85226. All capitalized terms used but not defined in this Agreement shall have the meanings in the Existing Agreement. We and you are signing this Agreement because you would like the right to develop and operate a number of Gold’s Gym Facilities within a certain geographic area over a certain period of time. We are willing to grant you such development rights if you comply with the terms of this Agreement.

2. **Grant of Development Rights.** Subject to your compliance with this Agreement, we hereby grant you and/or any of your approved Affiliated Entities (defined below) the right to sign Franchise Agreement(s) (defined in Section 6) to develop and operate four (4) new Gold’s Gym Facilities, in addition to the Gold’s Gym Facility that the Existing Agreement covers, according to a development schedule (the “**Schedule**”), and within a geographic area (the “**Area**”), identified on Exhibit A to this Agreement. “**Affiliated Entity**” means any corporation, limited liability company or other Entity of which you or one or more of your owners owns more than fifty percent (50%) of the total authorized Ownership Interests, as long as you or such owner(s) have the right to control the Entity’s management and policies.

3. **No Gold’s Gym Facilities in Area.** Except as provided below, if you are complying with this Agreement, and you and your Affiliated Entities are fully complying with all of your and their obligations under any and all franchise agreements then in effect between you or any Affiliated Entity and us for the operation of Gold’s Gym Facilities (including, without limitation, the Existing Agreement), then during the term of this Agreement only, neither we nor our affiliates will operate, or authorize any other party to operate, a Gold’s Gym Facility the physical premises of which are located within the Area (except for franchises we grant you and your approved Affiliated Entities). Notwithstanding the foregoing, we and our affiliates may:

(a) operate, and/or authorize any other party to operate, a Gold’s Gym Facility located at any hotels, motels or similar operations (“**Hotels**”) located within the Area, but they will be authorized to sell goods and provide services only to guests of the Hotel; and

(b) acquire the assets or Ownership Interests of an Entity (in either case, regardless of the form of transaction) that operates, and/or grants rights to other persons to operate, one or more health and fitness center(s) within the Area. If any of those health and fitness center(s) are located or under development within the Area on the date

upon which that acquisition closes, then we and our affiliates may, following that acquisition, convert or authorize the conversion of any or all of those health and fitness center(s) to Gold's Gym Facilities, and those health and fitness center(s) may continue to operate as Gold's Gym Facilities throughout the remaining term of this Agreement (and after that); and

(c) sell the assets or Ownership Interests of any Gold's Gym Facilities owned by us or our affiliates, even if the buyer of such assets or Ownership Interests intends to reimage the Gold's Gym Facilities and/or such sale causes the number of Gold's Gym Facilities within your general market area to decrease. You acknowledge that we have no obligation to ensure that there exists a certain minimum number of Gold's Gym Facilities within any particular area.

We (and any affiliates that we might have from time to time) shall at all times have the right to engage in any activities we or they deem appropriate that are not expressly prohibited by this Agreement, whenever and wherever we or they desire, including, without limitation, those which we now reserve in the Existing Agreement. Upon expiration or termination of this Agreement, we (and our affiliates) may operate, and authorize any other parties to operate, Gold's Gym Facilities the physical premises of which are located within the Area and engage, and allow others to engage, in any other activities we desire within and outside the Area without any restrictions whatsoever, subject only to your (or your Affiliated Entity's) rights under existing franchise agreements with us.

4. **ROFR.** Notwithstanding anything to the contrary herein, we and our affiliates will not, during the Term of this Agreement, authorize any third party to operate a Gold's Gym Facility, the physical premises of which are located outside of the Area, but inside the territory of Maricopa County, Arizona (as its boundaries exist on the Agreement Date), without first providing you with a Right of First Refusal. You will have 10 days, from the date we provide you with the terms of any offer ("Offer"), to notify us in writing that you are electing to exercise your Right of First Refusal matching the Offer terms (which shall include, but not be limited to, number of facilities to be developed, payments and fees, development schedule, and development area. If you do not notify us in writing of your election within the 10-day period, you will be deemed to have elected not to exercise your Right of First Refusal. If, however, you provide the required written notice of your election to exercise your Right of First Refusal with respect to the Offer, you shall have 21 days from the date that we provide you with a development rights agreement and franchise agreement to execute such documents, pay fees, and close the transaction. After the 21 day-period, your ROFR rights will be forfeited with respect to the Offer if the transaction has not closed and been fully funded.

5. **Development Fee.** Simultaneously with signing this Agreement, you must pay us a "**Development Fee**" of Forty Thousand Dollars (\$40,000). The Development Fee is fully earned by us when we and you sign this Agreement and is non-refundable, even if you do not comply with the Schedule. However, we will reduce by \$10,000 the amount of the initial franchise fees due under each Franchise Agreement (defined below) which you or your Affiliated Entities execute pursuant to this Agreement (other than the Existing Agreement),

subject to a maximum aggregate reduction for all such Franchise Agreements equal to the total Development Fee.

6. **Development Obligations.** To maintain your rights under this Agreement you (and/or approved Affiliated Entities) must sign a Franchise Agreement for each of the agreed-upon number of Gold's Gym Facilities within the Area by the dates set forth on the Schedule. Time is of the essence under this Agreement. You (or your Affiliated Entity) will operate each Gold's Gym Facility under a separate Franchise Agreement with us. We do not apply the Development Fee towards any initial or other fees that you or your Affiliated Entities owe under Franchise Agreements. The franchise agreement and related documents that you (or your Affiliated Entity) sign for each Gold's Gym Facility will be the form of franchise agreement and any ancillary agreements we then customarily use in granting franchises for Gold's Gym Facilities (collectively, the "**Franchise Agreement**"), any or all of the terms of which may differ substantially from the terms contained in the Existing Agreement. To retain your rights under this Agreement, each Gold's Gym Facility opened pursuant to this Agreement must operate continuously throughout the term of this Agreement.

7. **No Sublicensing Rights or Rights to Use Marks.** This Agreement does not grant you any right to license others to operate Gold's Gym Facilities. Only you (and your approved Affiliated Entities) may develop Gold's Gym Facilities pursuant to this Agreement and only under Franchise Agreements with us. This Agreement does not grant you any right to use, or authorize others to use, the Marks in any manner. Your right to use the Marks arises only under Franchise Agreements with us. Our affiliate owns all rights to the Marks, and your unauthorized use of the Marks is an infringement of our and our affiliate's rights and a breach of this Agreement.

8. **Site Acceptance.** You must deliver to us for our review complete site reports and other materials and information we request for each site you propose for a Gold's Gym Facility and your (or your Affiliated Entity's) financial and operational ability to develop and operate each proposed Gold's Gym Facility. Your proposed site, which must meet our then current site selection criteria for Gold's Gym Facilities, must be available for lease or purchase in time for you to develop and open a Gold's Gym Facility at that site on or before the date which is eighteen (18) months after signing the Franchise Agreement for that site. We will not unreasonably withhold our acceptance of a site that meets our criteria, but in making our decision, we may consider all factors we believe to be important, including demographic characteristics; traffic patterns; parking; character of neighborhood; competition from, proximity to, and nature of other businesses; other commercial characteristics; and the proposed site's size, appearance, and other physical characteristics; and the site's proximity both to the Area's boundaries and to other existing or potential sites for Gold's Gym Facilities located outside the Area. We will use our reasonable efforts to review and either accept or reject a site you propose within 15 days after receiving the complete site report and other materials we request.

Despite any assistance, information or recommendations that we provide (whether before or after the Agreement Date) with respect to any site, and despite our acceptance of any site, we make no representations or warranties of any kind, express or implied, of any site's suitability for a Gold's Gym Facility or any other purpose or of the likelihood that we ultimately will accept a

proposed site. Applying criteria that have appeared effective for other sites might not accurately reflect the potential for all sites, and, after we accept a site, demographic and/or other factors included in or excluded from our site criteria could change, thereby altering a site's potential. The uncertainty and instability of these criteria are beyond our control, and we are not responsible if a site fails to meet our or your expectations. Your decision to move forward with a site is and will be based on your own independent investigation and acceptance of any site without giving any weight to, and without relying on, our acceptance of any site in making your decision.

9. **Grant of Franchises.** If we accept a proposed site, then you or your approved Affiliated Entity (and your or its owners) must sign a separate Franchise Agreement and related documents, including personal guarantees, for that Gold's Gym Facility. Subject to Section 8, you may not sign a Franchise Agreement until after you have found a site for a Gold's Gym Facility that we have accepted, but you must sign a Franchise Agreement for that site before buying or signing a lease or sublease for that site. If you or your Affiliated Entity (and your or its owners) do not sign a separate Franchise Agreement and related documents within the time periods set forth in the Schedule, then we may terminate this Agreement according to Section 11. After you (or your Affiliated Entity) sign the Franchise Agreement and related documents, their terms and conditions will control the development and operation of the Gold's Gym Facility.

10. **Term.** This term of this Agreement begins on the Agreement Date and it ends on the date when (a) the final Franchise Agreement under the Schedule has been signed or (b) this Agreement otherwise is terminated, whichever occurs first.

11. **Termination.** We may terminate this Agreement and your right to develop additional Gold's Gym Facilities within the Area at any time, effective upon delivery of written notice of termination: (a) if you fail to satisfy either your obligations under the Schedule or any other obligation under this Agreement, which defaults you have no right to cure; or (b) if the Existing Agreement or any other franchise agreement between us and you (or your Affiliated Entity) for a Gold's Gym Facility is terminated by us or you for any reason.

12. **Assignment.** You and your owners acknowledge that we are granting you the rights under this Agreement because of our perception of your (and your owners') individual and collective character, skill, business acumen, financial capability and proven ability to operate Gold's Gym Facilities according to our standards. These rights are personal to you and your owners. Therefore, you and your owners may not assign this Agreement or any of your Ownership Interests (whether directly or indirectly) without our prior written approval, which we may grant or withhold for any or no reason. We may assign this Agreement or any of our Ownership Interests without restriction.

13. **Incorporation of Other Terms.** Sections 11.A, 11.C, 12, 17 and 18 of the Existing Agreement, entitled "Confidential Information," "Innovations," "Exclusive Relationship," "Relationship of the Parties/Indemnification" and "Enforcement," respectively, including (without limitation) the provisions relating to arbitration of disputes, are incorporated by reference in this Agreement and will govern all aspects of our relationship and the construction of this Agreement as if fully restated within the text of this Agreement. This Agreement, together with the Existing Agreement, supersedes all prior agreements and

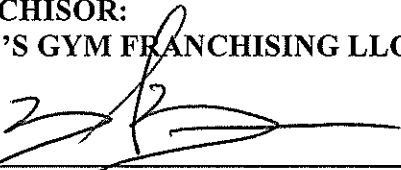
understandings, whether oral and written, among the parties relating to its subject matter, and there are no oral or other written understandings, representations, or agreements among the parties relating to the subject matter of this Agreement. This Agreement may be signed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument. The provisions of this Agreement may be amended or modified only by written agreement signed by the party to be bound.

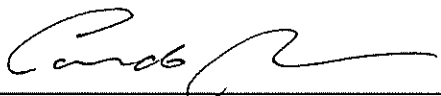
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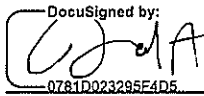
IN WITNESS WHEREOF, the parties have executed and delivered this Agreement effective on the date stated on the first page above.

**FRANCHISOR:**  
**GOLD'S GYM FRANCHISING LLC**

By:   
Name: Brandon Bean  
Title: CEO  
Date: 10-22-18

By:   
Name: EDUARDO M. AFONSO  
Title: SR. DIRECTOR, FRANCHISE ADMIN  
Date: 10-22-18

**DEVELOPER:**  
**JAD AWALE**

By:   
Name: Jad Awale  
Date: 10/19/2018 | 12:45 AM EDT

**EXHIBIT A**  
**TO DEVELOPMENT RIGHTS AGREEMENT**

You agree to sign Franchise Agreements for four (4) additional Gold's Gym Facilities within the Area (excluding the Gold's Gym Facility operating under the Existing Agreement) according to the following Schedule:

<b>Franchise Agreement(s) Signed by:</b>	<b>Cumulative Number of Franchise Agreements (Excluding the Existing Agreement) Signed No Later Than the Date (in Previous Column)</b>
12 months after the Agreement Date	1
24 months* after the Agreement Date	2
36 months after the Agreement Date	3
48 months after the Agreement Date	4

\*See special terms for Scottsdale, AZ Option, below

**The Area is defined as follows:**

The entire territory encompassed by the shape with the following coordinates:

33.45106; -111.98145; 33.45106; -111.58079; 33.20540, -111.58266;  
33.20540, -112.08499; 33.31969, -112.08360; 33.36386, -111.97861


By way of illustration and not definition, the Area has been plotted on Schedule 1, attached hereto, and made part of this Agreement using the above described coordinates.

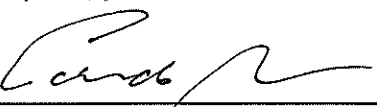
Scottsdale, AZ Option (the "Scottsdale Option"):

If Developer (1) within 18 months after the Agreement Date secures an LOI on a Site that we accept in the city boundaries of Scottsdale, AZ (the "Scottsdale Site"); and (2) within 20 months after the Agreement Dates signs a Franchise Agreement and an approved Lease for such accepted Site, then the Area shall be amended to include the entire territory of the city of Scottsdale in the State of Arizona, as the boundaries exist on the Agreement Date. Developer shall be required to either (1) apply the first Franchise Agreement required to be purchased under this Agreement (by 12 months after the Agreement Date) towards said Scottsdale Site, or (2) purchase the second Franchise Agreement early, by 20 months after the Agreement Date. (In other words, if the first Franchise Agreement is not used for the Scottsdale Site, then the second Franchise Agreement must be applied to Scottsdale, AZ and must be executed by 20 months after the Agreement Date, instead of 24 months after the Agreement Date). For avoidance of doubt, if Developer fails to fulfill any of the requirements in this paragraph, then the city of Scottsdale, AZ shall not be added to or included in the Area under this Agreement and Developer shall have no rights with respect to Scottsdale, AZ (except pursuant to the ROFR).

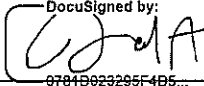
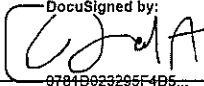
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**FRANCHISOR:**  
**GOLD'S GYM FRANCHISING LLC**

By:   
Name: Brandon Bean  
Title: CEO  
Date: 10-22-18

By:   
Name: EDUARDO M. AFONSO  
Title: SR. DIRECTOR, FRANCHISE ADMIN  
Date: 10-22-18

**DEVELOPER:**

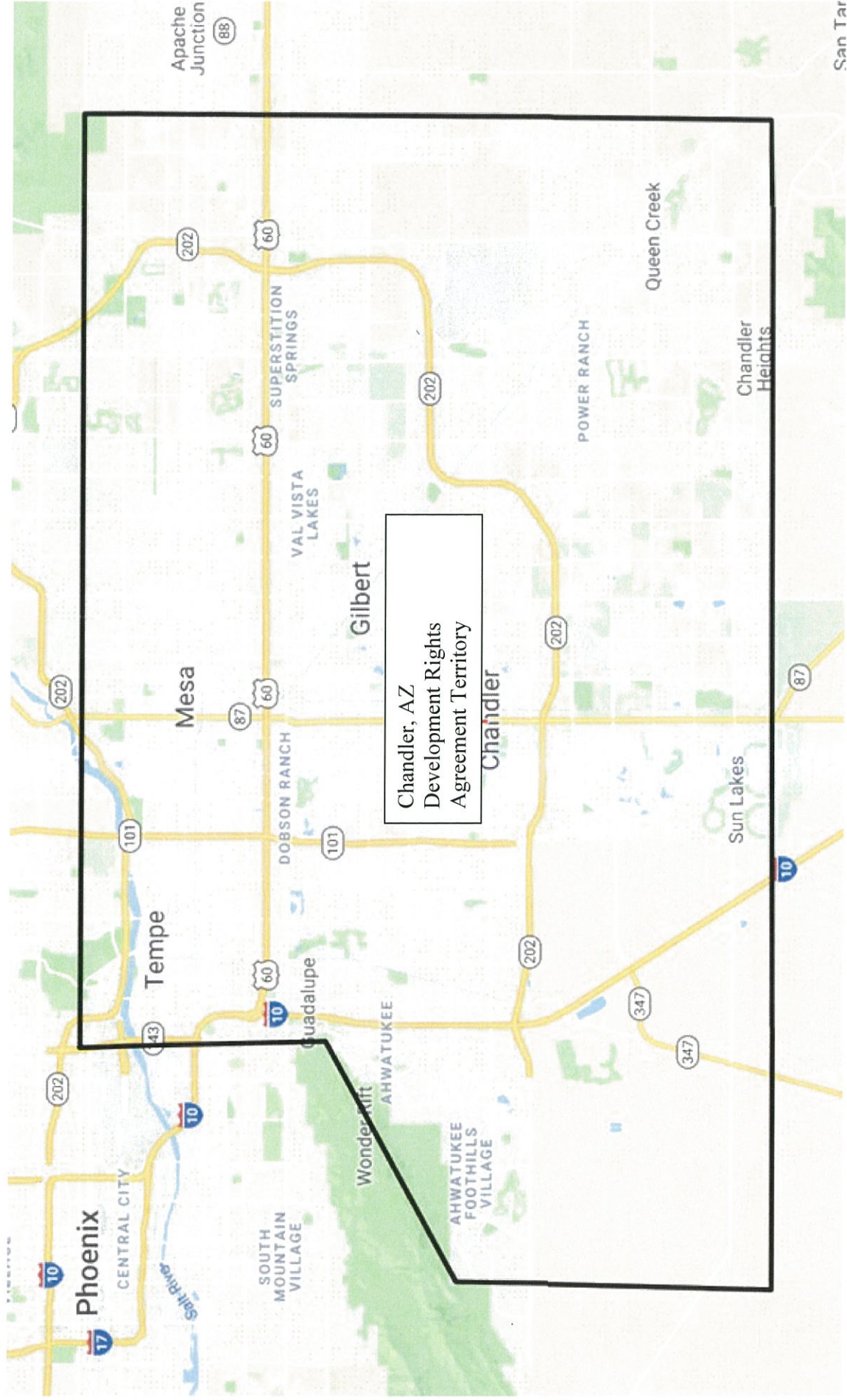
DocuSigned by:  
  
By:   
Name: Jad Awale  
Title: President  
Date: 10/19/2018 | 12:45 AM EDT



## Chandler, AZ Development Rights Agreement Territory

### SCHEDULE 1

33.45106; -111.98145; 33.45106; -111.58079; 33.20540, -111.58266;  
33.20540, -112.08499; 33.31969, -112.08360; 33.36386, -111.97861



Attachment 4 - Awale - Exhibit B Judgment.pdf

Description - Exhibit B

# Exhibit B

F. ANN RODRIGUEZ, RECORDER  
Recorded By: RLL  
DEPUTY RECORDER  
4992



SEQUENCE : 20200550638  
NO. PAGES : 5  
02/24/2020  
14:21:46

W  
TRACK DOWN-BUCHALTER  
PICKUP

Phoenix, AZ 85067

this area reserved for county recorder

DO NOT REMOVE  
THIS IS PART OF THE OFFICIAL DOCUMENT

Document Title:

## JUDGMENT INFORMATION STATEMENT

Re: HENDERSON BELTWAY, LLC, a Nevada limited liability company v. FITNESS AZ 1 L.L.C., an Arizona limited liability company; JAD AWALE and REYNA D. AWALE, husband and wife

Case No. CV2019-055062

Judgment Debtor(s): FITNESS AZ 1 L.L.C., an Arizona limited liability company; JAD AWALE and REYNA D. AWALE, husband and wife  
4540 North Quartz Hill Drive, Tucson, AZ 85750

Service Address: Same as Above

Judgment Creditor: HENDERSON BELTWAY, LLC, a Nevada limited liability company  
c/o Paul M. Weiser, Esq.  
BUCHALTER, a Professional Corporation  
16435 North Scottsdale Road, Suite 440  
Scottsdale, AZ 85254-1754

Amount of Judgment: \$230,325.69

### Judgment Debtor(s) Information:

Social Security Number:  
Date of Birth:  
Driver's License No.:

Has there been a stay of enforcement of the Judgment?

No ☒ Yes ☐ Date stay expires:

Our File Number: C2393.0016



**CERTIFIED COPY**

CLERK OF THE SUPERIOR COURT

FILED

2/4/2020 1:44 p.m.

V. Burton, Deputy

1 Paul M. Weiser (SBN: 006998)  
 2 Nancy K. Swift (SBN: 014910)  
 3 BUCHALTER  
 4 16435 North Scottsdale Road, Suite 440  
 5 Scottsdale, AZ 85254-1754  
 6 Telephone: (480) 383-1800  
 7 Facsimile: (480) 824-9400  
 8 Email: pweiser@buchalter.com  
 9 nswift@buchalter.com

**Electronically Recorded**

10 Attorneys for Plaintiff

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF MARICOPA

13 HENDERSON BELTWAY, LLC, a  
 14 Nevada limited liability company,

No. CV2019-055062

DEFAULT JUDGMENT

15 Plaintiff,

16 v.

17 FITNESS AZ 1 L.L.C., an Arizona limited  
 18 liability company; JAD AWALE and  
 19 REYNA D. AWALE, husband and wife,

20 Defendants.

21 This matter having come on regularly before the Court and it appearing to the  
 22 Court that Defendants FITNESS AZ 1 L.L.C., an Arizona limited liability company, and  
 23 JAD AWALE and REYNA D. AWALE, husband and wife, having been regularly served  
 24 and having failed to answer within the allotted time, and it further appearing that the  
 25 default of said Defendants has been regularly entered by the Clerk, and the Court being  
 26 fully advised in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff  
 HENDERSON BELTWAY, LLC, a Nevada limited liability company, have Judgment

1 against Defendants FITNESS AZ 1 L.L.C., an Arizona limited liability company, and  
 2 JAD AWALE and REYNA D. AWALE, husband and wife, all jointly and severally  
 3 liable, after application of Defendant FITNESS AZ I L.L.C.'s security deposit, in the  
 4 principal sum of \$209,009.95 as being the rent and other charges due through February,  
 5 2020, together with interest thereon at the rate of 10% per annum from February 1, 2020  
 6 until paid in full, plus late charges and applicable taxes accrued through February, 2020 in  
 7 the amount of \$12,711.92, plus Plaintiff's reasonable attorneys' fees incurred herein in the  
 8 amount of \$4,500.00, plus Plaintiff's court costs in the amount of \$436.40, together with  
 9 interest on said late charges, attorneys' fees and court costs at the rate of <sup>5.75% CR</sup> 4.5% per annum  
 10 from date of Judgment until fully paid, together with interest accrued through January 31,  
 11 2020 in the amount of \$3,667.42;

12 This Judgment does not resolve all claims as to the above-named party, as claims  
 13 and parties remain to be adjudicated. Specifically, Plaintiff reserves the right to seek a  
 14 Judgment against Defendants FITNESS AZ 1 L.L.C., an Arizona limited liability  
 15 company, and JAD AWALE and REYNA D. AWALE, husband and wife, and the right to  
 16 seek amendments to this Judgment should future charges become due under the subject  
 17 Lease and remain unpaid;

18 THE COURT FURTHER DETERMINES that there is no just reason for delay and  
 19 expressly directs the entry of Judgment against Defendants FITNESS AZ 1 L.L.C., an  
 20 Arizona limited liability company, and JAD AWALE and REYNA D. AWALE, husband  
 21 and wife.

22 DONE IN OPEN COURT this date:

*February 4, 2020.*

*[Signature]*  
 Judge / Commissioner

THE FOREGOING INSTRUMENT IS A FULL, TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE IN THIS OFFICE.

Attest FEB 10 2020 20

JEFF FINE, Clerk of the Superior Court of the  
State of Arizona, In and for the County of Maricopa.

By *[Signature]* Deputy Clerk

Attachment 5 - Awale - Exhibit C.pdf

Description -

# Exhibit C

## Claim of Fitness AZ 1 Proof of Claim

Income FROM May 17, 2019 - October 25, 2019	\$ 90,000.00
Expenses for Fitness AZ 1	\$ (2,353,527.62)
Landlord Judgment	\$ (230,325.69)
	<hr/>
	\$ (2,493,853.31) *

\*Subject to Additional Expenses Associated with Landlord and Other Non-Liquidated Claims