

**Exhibit A  
To Disclosure Document**

**Franchise Agreement and Related Materials**

**(See Next Page)**



**ATHLETIC REVOLUTION INTERNATIONAL, LLC**

**UNIT FRANCHISE AGREEMENT**

## TABLE OF CONTENTS

ARTICLE 1.	DEFINITIONS .....	1
ARTICLE 2.	THE FRANCHISED BUSINESS.....	4
ARTICLE 3.	LOCATION OF BUSINESS .....	5
ARTICLE 4.	PAYMENTS OF FRANCHISEE .....	7
ARTICLE 5.	TERM.....	8
ARTICLE 6.	PROPRIETARY MARKS .....	9
ARTICLE 7.	INSTRUCTION AND OPERATING ASSISTANCE .....	12
ARTICLE 8.	OPERATION OF BUSINESS .....	14
ARTICLE 9.	ASSIGNMENT .....	20
ARTICLE 10.	DEFAULT AND TERMINATION .....	24
ARTICLE 11.	DISPUTE RESOLUTION .....	28
ARTICLE 12.	OBLIGATIONS AND RIGHTS UPON TERMINATION OR EXPIRATION .....	31
ARTICLE 13.	GENERAL CONDITIONS AND PROVISIONS .....	34
ARTICLE 14.	CONSTRUCTION OF AGREEMENT .....	36
ARTICLE 15.	SUBMISSION OF AGREEMENT .....	37
ARTICLE 16.	ACKNOWLEDGEMENTS AND REPRESENTATIONS OF FRANCHISEE .....	37
LIST OF EXHIBITS TO FRANCHISE AGREEMENT:.....		40
EXHIBIT 1	FRANCHISED TERRITORY	
EXHIBIT 2	LEASE ASSIGNMENT AGREEMENT	
EXHIBIT 3	NAMES & ADDRESSES OF EQUITY OWNERS, DIRECTORS & OFFICERS	
EXHIBIT 4	PERSONAL GUARANTEE	
EXHIBIT 5	DE-IDENTIFICATION CHECKLIST	
EXHIBIT 6	CONFIDENTIALITY/NON COMPETITION AGREEMENT	
EXHIBIT 7	GENERAL RELEASE – RENEWAL	
EXHIBIT 8	GENERAL RELEASE – ASSIGNMENT	
EXHIBIT 9	FINANCING AGREEMENT – UNSECURED PROMISSORY NOTE	
EXHIBIT 10	SUPPLEMENTAL ADDENDA	
EXHIBIT 11	LICENSING AGREEMENTS	

# ATHLETIC REVOLUTION INTERNATIONAL, LLC

## UNIT FRANCHISE AGREEMENT

This Unit Franchise Agreement ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 201\_, (the "Effective Date"), by and between Athletic Revolution International, LLC, a Kentucky limited liability company, ("Franchisor"), and located at 110 Chase Way, Suite 5, Elizabethtown, KY 42701 ("Franchisee"), and each person owning 15% or more of Franchisee who will be a party to this Agreement (in such context, "Principal") with reference to the following facts:

### BACKGROUND RECITALS

As a result of its expenditure of time, skill, effort and money, Franchisor has developed and will supervise the Athletic Revolution System for operating youth fitness centers (the "Athletic Revolution Elite Franchise") and youth fitness camps (the "Athletic Revolution Independent Coach Franchise") using Trademarks and proprietary operating methods as described in this Agreement and Franchisor's "Success System" as amended from time to time.

Franchisor is the owner of the Marks and all rights in respect thereof. Franchisor is engaged in the administration and development of programs for the operation of youth fitness centers and related products (collectively, "Products"), using the Marks, operational techniques, service concepts, membership programs, and proprietary information owned or authorized to be used by and identified with Franchisor. Franchisor's activities in general, and its programs including but not limited to readily recognized color schemes; fixtures and furniture; distinctive interior and exterior; equipment and operations; designs and layouts for the franchise premises; specialized marketing, specialty retail items and promotional activities; unique uniforms, and signs in particular, are undertaken to develop, maintain and enhance the Marks and Franchisor's reputation in its business.

Franchisee desires to be franchised and licensed by Franchisor to use the System, Marks and goodwill of Franchisor to conduct one or more of the Franchised Business opportunities as more fully defined in Article 1 below. Athletic Revolution Elite Franchises will be operated at a specific location selected by Franchisee and consented to by Franchisor (the "Center"). Athletic Revolution Independent Coach Franchise may be operated at any location or multiple locations as selected by Franchisee, provided that each location is within the designated Territory licensed by Franchisee, and provided further that Franchisee has entered into a Franchise Agreement for each location. Franchisor is willing to grant to Franchisee a license to operate either the Athletic Revolution Elite Franchise or the Athletic Revolution Independent Coach Franchise, in accordance with the provisions of this Agreement and the Athletic Revolution Success System, for the term set forth below.

Franchisee and each Principal acknowledge that, in the administration of this Agreement and in taking actions with respect to its relationship with Franchisee, Franchisor must take into account the needs of the System, the effect upon the System as a whole, and the need to protect the Marks for the benefit of the System.

### ARTICLE 1. DEFINITIONS

**1.01 Abandoned.** The term "Abandoned" shall mean closure of the business for a period of five (5) consecutive days without Franchisor's prior written consent. A repeated pattern of

closures of the business for periods of less than five (5) consecutive days may result in the business being deemed Abandoned if in the judgment of Franchisor such closure adversely Impacts the Franchised Business. The business shall not be deemed Abandoned if the closure is due to natural disasters or other matters beyond the control of Franchisee (other than Franchisee's inability to make money), provided that Franchisee gives notice of any such closure to Franchisor within ten (10) days after the initial occurrence of the event resulting in such closure and Franchisee acknowledges in writing that such closure is due to one of the foregoing causes and that Franchisee shall reestablish the Franchised Business and be fully operational within sixty (60) days after the initial occurrence of the event resulting in such closure or such longer period as Franchisor may permit.

**1.02 Affiliate.** The term used to describe a franchisee when acting in a commissioned only bases for certain products developed by the Franchisor and marketed directly to members through the national data base.

**1.03 Anniversary Year.** The term "Anniversary Year" shall mean the 12 month period between the Effective Date and the first anniversary thereof and between each succeeding anniversary.

**1.04 Athletic Revolution Elite Franchise.** The term "Athletic Revolution Elite Franchise" shall mean the entire franchise opportunity and requires the ownership of or leased facility to operate the business.

**1.05 Athletic Revolution Independent Coach Franchise.** The term "Athletic Revolution Independent Coach Franchise" shall mean a limited version of the franchise opportunity that offers short term youth programs ranging from two (2) days to six (6) weeks and does not required the ownership of a facility to operate the business. All Athletic Revolution Independent Coach Franchises must be owner operated.

**1.06 Center.** The term Center shall mean an Athletic Revolution Franchise location within the Territory that is owned and operated by Franchisee.

**1.07 Control.** The term "Control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

**1.08 Depository Account.** The term "Depository Account" shall mean any and all accounts opened and maintained by Franchisee at a bank or other financial institution that is a participating member of the Automated Clearinghouse ("ACH") network or such other network or system as may be directed by Franchisor, from which Franchisor may make electronic withdrawal of sums due under this Agreement.

**1.09 Franchised Business.** The term "Franchised Business" shall mean the sale of Services and Products pursuant to the business method and certain business procedures set forth by Franchisor for the operation of the business and shall include both the Athletic Revolution Elite Franchise and the Athletic Revolution Independent Coach Franchise, unless stated otherwise elsewhere in this Agreement.

**1.10 General Manager.** The term "General Manager" shall mean an individual Franchisee or the employee or agent of Franchisee who has been designated by Franchisee as the person responsible for the day-to-day operation of the Franchised Business and who has successfully completed "Initial Franchise Training" ("IFT"), if required pursuant to this Agreement.

**1.11 Gross Receipts.** The term "Gross Receipts" shall mean all cash and charge sales of every kind and nature made at or from the Franchise Business, including but not limited to revenues from services, grooming and retail products, information products, trainings, dietary supplements, vending machines, internet terminals, and any other electronic or mechanical devices (if permitted), excluding only applicable sales taxes.

**1.12 Initial Franchise Fees.** The Initial Franchise Fees for both the Athletic Revolution Elite Franchise and the Athletic Revolution Independent Coach Franchise are set forth in Section 4.01 of this Agreement.

**1.13 Initial Franchise Training (or IFT).** The term "Initial Franchise Training" (or "IFT") shall mean training in the System provided by Franchisor, as described in this Agreement.

**1.14 Marks.** The term "Marks" shall mean any and all proprietary mark registered or filed to be registered, in respect of which a registration has been obtained from the United States Patent and Trademark Office and any state, as well as all common law trademarks and service marks, trade names, logos, insignias, designs, slogans and other commercial symbols which Franchisor now or hereafter is authorized to use and does use or authorizes others to use to identify the Franchised Business.

**1.15 Member.** The term "Member" is used to designate a customer of a Franchise center.

**1.16 Athletic Revolution Success System.** The term "Success System" shall mean a comprehensive online marketing and operational system prescribed by Franchisor to be used in the conduct of the Franchised Business, as set forth in this Agreement and the Success System for either the Athletic Revolution Elite Franchise or the Athletic Revolution Independent Coach Franchise, as amended from time to time. The System shall include, among other things, (i) the Marks, (ii) know-how of the Franchised Business Operation, (iii) a physical layout for the business, (iv) advertising, marketing and sales programs and techniques, (v) training programs, (vi) materials, artwork, graphics, layouts, slogans, names, titles, text and other intellectual property that Franchisor makes available to Franchisee, (vii) product design, packaging, equipment and proprietary systems and (viii) trade dress of the franchise premise. Franchisor, in its sole discretion, may improve or change the Success System from time to time (including but not limited to adding to, deleting or modifying elements of the Success System, establishing categories or classifications of franchisees and amending the Success System) for the intended purpose of making the Success System more effective, efficient, economical or competitive; adapting to or taking advantage of competitive conditions, opportunities, technology, materials or local marketing needs and conditions; enhancing the reputation or public acceptance of the Success System; and better serving the public.

**1.17 Territory.** For the first 10 Athletic Revolution Elite Franchises, the term "Territory" shall be defined as an area that contains at least 20,000 age 6-18 youth. After the first 10 franchises, the "Territory" will contain at least 15,000 age 6-18 youth of the Franchised Business Location as set forth in section 2.01 of this Agreement. For all Athletic Revolution Independent Coach Franchises, the "Territory" shall be defined as an area that contains at least 10,000 age 6-18 youth. Numbers of youth shall be determined in accordance with Franchisor's census software that is updated on a yearly basis by its third party software provider.

**1.18 Transfer.** The term "Transfer" shall mean to sell, assign, transfer, convey, pledge, mortgage, encumber, abandon, eliminate or give away, voluntarily or involuntarily, by operation of law or otherwise.

## ARTICLE 2. THE FRANCHISED BUSINESS

**2.01 Grant of Franchise.** Franchisor hereby grants to Franchisee, and Franchisee hereby accepts, a license and franchise ("Franchise") to participate in and use the System by conducting the Franchised Business at the location(s) within a limited exclusive Territory. The Franchise Territory for the Athletic Revolution Elite Franchise will consist of the center location and a surrounding trade area. The Franchise Territory for the Athletic Revolution Independent Coach Franchise will consist of the surrounding trade area. The size of the trade area will be determined based on several factors including population and demographics. The specific address of the Athletic Revolution Center (Athletic Revolution Elite Franchise or Athletic Revolution Independent Coach Franchise) location will be attached as Exhibit 1 to this Agreement along with a map and description of the trade area for either the Athletic Revolution Elite Franchise or the Athletic Revolution Independent Coach Franchise. So long as Franchisee remains in good standing under this Agreement, neither Franchisor nor Franchisee will open itself, or through any affiliate or franchisee, any other Franchised Business within the Territory except Franchisor may operate a Athletic Revolution Center or sell products and services that are within the definition of this Agreement through any major public venue such as airports, arenas, hotels, cruise ships or similar public venues even within the Territory with no geographical limit. Franchisee acknowledges that the Franchisor has granted and may in the future operate or grant other licenses and franchises outside the Territory. Franchisor retains all sales rights for Products and Services sold or provided on its website, through the Internet or by any other means other than within Franchisee's Franchise Business.

FRANCHISEE SHALL NOT PERSONALLY OR AS PART OF A GROUP OR ENTITY USE THE MARKS (AS DEFINED HEREIN), OPERATIONAL TECHNIQUES, SERVICE CONCEPTS OR PROPRIETARY INFORMATION IN CONNECTION WITH OTHER BUSINESSES OR SERVICES WITHOUT THE EXPRESS PRIOR WRITTEN PERMISSION OF THE FRANCHISOR OR EXECUTIVE OFFICER OF FRANCHISOR, WHICH PERMISSION, IF GRANTED, SHALL BRING SUCH BUSINESSES OR SERVICES WITHIN THE SCOPE OF THE FRANCHISED BUSINESS AND THIS AGREEMENT.

**2.02 Reserved Rights.** Nothing contained herein shall give Franchisee any right, title or interest in or to the Marks, System, operational techniques, service concepts, proprietary information or goodwill of Franchisor, except such rights as may be granted hereunder. **THE FRANCHISE APPLIES TO FRANCHISEE'S LOCATION(S) AND NO OTHER PLACES OF BUSINESS.**

**2.03 Area and Scope of Operation.** Franchisee shall only operate its Franchised Business from its approved franchise location(s) within the Territory. Franchisee shall (i) diligently and effectively promote, market, and engage in the Franchised Business; (ii) develop, to the best of its ability, the potential for the Franchised Business from its approved business location and (iii) devote and focus its attentions and efforts to such promotion and development.

**2.04 Extent of Grant.** Franchisee understands and agrees that the Franchise and license granted herein shall not apply to, and Franchisee shall not conduct or permit any others to conduct, any retail or wholesale business operations of any kind from the franchise location, unless permitted by Franchisor in writing, and that Franchisee is licensed hereby only for the operation of a retail franchised business to be operated in accordance with this Agreement and only from the approved business location.

**2.05 Affiliate Appointment.** Franchisor retains all direct marketing rights for products and services sold to Members. These rights include but are not limited to offers sent to Members for

products and services offered by direct mail, email, and other promotional means whereby the Members purchase from the Franchisor. Franchisor appoints Franchisee as an "Affiliate" for sales made to Members of Franchise and will pay Franchisee an Affiliate commission on sales to those Members. Commission amounts will be listed in the Success System as products and services are developed, added and modified.

**2.06 Obligations of Principals.** Each Principal and a holder of 5% or more of the stock in the Franchisee hereby agrees, individually and jointly, to comply with and be bound by the terms and provisions of this Franchise Agreement and to sign a non compete agreement.

### **ARTICLE 3. LOCATION OF BUSINESS**

#### **3.01 Athletic Revolution Elite Franchise Business**

(a) The Franchised Business shall only be operated from the location(s) listed in this Agreement, in order to promote the orderly and timely service of its customers.

(b) Premises acceptable to Franchisor from which the Athletic Revolution Elite Franchise will be operated must be located by Franchisee within one hundred eighty (180) days after execution of this Agreement. Franchisee must commence operation of the Athletic Revolution Elite Franchised Business at the location within one hundred twenty (120) days after execution of a signed lease for the location. For each Athletic Revolution Independent Coach Franchise, Franchisee must also commence operations within one hundred twenty (120) days of entering into this Agreement. If Franchisee fails to find suitable premises for the Athletic Revolution Elite Franchise or to commence operation of the Athletic Revolution Elite Franchise within the specified time periods, Franchisor may terminate this Agreement effective on written notice, in accordance with this Agreement (No refund of initial fee). Franchisee shall be deemed to have commenced the operation of the Franchise on the date that Franchisee begins offering products and services for sale from the approved location furnished and equipped in accordance with Franchisor's requirements.

(c) A Site Submittal Package must be submitted and reviewed by Franchisor before any lease for the premises is executed. Franchisor may assist Franchisee in the site selection process with Franchisor reserving the right of final consent to any location. If the Franchisor does not deny the site within thirty (30) days it shall be approved. Franchisor encourages but does not require Franchisee to use third party demographic information to help Franchisee evaluate the site and the area in which it is located, and analyze area income figures, traffic patterns, visibility, population density, competition, zoning, parking, accessibility and other related, relevant circumstances. Franchisor's final consent to the site is not a guarantee that an Athletic Revolution Elite Franchise can be successfully operated there. Franchisee is fully responsible for the selection of the site and accepts the risk associated with the site selection relative to the success of the franchise.

(d) Franchisee is encouraged at their own expense to retain a Realtor or attorney skilled in retail leases to ensure necessary lease assignment and other addendums are incorporated into the lease prior to its submission to Franchisor for review and consent.

#### **3.02 Design and Construction of Retail Space.**

(a) Franchisor will provide Franchisee with a sample layout for the approved interior for a Athletic Revolution Franchise. At its sole expense, Franchisee must employ approved architects, designers and others as may be necessary to complete, adapt, modify or substitute

the specifications for the location. Franchisee shall submit a complete set of final plans and specifications to Franchisor prior to commencing construction built out for the franchise space. Franchisor shall review such plans and specifications promptly and approve or provide comments on the plans and specifications to Franchisee. Franchisee shall not commence construction until Franchisor approves in writing the final plans and specifications to be used. Franchisor shall consult with Franchisee, to the extent it deems necessary, on the construction and equipping of the franchise space (this must be done by approved suppliers), but it shall be and remain Franchisee's sole responsibility to diligently construct, equip and otherwise ready and open the Center. At its sole expense, Franchisee is responsible for obtaining all zoning classifications, licenses, permits, and clearances, certificates of occupancy and Center clearances which may be required by governmental authorities.

(b) Franchisee shall use licensed general contractors to perform construction work at the Athletic Revolution Elite Franchise location. Franchisor expressly disclaims any warranty of the quality or merchantability of any goods or services provided by architects, contractors, equipment vendors or any other persons or entities to which it may refer Franchisee. Franchisor shall not be responsible for delays in the construction, equipping or decoration of the Center or for any loss resulting from the design or construction since Franchisor has no control over the landlord or developer and numerous construction or related problems that could occur and delay the opening of Franchisee's Athletic Revolution Elite Franchise location. Franchisor must approve in writing any and all changes in the plans prior to construction of the Center or the implementation of such changes.

(c) Franchisor shall have access to the location while work is in progress and may require such reasonable alterations to or modifications in the construction of the Center, as Franchisor deems necessary. Franchisee's failure to promptly commence the design, construction, equipping and opening of the Center with due diligence shall be grounds for the termination of this Agreement. In addition, if Franchisee does not complete the build out of the Center in a reasonable time, Franchisor can complete the build out, all expenses of which shall be paid or reimbursed by Franchisee. Before opening of the Center and prior to final inspections by any governmental agency, Franchisor shall complete a final "walk through" inspection of the Center and issue a written approval. Any deficiencies noted by Franchisor as a result of this inspection must be corrected by Franchisee within thirty (30) days or this Agreement may be terminated without any liability to Franchisor.

(d) At Franchisor's request, but not more often than once every seven (7) years, unless sooner required by Franchisee's lease, Franchisee shall refurbish the Center to conform to the then-current building design, trade dress, and color schemes for a new Athletic Revolution Franchise location. Such refurbishment may require expenditures by Franchisee of among other things; structural changes, installing new equipment, remodeling, redecoration and modifications to existing improvements.

### **3.03 Standards of Operation.**

(a) Franchisee agrees that Franchisor, Franchisee, and the Franchise Business as a whole, will benefit from the maintenance of reasonable standards of quality, similar appearance, and prominent display of the Marks on the Franchise Business' premises, trade dress, packaging, materials, supplies and products used in the operation of the Franchise Business. Therefore, Franchisee agrees to maintain the standards of quality, appearance and display of the Marks in strict accordance with this Agreement, the architectural plans as applicable and the Success System as it may be revised from time to time, and as Franchisor may otherwise direct in writing. In order that Franchisor may establish and maintain an effective network of

franchisees for the sale of authorized products, Franchisee specifically agrees that it shall not display the Marks nor, either directly or indirectly, establish any place or places of business for the conduct of any of its Franchise operations without the prior written approval of Franchisor.

(b) Franchisee is not permitted to install promotional displays, vending machines, or any other electronic or mechanical devices on the franchise premises, except with written approval of Franchisor, and subject to further conditions as to the number and appearance of such devices, and their consistency with the operation, image, and reputation of the Athletic Revolution Franchise.

**3.04 Assistance in Obtaining Athletic Revolution Premises.** The sole responsibility for locating and obtaining a Athletic Revolution Elite Franchise or the Athletic Revolution Independent Coach Franchise location is that of Franchisee. Athletic Revolution Independent Coach Franchises do not require a leased space, however Franchisee shall have the right to enter into a leased space agreement provide that Franchisee adheres to the same requirement as the Athletic Revolution Elite Franchisee's. Franchisee and Franchisee's landlord, as applicable, will be required to execute an acceptable form of Lease Assignment Agreement (a sample form is attached as Exhibit 2 hereto) for the Franchise Business location. The term of the Lease Assignment Agreement shall coincide with the term of this Agreement. It is Franchisee's obligation to maintain, refinish, redecorate and re-equip the Center location in accordance with the Success System, as it may be amended from time to time, and standards established by Franchisor consistent with the Success System. Franchisee is required to post signs and logos as reasonably requested by Franchisor. Franchisee may order their sign from a vendor or their choosing including a recommended vendor of Franchisor. The Franchisor has received fees, and may continue to receive fees from recommended vendors for their referral to Franchisee.

**3.05 Signs.** Subject to applicable governmental ordinances, regulations and statutes, Franchisee agrees to erect and maintain, at the franchise location, entirely at Franchisee's expense, standard authorized signs of types recommended by Franchisor. In addition, Franchisee shall prominently display on all forms, advertising, literature and business cards the following words: "Independently Owned and Operated."

**3.06 Permission to Relocate.** If Franchisee desires to relocate its Center, it must request Franchisor's consent upon the following conditions:

(a) Not less than one hundred eighty (180) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation in which event notice shall be made as soon as possible); Franchisee must make a written request for consent to relocate, describing the reasons for the relocation and providing complete written details regarding any proposed new location.

(b) Within sixty (60) days after receiving Franchisee's request, Franchisor shall either consent to or deny in writing such closure or relocation in its sole discretion. In the event of the denial of a proposed relocation, Franchisee may request an alternative proposed new location.

## **ARTICLE 4. PAYMENTS OF FRANCHISEE**

**4.01 Franchise Fee.** The Initial Franchise Fee for an Athletic Revolution Elite Franchise is \$14,995 for the first ten franchisees and \$19,995 thereafter and is due and payable in full, by check payable to Franchisor, when Franchisee signs the Franchise Agreement. The Initial Franchise Fee for an Athletic Revolution Independent Coach Franchise is \$5,000. The Initial

Franchise Fees are not refundable and Franchisor may offer financing at interest rates and terms to be mutually agreed upon by the Franchisor and Franchisee.

**Continuing Royalty and Management Fees.** For each Athletic Revolution Elite Franchise, commencing on the date the Athletic Revolution Center opens for business, a royalty is due based off six percent (6%) of Gross Revenue. Gross Revenue shall be defined as all revenue from all sources before any deductions for any cost or expenses excluding sales tax. In addition to the six percent (6%) royalty, both Athletic Revolution Independent Coach Franchise and Athletic Elite Franchise will be required to enter into a website agreement ("Website Agreement") with Franchisor. Franchisor will host and maintain the website for Franchisee for the duration of the signed Franchise Agreement. Under the terms of the Website Agreement, Franchisee shall pay a monthly fee of \$19.99 in exchange for the website on-going maintenance and services.

In addition, both the Athletic Revolution Elite franchisees and Independent Coach franchisees may be required to pay additional fees for the use of optional services provided by Franchisor. For example, both the Athletic Revolution Elite Franchisee and the Independent Coach Franchisee shall have the option, but will not be required, to use Franchisor's Camp Management System for the processing of payment for Franchisee's camp customers. The Camp Management System is a payment acceptance method where a link is created by the Franchisor which allows Franchisee's customers to make payments for enrollment online. These fees are based on twelve percent (12%) of the gross revenues received from all of Franchisee's camp customers. Franchisor may at its option add additional services from time to time at its sole discretion for marketing campaigns in order to attract additional camp customers for the Franchisee.

For Franchisees who choose to use the Camp Management System, Franchisee will receive notification of each enrollment, and we remit the net proceeds (camp fees, minus fees and royalties) on the 5<sup>th</sup> and 20<sup>th</sup> of each month either by check or direct deposit.

**4.02 Interest on Delinquent Payments.** All delinquent payments of any sums due Franchisor shall bear interest at the rate of 18% per annum or the highest amount under state law whichever is less.

**4.03 No Accord or Satisfaction.** If Franchisee pays, or Franchisor otherwise receives, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt shall be applied against the earliest amount due Franchisor. Franchisor may accept any check or payment in any amount without prejudice to Franchisor's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

## **ARTICLE 5. TERM**

**5.01 Initial Term.** The initial term of this Agreement shall commence on the Effective Date and expires ten (10) years from that date for the Athletic Revolution Elite Franchise and five (5) years for the Athletic Revolution Independent Coach.

## **5.02 Additional Term.**

(a) Subject to the terms and conditions contained in this Agreement, Franchisee shall have the right to extend its Franchise relationship for additional ten year and five year terms respectively, upon the following conditions:

(1) Franchisor shall notify Franchisee of the expiration date of the then current term of this Agreement and shall transmit to Franchisee a copy of its then current Unit Franchise Agreement and related Franchise Disclosure Document not less than one hundred eighty (180) days prior to the expiration of the initial term, or any subsequent additional term.

(2) No later than thirty (30) days after Franchisee receives the current Franchise Disclosure Document and Franchise Agreement. Franchisee shall execute and return two copies of the then current Unit Franchise Agreement. Upon receipt, Franchisor shall execute two copies thereof and return one copy to Franchisee. If Franchisee fails or refuses to execute and return to Franchisor the new Unit Franchise Agreement within the time frame set forth, all of Franchisees rights and options to enter into an additional Franchise term shall expire.

(3) Franchisee shall pay an additional term fee of \$5,000 for each Athletic Revolution Elite Franchise and \$2,500 for each Athletic Revolution Independent Coach Franchise at the time of its execution of the then current Franchise Agreement.

(4) Sign a general release form regarding the current business relationship under the existing Franchise Agreement.

(b) If Franchisor determines not to grant an additional term to Franchisee because of a default by Franchisee which is incurable or has not been cured by Franchisee within the applicable time period or failure of Franchisee to fully perform its obligations under the Agreement, then and in such event, Franchisor must give Franchisee notice of its intention not to grant an additional term (i) within the minimum time required by the jurisdictional authorities or (ii) in the absence of such specific period, within thirty (30) days after Franchisee gives its notice of intention to enter into an agreement for an additional term but not less than ninety (90) days prior to the termination date of the Agreement.

(c) Subsequent to the execution by Franchisee of a Franchise Agreement for an additional term, and prior to the effective date of the new Franchise Agreement, Franchisee shall bring each franchise location into compliance with the standards then applicable to new Franchises.

**5.03 Notice of Expiration Required by Law.** If applicable law requires that Franchisor give a longer period of notice to Franchisee than herein provided prior to the expiration of the initial term or any additional term, Franchisor will give such additional required notice. If Franchisor does not give such required additional notice, this Agreement shall remain in effect on a month-to-month basis only until Franchisee has received such required additional notice.

## **ARTICLE 6. PROPRIETARY MARKS**

**6.01 Franchise.** Franchisor, hereby grants to Franchisee the right during the term hereof to use and display the Marks in accordance with the provisions contained herein and under the Success System, solely in connection with the operation of the Franchised Business. Franchisee acknowledges that Franchisor prescribes minimum standards respecting the nature

and quality of the goods and services used by Franchisee in connection with which the Marks are used. Franchisee agrees to be responsible for and supervise all of its employees and agents in order to insure the proper use of the Marks in compliance with this Agreement. Franchisee shall use the Marks solely in connection with the Franchised Business and shall not use or display the Marks in connection with the operation of any other business, the performance of any other service or the conduct of any other retail business or other activity outside the scope of the Franchised Business. The Marks cannot be used in any other manner without the prior written consent of Franchisor. Franchisee agrees that all of Franchisee's use of the Marks under this Agreement inures to the benefit of Franchisor. Nothing herein shall give Franchisee any right, title or interest in or to any of the Marks, except a mere privilege and license during the term hereof to display and use the same strictly according to the limitations provided in this Agreement and the Success System. Franchisee may only use the Marks on the Internet in the manner and as specifically authorized by Franchisor in this Agreement and, in the Success System or otherwise in writing. Franchisee agrees that all art work, trade dress, graphics, layouts, slogans, names, titles, text or similar materials incorporating, or being used in connection with the Marks which may be created by Franchisee, its employees, agents and subcontractors and any other party with whom it may contract to have such materials produced pursuant to this Agreement, shall become the sole property of Franchisor, including copyright and trademark rights, and Franchisee agrees on behalf of itself, its employees, its agents, its subcontractors and any other party with whom it may contract to have such materials produced, to promptly execute any and all appropriate documents in this regard. Franchisee agrees to join with Franchisor in any application to enter Franchisee as a registered or permitted user, or the like, of the Marks if required by any appropriate governmental agency or entity. Upon termination of this Agreement for any reason whatsoever, Franchisor may immediately apply to cancel Franchisee's status as a registered or permitted user and Franchisee shall consent in writing to the cancellation and shall join in any cancellation petition. The expense of any of the foregoing recording activities shall be borne by Franchisee.

## **6.02 Acts in Derogation of the Marks and Trade Secrets.**

(a) Franchisee agrees that as between Franchisor and Franchisee, the Marks are the exclusive property of Franchisor. Franchisee now asserts no claim and will hereafter assert no claim to any goodwill, reputation or ownership thereof by virtue of Franchisee's franchised or licensed use thereof or otherwise. It is expressly understood and agreed that ownership and title of the Marks and Franchisor's manuals, bulletins, instruction sheets, forms, methods of operation and goodwill, all existing products and all future new product developments are and, as between Franchisor and Franchisee, shall remain vested solely in Franchisor, and the use thereof is only coextensive with the term of this Agreement. Franchisee acknowledges that the material and information now and hereafter provided and revealed to Franchisee pursuant to this Agreement (including in particular, but without limitation, the contents of the Success System) are confidential trade secrets of Franchisor and are revealed in confidence, and Franchisee expressly agrees to keep and respect the confidences so reposed, both during the term of this Agreement and thereafter. Franchisor expressly reserves all rights with respect to the Marks, confidential trade secrets, methods of operation and other proprietary information, except as may be expressly granted to Franchisee hereby or under the Success System. Franchisor shall disclose its trade secrets to Franchisee by loaning to Franchisee (for the term of this Agreement) manuals and other written material containing the trade secrets, through training and assistance provided to Franchisee hereunder, and by and through the performance of Franchisor's other obligations under this Agreement. Franchisee acknowledges that Franchisor is the sole owner of all proprietary information and trade secrets; that such information is being imparted to Franchisee only by reason of its special status as a franchisee

of the System; and that the trade secrets are not generally known to the industry or public at large and are not known to Franchisee except by reason of such disclosure. Franchisee further acknowledges that it shall acquire no interest in the trade secrets, other than the right to utilize them in the development and operation of the Franchised Business during the term of this Agreement. In addition, Franchisee acknowledges that the use or duplication of the trade secrets except as expressly permitted by this Agreement shall constitute an unfair method of competition and that Franchisor shall suffer irreparable injury thereby. Franchisee agrees that it will not do or permit any act or thing to be done in derogation of any of the rights of Franchisor in connection with the Marks, trade names, or methods of operation either during the term of this Agreement or thereafter, and that it will use same only for the uses and in the manner franchised and licensed hereunder and as herein provided. Furthermore, Franchisee and its employees and agents will not engage in any act or conduct that impairs the goodwill associated with the Marks.

(b) In connection with the operation of the Franchised Business, Franchisee agrees that at all times and in all advertising, promotions, signs and other display materials, on its letterheads, business forms, and at the Center location and other authorized business sites, in all of its business dealings related thereto and to the general public, it will identify the Franchised Business solely under the names (in such context, the "Business Name"), authorized by Franchisor (together with the words "INDEPENDENTLY OWNED AND OPERATED" on stationery, letterhead and other written materials containing the Marks) or such other similar designation as shall hereafter be prescribed by Franchisor, all in such form, size and style as shall be directed by Franchisor under the Success System or otherwise in writing. Franchisee shall file and keep current a "Fictitious Business Name Statement" (or similar document) with respect to its Business Name in the county or other designated region in which Franchisee is conducting business and at such other places as may be required by law. Before commencing business under the Marks, Franchisee shall supply evidence satisfactory to Franchisor that Franchisee has complied with relevant laws regarding the use of fictitious or assumed names. Franchisee further agrees that it will not identify itself as Franchisor, a subsidiary, parent, division, shareholder, partner, joint venture, agent or employee of Franchisor or any of Franchisor's other franchisees. If Franchisee is a corporation, Franchisee shall not use any of the Marks in its corporate name.

**6.03 Use and Modification of Marks.** Franchisor may add to, substitute or modify any or all of the Marks or proprietary information related to the Franchise from time to time, by written directive. Franchisee shall accept, use, display, or cease using, as may be applicable, the Marks, including but not limited to, any such modified or additional trade names, trademarks, service marks, logo types and commercial symbols, and shall within thirty (30) days of receiving notification, commence to implement such changes and use its best efforts to complete such changes as soon as practicable. On expiration or sooner termination of this Agreement, Franchisor may, if Franchisee does not do so, execute in Franchisee's name and on Franchisee's behalf any and all documents necessary, in Franchisor's judgment, to end and cause a discontinuance of the use by Franchisee of the Marks and Business Name registrations and Franchisor is hereby irrevocably appointed and designated as Franchisee's attorney-in-fact to do so.

**6.04 Use of Other Trademarks.** Unless otherwise agreed to in writing, Franchisee shall not use or display or permit the use or display of trademarks, trade names, service marks, insignias or logo types other than the Business Name (1) in any advertisement that contains the Marks, (2) in or on the Center premises or place of business of Franchisee in any manner that is reasonably visible from outside such Center or place of business, in any manner that could lead

any person to believe that such other trademarks, trade names, service marks, insignias or logo types or the Products or services with which they are associated are owned or offered by Franchisor.

**6.05 Prohibition Against Disputing Franchisor's Rights.** Franchisee agrees that it will not, during or after the term of this Agreement, in any way, dispute or impugn the validity of the Marks licensed hereunder, or the rights of Franchisor thereto, or the rights of Franchisor or other franchisees of Franchisor to use the same during the term of this Agreement or thereafter. If Franchisee disputes the validity of the Marks with Franchisor, then Franchisee shall be responsible for all of Franchisor's attorney fees and expenses associated with such dispute.

**6.06 Service Mark Infringement Claims and Defense of Marks.** If Franchisee receives notice or otherwise becomes aware of any claim, suit or demand against it by any party other than Franchisor or its affiliates on account of any alleged infringement, unfair competition or similar matter arising from its use of the Marks in accordance with the terms of this Agreement, Franchisee shall promptly notify Franchisor of any such claim, suit or demand. Franchisee shall have no power, right or authority to settle or compromise any such claim, suit or demand by a third party without the prior written consent of Franchisor. Franchisor shall defend, compromise or settle at its discretion any such claim, suit or demand at Franchisor's cost and expense, using attorneys selected by Franchisor, and Franchisee agrees to cooperate fully in such matter, and Franchisor shall indemnify and hold harmless Franchisee from and against any and all judgments resulting from such claim, suit or demand arising from Franchisee's use of the Marks in accordance with the terms of this Agreement. Franchisor shall have the sole discretion to determine whether a similar trademark or service mark being is used by a third party is confusingly similar to the Marks being used by Franchisee and whether and what subsequent action, if any, should be undertaken with respect to such similar trademark or service mark.

## **ARTICLE 7. INSTRUCTION AND OPERATING ASSISTANCE**

### **7.01 Initial Training and Assistance.**

(a) Franchisor will provide Initial Franchise Training ("IFT") to Franchisee (up to two people) at a location determined by Franchisor. At the time the franchise Center is ready to open, Franchisor will provide opening training, Center set up, and all post opening reviews and training as specified by Franchisor. Franchisee understands that it is of paramount importance that Franchisee and Franchisee's employees or representatives understand Franchisor's system, and therefore failure to complete IFT to Franchisor's satisfaction, shall be grounds for termination of this Agreement; provided however, that Franchisee's designated employees that attended shall have the opportunity to either retake the training program or to send one other designated person, approved by Franchisor, to Franchisor's (may also be provided by Franchisor) training program for an additional charge of \$450.00 per day plus any travel expenses.

(a) Franchisee agrees that Franchisee's Center will not be open to the public until Franchisee has satisfactorily completed the training and has taken charge of the operations after securing Franchisor's approval to open. If additional training and/or set up is needed then Franchisee will pay Franchisor \$450.00 per day per representative plus all travel related expenses.

(b) To assist Franchisee in the fulfillment of its responsibilities, Franchisor shall provide the following assistance and materials to Franchisee:

(1) Reasonable telephone assistance, without charge, to instruct in all phases of the Franchise operation commencing on the first day that the Center is opened for business.

(2) Franchisee must designate who will manage the Athletic Revolution Franchise Center within sixty (60) days before the Center opens for business, and this manager (must be satisfactory to Franchisor) must attend and successfully complete IFT to Franchisor's satisfaction. It is highly recommended that at least one Principal of the Franchisee also attend.

(3) Any general advertising programs or sales promotion materials currently available for use.

(4) Copies of the standard business forms designated in the Success System, as revised from time to time.

(5) An approved Gross Receipts reporting system including copies of certain materials and forms to be used in connection therewith.

(6) Individualized login and password to access the Success System.

(7) Periodic reviews and follow-up assistance by Franchisor to the extent Franchisor deems necessary to assist Franchisee in management, merchandising, and training in its day-to-day operations.

(8) Periodic news releases, available to all franchisees, discussing matters of interest.

**7.02 Costs of Initial Training.** All costs and expenses (including travel, hotel and meal) of attendees of IFT shall be the sole responsibility of Franchisee. Persons attending IFT must have a demonstrable relationship to the management and operation of the Athletic Revolution Franchise Center. Franchisor reserves the right to assess a reasonable tuition charge for training all attendees other than Franchisee's manager (or other on-premises supervisor) and a principal of Franchisee.

**7.03 Mandatory Meetings.** Not more often than once each year, Franchisor may conduct a system-wide or series of regional meetings to discuss Athletic Revolution business activities or other matters relating to the Franchised Business. Attendance of a principal of Franchisee or the Manager at these meetings will be mandatory (and is highly recommended for other principals of Franchisee). Franchisee must pay all costs incurred as a result thereof including the cost of transportation, accommodations and living expenses. Franchisee may be required to pay Franchisor a fee to attend such annual meetings to help pay their costs. The annual meetings referenced in this section are in addition to any voluntary convention or sales conference that may be established by Franchisor. Franchisor may also require Franchisee's participation in periodic teleconferences to discuss System, marketing or operational matters.

**7.04 Staff Training Courses.**

(a) Franchisor may make available to Franchisee, from time to time, staff training courses, seminars, conferences, or other programs, in a suitable location at Franchisor's discretion.

(b) Upon reasonable notice, Franchisor may require attendance of designated personnel of Franchisee at training courses, seminars, conferences, conference calls or other programs other than IFT that are deemed by Franchisor to be relevant or appropriate to the successful operation of the System. Franchisor may charge a separate fee for required training courses, seminars, conferences or other programs.

(c) In connection with any staff training courses described, Franchisee shall pay the travel, hotel, meal and all incidental expenses of Franchisee's attendees.

## **ARTICLE 8. OPERATION OF BUSINESS**

### **8.01 Franchisee Operational, Staff and Supplies Requirements.**

(a) At least one principal of Franchisee or an Appointed General Manager must be actively involved in the operations of the Franchised Business. For each Athletic Revolution Elite Franchise, Franchisee shall employ or engage the services of, on a full time basis, at least one on-premises Manager. If Franchisee owns and operates multiple Centers, Franchisee must hire a General Manager who shall devote his or her entire time during normal business hours, as defined in the Success System, to the management, operation and development of the Centers and shall not engage in any other business activity requiring his or her active participation during normal business hours. The Supervisor and General Manager must complete Franchisee training. For each Athletic Revolution Independent Coach Franchise, Franchisee shall employ or engage the services of, on a part-time basis, at least one Manager as long as the Manager is a principle of the Franchisee.

(b) Each Center shall continuously operate between the hours of Monday through Thursday, 3:00 pm to 8:00 pm, Friday, 3:00 pm to 7:00 pm and Saturday, 8:00 am to 1:00 pm (except days of religious observance required by religious convictions) unless different hours have been approved in writing by Franchisor based upon the circumstances existing with the particular Center, or on a full time and continuous basis, consistent with the schedule of the department center or shopping strip center within which the center is located, except as caused by natural disasters or other matters not the responsibility of or beyond the control of Franchisee. No other business may be operated at the Center.

(c) Franchisee understands and agrees that the maintenance of the quality of the services and products offered by each Franchised Business is of primary importance to Franchisor in order to properly promote and protect the public image of each of such products and services, and to protect the Marks under which such Franchisees are licensed to operate. Franchisee therefore agrees to display and/or sell those products and services in accordance with the terms of this Agreement and the terms of the Licensing Agreements attached as an Exhibit hereto. Franchisee may, but is not required to, purchase their products from suppliers who are recommended in writing by Franchisor.

(d) Franchisee must obtain approval of its required branding materials to ensure compliance with this Agreement and the terms and conditions of the Licensing Agreements. Franchisor will base its approval of the branding materials on the terms of the Licensing Agreements to protect the integrity and marketability of the trademarks. Franchisee may, but is not required to, purchase other products such as equipment and additional branding materials. In that event, Franchisee must obtain Franchisor's approval of such products to ensure compliance with Franchisor's specifications and standards.

(e) Franchisee may, but is not required to, offer the specific approved list of products and services for each Franchised Business. Retail prices may be suggested to Franchisee by the Franchisor but are not required to be followed under any circumstance. Franchisee should report any suggestion of required pricing to Franchisor. Franchisor will receive income in the form of mark-up on all products and supplies, signs, memorabilia and other products they may decide to add in the future.

**8.02 Reporting Requirements.** Franchisee is required to report to Franchisor on a periodic basis, certain statistical data as Franchisor deems appropriate, including, but not limited to, Gross Receipts received or receivable, gross sales, operating expenses and such other data as further specified in the Success System. Additionally, franchises shall forward to franchisor the name, address, phone number and E-mail address of all customers (members and non members). Such list shall be updated monthly and are the property of the Franchisor and Franchisee.

**8.03 Athletic Revolution Success System.**

(a) Franchisee shall operate each Franchised Business in accordance with the provisions and guidelines of the Success System for the Athletic Revolution Franchise. Franchisee shall be provided with an individualized login and password to access the Success System not later than the beginning of Initial Franchise Training (IFT). Franchisor shall have the right to modify the contents of the Success System at any time by the addition, deletion or other modification of the provisions thereof. Franchisor agrees that although such modifications to the Success System may be material in that they may have an effect on the operation of the business, they may not conflict with or materially alter the terms of this Agreement. All such additions, deletions or modifications shall be effective the next business day.

(b) Upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee's login and password to the Success System shall be immediately de-activated. Except as specifically permitted by Franchisor, at no time may Franchisee, or its employees or agents disseminate the individualized login and password to the Success System or otherwise make, or cause to be made, any copies or reproductions of all or any portion of the contents of the Success System and shall not disclose the terms thereof to any other person except employees and agents of Franchisee when required in the operation of the Franchised Business.

**8.04 Minimum Product Inventories.** Franchisee agrees that it shall, at all times during this Agreement, achieve and maintain at least the minimum types and amounts of inventory of items as specified under the Success System. Franchisee understands and agrees that the maintenance of the quality of the products and services offered by each Athletic Revolution franchisee is of primary importance to Franchisor in order to properly promote and protect the public image of each of such products and services, and to protect the Marks under which such franchisees are licensed to operate. Franchisee therefore agrees to sell only those products and services provided to Franchisee under the terms of this Agreement and as specified in the Success System and to purchase the same only from designated or approved suppliers that are recommended in writing to Franchisee. Franchisee may reasonably add or delete products or services.

**8.05 Uniforms.** Franchisor shall be entitled to prescribe standard uniforms and attire for all of Franchisee's Athletic Revolution Trainers and other personnel in order to enhance Franchisor's product and format. Franchisee must obtain such uniforms and attire only from approved manufacturers or distributors in order to maintain consistency.

**8.06 Signs and Display Materials.** All signs, display materials and other Materials shall be in full compliance with the specifications provided in, and in conformity with, the terms and conditions of the Licensing Agreements, Success System, or approved architectural plans. Said Materials may be purchased and procured by Franchisee from Franchisor or suppliers designated or approved by Franchisor in accordance with the Success System.

**8.07 Telephone Numbers.** At its sole expense, Franchisee shall obtain "white pages" listings in the form, size and content and in accordance with procedures prescribed by the Success System, in at least one applicable telephone directory of general distribution covering the geographical area containing the Center, or such other areas as Franchisor may direct, of its authorized Business Name as promptly as possible after the Center premises have been identified, and shall list the telephone numbers for its Center. Upon the termination of this Agreement for any reason the telephone number must be promptly assigned to Franchisor.

**8.08 Depository Account.**

(a) For each Athletic Revolution Elite Franchise, Franchisee shall furnish its bank with authorizations necessary to permit Franchisor to access funds from the account for electronic funds transfer for royalty payments and marketing fee payments. Franchisee shall bear any expense associated with such authorizations and electronic funds transfers.

(b) Franchisor shall furnish Franchisee with a written confirmation by letter or email of each such transfer. Franchisee agrees to maintain sufficient funds in the account at all times to cover all royalty fees and marketing contributions payable to Franchisor. If funds in the account are insufficient to cover the amounts payable at the time Franchisor makes a monthly electronic funds transfer, Franchisor will notify Franchisee by email and the amount of the shortfall shall be deemed overdue, and Franchisee shall pay Franchisor, on demand. In addition to the overdue amount, daily interest on such amount from the date it was due until paid, at the rate of 18% per annum or the maximum rate permitted by law, whichever is less shall be due to Franchisor. Entitlement to such interest shall be in addition to any other remedies Franchisor may have. More than two payment defaults will be a breach of this Agreement and subject to the loss of the franchise.

**8.09 Client Management System.** Franchisee shall record all sales and all sales receipts of revenue on a prescribed model computerized Client Management System ("CMS") as indicated in the Success System, Franchisee agrees that certain key data may be made available to or from Franchisor on a daily basis. Financial information required or made available will include but may not be limited to (i) total daily gross sales; (ii) the franchise fee as it relates to those sales; (iii) information pertaining to Franchisee's daily profits and losses; and (iv) automatic electronic modification by Franchisor of key program information such as revised tax tables, operational system flags and new Product Listing Units ("PLU") that may affect Franchisee from time to time. Franchisee *agrees* that no other CMS or cash register of any nature will be introduced or employed in the daily operation of any Center. Franchisor may, at Franchisor's sole discretion, require the use of new and improved CMS upon prior written notice. All financial records must be kept by Franchisee for at least five (5) years following the end of the calendar year in which they relate. Franchisee shall deliver to Franchisor quarterly, a complete and accurate profit and loss statement and a balance sheet for the preceding half year along with a summarized royalty statement and any other sales data requested by Franchisor on a form specified by Franchisor.

**8.10 Insurance.**

(a) Franchisee shall have in effect on the Effective Date and maintain during the term hereof insurance in such types and amounts as are specified under the Success System. All policies of insurance to be maintained by Franchisee shall contain a separate endorsement naming the Franchisor (and if required, its affiliated companies), as additional insured parties. Such policies of insurance shall not be subject to cancellation or modification except with thirty (30) days prior written notice to the Franchisor. Franchisee shall cause certificates of insurance showing compliance with the above requirements to be delivered to Franchisor annually upon renewal and at such other times as Franchisor may request.

(b) Throughout the term of this Agreement, Franchisee shall maintain in effect at all times a policy or policies of insurance with an "A" insurance carrier naming Franchisor as an additional insured on the face of each policy at Franchisee's sole cost and expense with at least the minimum policy coverage limits as set forth in the Success System but no less than \$1,000,000 in liability coverage.

(c) Certain states or insurance companies may require special insurance and/or rules as it relates to fitness, training and any other services offered in the Center. Franchisee must secure and maintain such insurance and in amounts described in the Success System.

(d) If Franchisee does not maintain the insurance coverage required by the Success System, Franchisor may purchase such policies of insurance as it deems required and Franchisee shall reimburse Franchisor for all costs of such insurance plus interest cost on the funds advance of the maximum rate allowed by law.

(e) Franchisee shall promptly notify Franchisor of any and all claims against Franchisee or Franchisor under said policies of insurance and shall deliver to Franchisor a certificate evidencing that such insurance is in full force and effect concurrently with the opening of the first Center and each year thereafter. Such insurance certificate shall contain a statement that the certificate shall not be cancelled without thirty (30) days prior written notice to Franchisee and Franchisor.

#### **8.11 Records and Rights of Inspection.**

(a) Franchisee covenants and agrees that it shall keep and maintain during the term hereof, and for a period of five (5) years following expiration or termination for any reason, full, true and complete records of all revenues and expenditures respecting the Franchised Business, in the form and manner specified by Franchisor in the Success System and shall permit Franchisor or its representatives or agents selected in the sole discretion of Franchisor, during normal business hours, to examine or audit the books of accounts, bank statements, documents, records, papers, and federal, state and local tax return records relating to the Franchised Business or individual officers, directors, owners, partners, or affiliated or related entities or shareholders. If Franchisor causes an audit to be made and the Gross Receipts as shown by Franchisee's records should be found to be understated by any amount, Franchisee shall immediately pay to Franchisor the additional amount payable as shown by such audit, plus interest thereon at the rate of 18% per annum or the highest rate of interest allowed by law, whichever is lower, computed from the date (or dates) said understated amount (or amounts) were due. If (i) the Gross Receipts are found to be understated by 3% or more or (ii) if Franchisee's records require a substantial effort (as determined in the sole judgment of Franchisor, exercised in good faith) on behalf of Franchisor's auditors to be placed in a condition readily conducive to audit, Franchisee will be required to immediately pay to Franchisor the entire cost of such audit; otherwise, the cost of the audit shall be borne by Franchisor.

(b) Within forty-five (45) days after the end of each of Franchisee's fiscal year, Franchisee shall furnish Franchisor with (i) a Profit and Loss Statement and Balance Sheet of the Franchised Business for the previous fiscal year, and (ii) a statement of Gross Receipts for the previous fiscal year along with any further information Franchisor shall reasonably request. All such financial statements and information shall be prepared in accordance with the guidelines prescribed by Franchisor in the Success System, and shall be certified by Franchisee's Chief Executive Officer or Chief Financial Officer (or an independent Certified Public Accountant), as being true and correct

#### **8.12 Review.**

(a) Franchisee shall permit Franchisor and Franchisor's agents to enter the Center or visit any Athletic Revolution Independent Coach Franchise location at any time during normal business hours to conduct inspections. Franchisee shall cooperate with such inspections by rendering such assistance as Franchisor's representatives may reasonably request; and, upon notice from Franchisor (or Franchisor's agents), shall immediately begin such steps as may be necessary to correct any deficiencies noted during any such inspection.

(b) If Franchisee's business operations are determined by Franchisor to be unsatisfactory as a result of any inspection, Franchisor shall itemize such deficiencies and Franchisee shall then have fifteen (15) days to correct them. If Franchisee fails to correct these deficiencies within fifteen (15) days, Franchisor may send up to three representatives to assist Franchisee in correcting these deficiencies, and Franchisee shall be responsible for reasonable travel and lodging expenses of these representatives, plus pay Franchisor a charge of \$450.00 per day per representative and expenses associated with correction of the deficiencies.

(c) At any other time, Franchisor shall have the right to send representatives at reasonable intervals during normal business hours, into Franchisee's Center or other offices as appropriate related to the Franchised Business in order to inspect Franchisee's other records, operations, business methods, service, management and administration, to determine the quality thereof and the faithfulness of Franchisee's compliance with the provisions of this Agreement and the Success System. If such other records are not located at the Center or such other administrative office, Franchisor's representatives shall have the right to inspect said other records, wherever located.

#### **8.13 Compliance with Laws.**

(a) Franchisee shall (i) operate the Franchised Business in compliance with all applicable laws, rules and regulations of all governmental authorities, (ii) comply with all applicable wage, hour and other laws and regulations of the federal, state or local governments, (iii) prepare and file all necessary tax returns and (iv) pay promptly all taxes imposed upon Franchisee or upon its business or property.

(b) Franchisee represents and warrants that it shall obtain and at all times maintain all necessary permits, certificates and licenses necessary to conduct the Franchised Business in the localities within which the Center or such other office is situated. Franchisee shall immediately notify Franchisor of any litigation, arbitration, disciplinary action, criminal proceeding, or any other legal proceeding or action brought against or involving Franchisee, or any entity affiliated with Franchisee, or any agent, employee, owner, director or partner of Franchisee, which notification shall include all relevant details.

#### **8.14 No Other Fitness Business.**

(a) Franchisee acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and trade secrets, including, without limitation, information regarding the operational, sales, promotional and marketing methods and techniques of the Athletic Revolution System. In consideration for the use and license of such valuable information, Franchisee agrees that it shall not during the term of this Agreement and for a period of 18 months after termination, cancellation or expiration of this Agreement (for any reason), engage in activities within 25 miles of the Territory or any other Athletic Revolution Franchised Business, nor operate, manage, own, assist or hold an interest, direct or indirect (as an employee, officer, director, shareowner, partner, joint venturer or otherwise), in any youth wellness or athletic development centers, gyms, or business. It is the intention of the parties that Franchisee maximize the Franchised Business and Gross Receipts for the mutual benefit of Franchisor and Franchisee, and any action of Franchisee that diverts business to another entity or diminishes the Gross Receipts of the Franchised Business shall be a material breach of this Agreement. Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with, any person, persons, partnership, or corporation, divert or attempt to divert any business or customer of the Franchised Business to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System. This section shall also apply to each of Franchisee's directors, officers, general partners, and Principals.

(b) Franchisee acknowledges that the restrictions contained in this section are reasonable and necessary in order to protect legitimate interests of Franchisor, and in the event of violation of any of these restrictions, Franchisor shall be entitled to obtain damages including, without limitation, Continuing Royalty and other fees that would have been payable if such business were included in the Franchised Business, and an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which Franchisor may be entitled at law or in equity.

(c) During the term of this Agreement, neither Franchisee nor any of Franchisee's principals shall directly or indirectly engage or be financially involved in (except for ownership of not more than 5% of the outstanding stock, voting and non-voting, of a corporation, the stock of which is traded on a national securities exchange), or be employed by any fitness or youth fitness business selling or offering related products to those sold or offered by Franchisee's Franchised Business which are a significant aspect of that operation.

**8.15 Web Site.** Franchisee may not engage in the Franchised Business directly or indirectly through the Internet, except as authorized by Franchisor under the Success System or otherwise in writing. Each Franchised Business shall be listed and participate in Franchisor's web site. Under no circumstances will Franchisee be authorized to establish its own web site for the purpose of advertising the Marks or the Franchised Business.

**8.16 Unauthorized Hiring.** During the Term and any renewal Term of this Agreement, and for 18 months after the termination or expiration of this Agreement for any reason, Franchisee agrees not to solicit for employment or hire Franchisor's personnel or the personnel of any of Franchisor's affiliated companies ("Affiliates"), without first obtaining written permission from the employer of the personnel in question. If Franchisee violates this covenant by hiring any such personnel of Franchisor or an Affiliate, then in addition to any other remedy available to Franchisor, Franchisee agrees to immediately pay to Franchisor (or to the Affiliate, if applicable) an amount equal to 200% of the compensation paid by Franchisor or the Affiliate to the employee during the preceding 12 months (or the total time if employed less than 12 months)

that he or she was employed by Franchisor or the Affiliate, such sum to be paid not as a penalty, but rather as liquidated damages for Franchisor's (or the Affiliate's) loss of an experienced employee, Franchisor (or the Affiliate's) need to locate, hire and train a replacement employee. Franchisee further agrees during the Term or any renewal Term of this Agreement, and for 18 months after the termination or expiration of this Agreement for any reason, not to solicit for employment or hire any former personnel of Franchisor or of an Affiliate. If such person has been in Franchisor's or the Affiliate's employ within the past 12 months, without first obtaining written permission from the employer of the personnel in question. If Franchisee violates this covenant by hiring any such former personnel of Franchisor's or the Affiliate, then in addition to any other remedy available to Franchisor, Franchisee agrees to immediately pay to Franchisor (or to the Affiliate, if applicable) an amount equal to 200% of the compensation paid by Franchisor or the Affiliate to the employee during the preceding 12 months (or the total time if employed less than 12 months) that he or she was employed by Franchisor or the Affiliate, such sum to be paid not as a penalty, but rather as liquidated damages for the likely disclosure of Franchisor's (or the Affiliate's) confidential information by the person hired.

**8.17 Advertising.** The Franchisor will maintain a National Advertising Fund described more fully in Item 11 of the Disclosure Document. Pursuant to the Fund, Franchisee will be required to pay a monthly advertising fee equal to one percent (1%) of monthly gross revenues which will be deposited in a separate account. In addition, the franchisee may develop advertising materials for their own use, at their own cost. As stated above, Franchisor must approve these advertising materials in advance and in writing, provided that Franchisor responds within ten (10) business days after receiving Franchisee's proposed advertising material, the material is approved.

## **ARTICLE 9. ASSIGNMENT**

**9.01 Assignment by Franchisor.** Franchisor shall have the right to Transfer this Agreement, and all of its rights and privileges hereunder to any other person, firm or corporation ("Assignee of Franchisor"); provided that, the, the Assignee of Franchisor is financially responsible and economically capable of performing the obligations of Franchisor hereunder; and the Assignee of Franchisor expressly assumes and agrees to perform such obligations. In the event of such Assignment by Franchisor, Franchisor shall be relieved of all obligations or liabilities then under this Agreement.

**9.02 Assignment by Franchisee.**

(a) This Agreement is being entered into in reliance upon and in consideration of the singular personal skills and qualifications of Franchisee and its principals and the trust and confidence reposed in Franchisee by Franchisor, or, in the case of a corporate Franchisee, the principal officers thereof who will actively and substantially participate in the ownership and operation of the Franchised Business or, in the case of a partnership Franchisee, the partners thereof who will actively and substantially participate in the ownership and operation of the Franchised Business. Therefore, neither Franchisee's interest in this Agreement and the Franchise granted hereunder nor substantially all of its assets nor any of its other rights or privileges hereunder shall be assigned, transferred, shared or divided, sub franchised, sublicensed, voluntarily or involuntarily, in whole or in part, by operation of law or otherwise, in any manner (collectively, "Assignment by Franchisee"), without the prior written consent of Franchisor and subject to Franchisor's right of first refusal provided for in this Agreement. Notwithstanding the foregoing, in the event of the death or legal incapacity of Franchisee, if an individual, or of a stockholder of a corporate Franchisee, or of a partner's of a Franchisee which

is a partnership, the transfer of Franchisee's or the stockholders or the deceased partners interest in this Agreement to his or her heirs, personal representatives or conservators, as applicable, shall not be deemed an Assignment by Franchisee (provided that the responsible management employees or agents of Franchisee have been satisfactorily trained at Initial Franchise Training) nor obligate Franchisee to pay any Assignment by Franchisee processing fee nor give rise to the Franchisor's right of first refusal as set forth in this Agreement, although such refusal right or obligation to pay shall apply as to any proposed transfer or assignment by such heirs, personal representatives or conservators. However, if Franchisor determines (i) there is no imminent sale to a qualified successor or (ii) there is no heir or other principal person capable of operating the Franchise, Franchisor may immediately commence operating the Franchise on behalf of Franchisee. For such management assistance, Franchisor may charge Franchisee a fee equal to 8% of the Gross Receipts during the Franchisor's operation, plus the cost of wages for the interim manager.

(b) Should Franchisor elect not to exercise its right of first refusal, or should such right of first refusal be inapplicable, as herein provided, Franchisor's consent to an Assignment by Franchisee shall not be unreasonably withheld; provided however, that it shall not be unreasonable for Franchisor to impose, among other things, the following conditions precedent to its consent to any such Assignment by Franchisee:

(1) the assignee ("Assignee of Franchisee") shall complete Franchisor's application for Franchise, and in connection therewith, Franchisee and Assignee of Franchisee shall fully disclose in writing all of the terms and conditions of the Assignment by Franchisee;

(2) the Assignee of Franchisee or the Principals, officers, shareholders or directors of the Assignee of Franchisee in the case of a corporate Assignee of Franchisee, or the partners of the Assignee of Franchisee in the case of a partnership Assignee of Franchisee, demonstrate that it has or they have the skills, qualifications and economic resources necessary, in Franchisor's sole judgment, to conduct the business contemplated by this Agreement,

(3) the Assignee of Franchisee and each shareholder of a corporate Assignee of Franchisee expressly assumes in writing for the benefit of Franchisor all of the obligations of Franchisee under this Agreement,

(4) the Assignee of Franchisee executes the then current form of Franchise Agreement being used by Franchisor for the remainder of the term of this Agreement or, in the sole discretion of Franchisor, for the initial term of the then current form of Franchise Agreement,

(5) Franchisee shall have complied fully as of the date of any such Assignment by Franchisee with all of its obligations to Franchisor, whether under this Agreement or any other agreement, arrangement or understanding with Franchisor,

(6) the Assignee of Franchisee agrees that Franchisor's Initial Franchisee Training program described in this Agreement and any other training or orientation programs then required by Franchisor will be satisfactorily completed by necessary personnel within thirty (30) days after the execution of the above described Franchise Agreement, provided however, that Assignee of Franchisee shall agree to pay for all of its expenses incurred in connection therewith, including travel, hotel and meal expenses plus a training fee of \$450.00 per day per person payable to Franchisor for Initial Franchise Training (IFT),

(7) Franchisee shall pay to Franchisor a non-refundable transfer fee of \$7,500.00 upon any transfer of an Athletic Revolution Elite Franchise and \$2,500.00 for any Athletic Revolution Independent Coach Franchise; and

(8) Franchisee acknowledges that substantial goodwill and Brand identification has been established by its association with Franchisor. Accordingly, if Franchisee sells any of its Franchised Businesses between the first and 12th month after the opening date, then Franchisee shall pay Franchisor thirty percent (30%) of the total sales proceeds at the close of escrow. If Franchisee sells any of its Franchised Businesses between the 12th and 24th month after the opening date, then Franchisee shall pay Franchisor twenty percent (20%) of the total sales proceeds at the close of escrow. If Franchisee sells any of its Franchised Businesses between the 24th month and 36th month after the opening date, then Franchisee shall pay Franchisor ten percent (10%) of the total sales proceeds at the close of escrow. This Section 9.02(b)(8) shall not apply to any Franchisee who is subject to a loan from the Small Business Administration ("SBA"). Upon the full payment of the loan or at such time that the SBA no longer has any interest in the loan for whatever reason, this Section 9.02(b)(8) shall apply to such Franchisee. Franchisee is required to provide written notice and confirmation to Franchisor within thirty (30) days after the termination of the loan obligation with the SBA.

(c) If Franchisee is a partnership or other business association, Franchisee shall provide Franchisor at the Effective Date with a copy of Franchisee's partnership agreement or other agreement between the partners and members of the association. If Franchisee is a corporation or limited liability company ("LLC"), Franchisee shall provide Franchisor at the Effective Date with copies of organizational documents, including stock certificates or membership certificates. As a condition to entering into the Franchise, if Franchisee is a corporation or LLC, the following legend must be placed on all stock or membership certificates:

"THE TRANSFER OF THIS STOCK IS SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN FRANCHISE AGREEMENT DATED \_\_\_\_\_ BETWEEN \_\_\_\_\_, THIS COMPANY AND ATHLETIC REVOLUTION INTERNATIONAL, LLC REFERENCE IS MADE TO SUCH FRANCHISE AGREEMENT AND THE RESTRICTIVE PROVISIONS CONTAINED THEREIN AND AS MAY BE OTHERWISE SET FORTH IN THE ORGANIZATIONAL DOCUMENTS OF THIS COMPANY."

(d) If there is an Assignment by Franchisee of this Agreement or the business contemplated hereby, if legally permissible, Franchisee shall also assign all of its rights under any lease for its Center(s) to the same Assignee of Franchisee. If Franchisee is a corporation, the cumulative Transfer of forty-nine percent (49%) or more of its capital stock or voting power shall be deemed to be an Assignment by Franchisee of this Agreement for purpose of the this Agreement; provided however, that a transfer of the Franchise from a sole proprietorship or partnership Franchisee to a corporation, all of the shares of which are owned by the sole proprietor or partners in the same proportionate amount, shall require the payment of a non-refundable Assignment by Franchisee fee of five percent (5%) of the then current Initial Franchise Fee in lieu of the Assignment by Franchisee fee described above. Notwithstanding the foregoing, Franchisee shall not in any event have the right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement in any manner whatsoever, nor sub-franchise or otherwise transfer, or attempt to sub-franchise or otherwise transfer the franchise so long as it is operated as a Athletic Revolution Franchised Business, or to transfer or sub-franchise a portion but not all of Franchisee's rights hereunder without the express prior written permission of Franchisor, which permission may be withheld for

any reason whatsoever in Franchisor's sole discretion. Any attempt by the Franchisee to assign or any purported assignment by the Franchisee in violation of this section shall be void.

(e) Upon Franchisor's consent to any assignment, Franchisee shall bring all accounts with Franchisor current and shall execute a general release of all claims against Franchisor.

**9.03 Right of First Refusal.** The rights of Franchisee to assign, transfer or sell its interest in the Franchise granted by this Agreement, except for a transfer to the Franchisee's heirs, personal representatives or conservators in the case of his death or legal incapacity shall be subject to Franchisor's right of first refusal with respect thereto. Franchisor's said right of first refusal may be exercised in the following manner;

(a) Franchisee shall serve upon Franchisor a written notice setting forth (i) all of the terms and conditions of any bona fide offer relating to a proposed Assignment by Franchisee, and (ii) all available information concerning the proposed Assignee of Franchisee.

(b) Within ten days after Franchisor's receipt of such notice (or if it shall request additional information, within ten days after receipt of such additional information), Franchisor may either consent or withhold its consent to such Assignment by Franchisee, or at its option, may accept the Assignment by Franchisee itself or on behalf of its nominee upon the terms and conditions specified in the notice.

(c) If Franchisor shall elect not to exercise said right of first refusal and shall consent to such Assignment by Franchisee, Franchisee shall for a period of ninety (90) days, be free to assign this Agreement to such proposed Assignee of Franchisee upon the terms and conditions specified in said notice. If, however, said terms shall be materially changed, or if said 90-day period shall have expired, Franchisor shall again have such right of first refusal with respect thereto and Franchisee shall again be required to comply with section 9.03(a) above.

**9.04 Transfers to Family Members.** Franchisee or a principal owner, if a natural person, may with Franchisor's consent, which will not be unreasonably withheld, Transfer the Franchised Business or an equity interest in Franchisee to such person's spouse, parent, sibling, niece, nephew, descendant or spouse's descendant provided that adequate provision is made for the management of the Franchised Business and the transferor guarantees, in form and substance satisfactory to Franchisor, the performance of the transferee's obligations under this Agreement. No transfer under this section 9.04 shall be subject to (i) Franchisor's right of first refusal or (ii) the transfer fee.

**9.05 Transfers to Affiliated Corporations.** Franchisee or a Principal, if a natural person, a sole proprietorship or a partnership, may without the consent of Franchisor, upon thirty (30) days prior written notice to Franchisor, Transfer the Franchised Business or an equity interest in Franchisee to a corporation entirely owned by such natural person, sole proprietorship or partnership, as the case may be, in the same proportionate amount of ownership as prior to such Transfer, provided that adequate provision is made for the management of the Franchised Business and that the transferor guarantees, in form and substance satisfactory to Franchisor, the performance of the transferee's obligations under this Agreement. No transfer under this section shall be subject to (i) Franchisor's right of first refusal or (ii) the transfer fee.

**9.06 Transfers Upon Death, Incapacity.** Notwithstanding any of the foregoing, in the event of the death or legal incapacity of Franchisee or a Principal, if a natural person, such person's interest in this Agreement or its equity interest in the Franchisee will Transfer in accordance with

such person's will or, if such person dies without a will, in accordance with laws of intestacy governing the distribution of such person's estate, provided that adequate provision is made for the management of the Franchised Business and the transferee is one or more of the decedent's spouse, parents, siblings, nieces, nephews, descendants or spouse's descendants. No transfer under this section shall be subject to (i) Franchisor's right of first refusal or (ii) the transfer fee.

**9.07 Restrictions on Granting Security Interests and Sub Franchising.** Except as otherwise set forth below, Franchisee shall not in any event have the right to pledge, encumber, hypothecate or otherwise give any third party a security interest in this Agreement in any manner whatsoever, nor sub franchise or otherwise Transfer, or attempt to sub franchise or otherwise Transfer any Franchised Business so long as it is operated as an Athletic Revolution Franchised Business, or to Transfer or sub franchise a portion but not all of Franchisee's rights hereunder without the express prior written permission of Franchisor, which permission may be withheld for any reason whatsoever in Franchisor's sole discretion. Notwithstanding anything contained herein to the contrary, Franchisee shall have the right to pledge its accounts receivable (if any) without the prior written consent of Franchisor for the sole purpose of obtaining financing for the operation of the Franchised Business provided Franchisee is in full compliance with all of the terms and conditions of this Agreement, and any other agreement, arrangement or understanding with Franchisor.

**9.08 Other Transfers.** Except as otherwise provided in this Agreement and subject to Franchisor's right of first refusal, Franchisee or a Principal may effect any Transfer of a direct or indirect interest in this Agreement, in the Franchised Business or in the economic benefits derived there from, or any equity interest in Franchisee, not permitted by the preceding sections only after written notice to Franchisor and only with Franchisor's written consent, which may not be unreasonably withheld. Franchisor shall exercise its good faith business judgment in determining whether to give or withhold its consent to a Transfer under this section. Such exercise of good faith business judgment shall include Franchisor's consideration of certain skills and qualifications of the prospective transferee which are of business concern to Franchisor, including without limitation, the following: experience in similar retail businesses, financial and operational skills and qualifications, economic resources, reputation and character of such prospective transferees; the ability of such prospective transferee(s) to fully and faithfully conduct the Franchised Business as contemplated by this Agreement; and the effect that the Transfer and the prospective transferees will have or may reasonably be expected to have on the reputation or business operations of the Franchised Business, the System or Franchisor, its parent or any of its affiliates.

## **ARTICLE 10. DEFAULT AND TERMINATION**

### **10.01 General.**

(a) This Agreement may be terminated unilaterally by Franchisor or Franchisee only for good cause, which for purposes of this Agreement shall mean a material violation of this Agreement and shall include any failure by Franchisee to substantially comply with any obligation, duty or promise under this Agreement. Franchisor or Franchisee shall exercise its respective right to terminate this Agreement in the manner described in this Article.

(b) Notwithstanding anything contained herein to the contrary, in those circumstances under which Franchisor shall have the right to terminate this Agreement, Franchisor shall have the option, to be exercised in its sole discretion, to choose alternative remedies to its right to terminate the entire Agreement.

(c) If Franchisor gives Franchisee written notice to cure a violation of this Agreement, Franchisee shall commence such cure within 24 hours and must effect a complete cure and remedy the damage caused by such violation as fully as possible in the shortest possible time, in no event more than seven (7) days; and Franchisee shall take action to prevent recurrence of the same type of violation.

(d) Notwithstanding anything contained herein to the contrary, in those circumstances under which Franchisor shall have the right to terminate this Agreement, Franchisor shall in order to preserve the value of all of the Franchised Businesses and to support its customers, Franchisor shall have the right to (i) buy some or all of Franchisee's existing furnishings, fixtures, equipment, supplies or inventory by paying the fair market value (as reasonably determined by Franchisor or by a third party appraiser) within ten (10) business days after notice is sent from Franchisor that it will be making such purchase, (ii) assume the lease for and take possession of the leasehold premises where the Center is located and (iii) exercise any and all remedies available to it at law or in equity, including without limitation specific performance and damages (including without limitation direct, indirect, special, incidental or consequential damages.) All rights and remedies provided herein shall be in addition to and not in substitution of all other rights and remedies available to a party at law or in equity.

**10.02 Termination without Prior Notice.** Franchisor shall have the right to terminate this Agreement without prior notice to Franchisee upon the occurrence of any or all of the following events, each of which shall be deemed an incurable breach of this Agreement:

(a) If Franchisee Abandons its franchised center;

(b) To the extent permitted by law (including without limitation the applicable provisions of the Federal Bankruptcy Act), (i) if Franchisee or a general partner thereof becomes insolvent (as revealed by its records or otherwise), or (ii) if Franchisee files a voluntary petition and is adjudicated bankrupt, or if an involuntary petition is filed against Franchisee and such petition is not dismissed within thirty (30) days, or (iii) if Franchisee shall make an Assignment by Franchisee for the benefit of creditors, or (iv) if a receiver or trustee in bankruptcy or similar officer, temporary or permanent, be appointed to take charge of Franchisee's affairs or any of its property, or (v) if dissolution proceedings are commenced by or against Franchisee (if a corporation or partnership) and are not dismissed within thirty (30) days thereafter, or (vi) if any final Judgment against Franchisee from which no further appeal is available and which is not currently on appeal remains unsatisfied or not bonded of record for thirty (30) days after receipt by Franchisee of actual or constructive notice thereof, and the amount of such judgment exceeds \$50,000.00 or ten percent (10%) of Franchisee's Gross Receipts for the preceding Anniversary Year, whichever is less;

(c) If (i) Franchisee has knowingly either inaccurately reported or withheld the reporting of Gross Receipts twice within 12 consecutive calendar months, or if (ii) a Principal has knowingly and directly caused or authorized Franchisee to either inaccurately report or withhold the reporting of any Gross Receipts;

(d) If Franchisee violates the transfer provisions of this Agreement or otherwise sells, assigns, transfers or encumbers the Marks without the prior written consent of Franchisor as provided above;

(e) If the Franchised Business Center is closed for health sanitation or other governmental reasons by appropriate authorities or if licenses necessary to operate the center

are suspended or revoked, and such licenses or substitute licenses have not been reinstated within seven (7) days thereafter;

(f) If Franchisee defaults in any material obligation twice previously within the preceding twelve (12) months with respect to the same or similar breach; or

(g) If Franchisee defaults in its obligation to permit Franchisor or its representative or agents to examine or audit books of accounts, bank statements, documents, records, papers or tax return records under this Agreement.

(h) If Franchisee re-identifies its center under marks other than the Marks of Athletic Revolution.

### **10.03 Termination with Notice.**

(a) If Franchisor gives Franchisee written notice to cure a violation of this Agreement, Franchisee shall commence such cure within 24 hours and must effect a complete cure and remedy the damage caused by such violation as fully as possible in the shortest possible time, in no event more than seven days; and Franchisee shall take action to prevent recurrence of the same type of violation. Franchisor may terminate this Agreement if (i) Franchisee previously received notice of two violations of the same or a similar type within the preceding twelve (12) months, (ii) Franchisee fails to comply with the preceding sentence, provided that if the sole reason for such noncompliance is that such violation was impossible to cure, Franchisor may terminate this Agreement only if Franchisee received notice of one prior violation under this section within the preceding twelve (12) months, or (iii) a Principal directly caused or authorized a violation which materially impaired the goodwill associated with the Marks In Franchisee's geographical area, and either he or she did so knowingly, or Franchisee failed to comply with the preceding sentence, or a Principal had done so once previously within the preceding twelve (12) months. Franchisor may terminate this Agreement if Franchisee uses the Marks in any manner that is not permitted by this Agreement, or takes any action that incorrectly indicates that certain products or services are associated with the Marks, and Franchisee fails to cure such violation within 24 hours of receipt of written notice by Franchisor to cure.

(a) With respect to any default by Franchisee of its obligation to pay any sums due Franchisor under this Agreement, Franchisor may terminate this Agreement upon not less than seven days prior written notice of such default. If Franchisee cures said default prior to the end of such period, Franchisor's right to terminate shall cease with respect to the breach that has been cured.

(b) Except as otherwise expressly provided herein, Franchisor may terminate this Agreement only upon thirty (30) days prior written notice to Franchisee setting forth the breach complained of in this Agreement or any other agreement to which both Franchisor or any of its affiliates and either Franchisee or any of its affiliates or Principals are party. Upon receipt of such notice, Franchisee shall immediately commence diligently to cure said breach, and if Franchisee shall cure said breach during such period, Franchisor's right to terminate this Agreement shall cease; provided however, that if, because of the nature of said breach, Franchisee shall be unable to cure the same within said thirty (30) day period, Franchisee shall be given such additional time as shall be reasonably necessary within which to cure said breach, not to exceed an additional thirty (30) days, upon condition that Franchisee shall, upon receipt of such notice from Franchisor, immediately commence to cure such breach and continue to use its best efforts to do so.

(c) A material violation of this Agreement shall mean any action or omission by Franchisee that impairs or adversely affects the System, Franchisor, Franchisee, or the relationship created by this Agreement without limitation, each of the following events, along with the events set forth in above are deemed a material violation of this Agreement. The parties acknowledge, however, that these events do not represent an exhaustive list of material violations of this Agreement, and additional events may occur, which individually, or in combination with other events, may constitute a material violation of this Agreement. It shall be a material violation of this Agreement:

- (1) If Franchisee fails to pay any sum due Franchisor;
- (2) If Franchisee fails to perform any material provision of a lease or sublease covering the center premises;
- (3) If the lease or sublease covering the Franchised Business Center is terminated or expires and Franchisee fails or is unable to locate suitable replacement premises satisfactory to Franchisor prior to the effective date of such termination or expiration;
- (4) If Franchisee is convicted of a felony or any other criminal misconduct which Franchisor deems relevant to the operation of the Franchise;
- (5) If Franchisor makes a reasonable determination that the continued operation of the Franchise by Franchisee will result in immediate danger to public health or safety;
- (6) If Franchisee fails to deliver to Franchisor any of the periodic reports required in this Agreement;
- (7) If Franchisee violates any of the provisions of this Agreement relating to use of Franchisor's Marks;
- (8) If Franchisee Abandons the franchise center;
- (9) If Franchisee closes or relocates the Center, except as otherwise provided for in this Agreement,
- (10) If Franchisee fails to maintain an independent contractor relationship with Franchisor;
- (11) If Franchisee has knowingly either inaccurately reported or failed to report any information as part of its application or qualification as a Franchisee; or
- (12) If Franchisee or any Principals commit an act, or permit an act to be committed, that violates any federal, state or local law.

**10.04 Description of Default.** The description of any default in any notice served by Franchisor hereunder upon Franchisee shall in no way preclude Franchisor from specifying additional or supplemental defaults in any action, arbitration, mediation, hearing or suit relating to this Agreement or the termination thereof.

**10.05 Statutory Limitations.** Notwithstanding anything to the contrary in this Article, in the event any valid, applicable law or regulation of a competent governmental authority having

jurisdiction over this Agreement or the parties hereto shall limit Franchisor's rights of termination hereunder or shall require longer notice periods than those set forth herein, and in the event the parties are prohibited by law from agreeing to the shorter periods set forth herein, then this Agreement shall be deemed amended to conform to the requirements of such laws and regulations, but in such event the provisions of the Agreement thus affected shall be amended only to the extent necessary to bring it within the requirements of the law or regulation.

**10.06 Extended Cure Period.** Notwithstanding anything contained herein to the contrary, in those circumstances under which Franchisor shall have the right to terminate this Agreement, Franchisor shall have the right, to be exercised in its sole discretion, to grant to Franchisee, in lieu of immediate termination of this Agreement, an extended period of time to cure the breach which gave rise to Franchisor's right to terminate, but in no event shall such extended cure period exceed six months from the last day of the cure period otherwise applicable to such breach. Franchisee acknowledges that Franchisor's election to grant such an extended cure period to Franchisee shall not operate as a waiver of any of Franchisor's rights hereunder.

**10.07 Continuance of Business Relations.** Any continuance of business relations between Franchisor and Franchisee after termination of this Agreement shall not be construed as a renewal, extension or continuation of this Agreement.

## **ARTICLE 11. DISPUTE RESOLUTION**

### **11.01 Dispute Resolution.**

(a) Franchisor and Franchisee have entered into a long term franchise relationship which gives rise to an obligation, subject to and consistent with the terms of this Agreement, to endeavor to make the relationship succeed, in light of the overall best interests of the Franchised Business and the Athletic Revolution System, as contemplated by this Agreement. To that end, Franchisor and Franchisee acknowledge that they need to attempt to resolve disagreements or disputes before such disagreements or disputes negatively impact the relationship. Good faith communications between Franchisor and Franchisee are an important aspect of that obligation. The provisions of this Article are intended to facilitate such communication and the prompt resolution of any disagreements or disputes between the parties. To the extent any element or aspect of this Article is found, under applicable law, to be unenforceable in any way, it shall not be deemed void but, if possible, shall be enforced to the fullest lawful extent and all other provisions of this Article shall remain in full force and effect.

(b) Except for the disputes described in section 11.02 of this Agreement and except as otherwise specifically modified by this Article 11 any dispute between (i) Franchisor and (ii) Franchisee and any of its equity owners, arising out of, relating to or referencing this Agreement or its breach in any way, including without limitation, any claim sounding in tort arising out of the relationship created by this Agreement, and any claim that this Agreement or any other of its parts is invalid, illegal or otherwise voidable or void, is subject to the dispute resolution provisions set forth in this Agreement

(c) "Affiliates", as used in this Article 11, includes without limitation all shareholders, partners, owners, direct and indirect parents and subsidiaries, all affiliates thereof, and all officers, directors, employees and agents of the foregoing, acting in the course of conducting business activities related to Franchisor or Franchisee, as the case may be.

**11.02 Disputes Not Subject To Alternative Dispute Resolution.** The following disputes are not subject to the procedures stated in sections 11.03 and 11.04 of this Agreement:

(a) Any disputes relating to (i) Franchisee's use of the Marks, or any other mark in which Franchisor or any of its affiliates has an interest; (ii) acts which otherwise violate Franchisee's obligations under Article 6 of this Agreement or (iii) conduct which is alleged to otherwise infringe the intellectual property rights of Franchisor or any of its affiliates;

(b) Any dispute for which Franchisor is entitled to terminate this Agreement without prior notice under section 10.02 of this Agreement;

(c) Any dispute in any way relating to the scope, application or enforceability of this Article 11;

(d) Any dispute, other than those enumerated above, in which temporary or preliminary injunctive relief is sought, but only to the extent of proceedings for such relief; and

(e) Any dispute with Franchisor regarding the validity of the Marks or disparagement by Franchisee of the Marks.

### **11.03 Mandatory Settlement Conferences.**

(a) If a dispute arises under this Agreement or in respect of the relationship between Franchisor and Franchisee, within ten (10) days after either party sends to the other a written notice of dispute, a principal of each party shall meet (without attorneys being present) and conduct a good faith discussion and negotiation of the issues with a view to arriving at a settlement. If the parties are unable to do so at the initial settlement conference, they shall meet again (without attorneys being present) within ten (10) days thereafter and conduct a second good faith discussion and negotiation of the issues with a view to arriving at a settlement.

(b) The object of any settlement conference under this section is to assist the parties in reaching a mutually acceptable resolution of the dispute. Such settlement conferences shall, in all circumstances, be consistent with the rights and obligations created by this Agreement and shall not be premised on the derogation or diminution of those rights or disregard of those rights. Any and all discussions, negotiations, findings or other statements by the parties made in connection with the settlement conferences shall be privileged and confidential and shall not be admissible into evidence in any ensuing arbitration or litigation.

(c) All settlement conferences between Franchisor and Franchisee shall take place in Hardin County, Kentucky, or other county where the principal place of business of Franchisor is then located. And each party shall bear their own expense.

### **11.04 Arbitration.**

(a) Except disputes not subject to alternative dispute resolution as specifically set forth in section 11.02 above, and only after full compliance with section 11.03 above, any dispute between (i) Franchisor or its related entities, and (ii) Franchisee or a Principal or any of their related entities, arising out of or relating to this Agreement or its breach, including without limitation, any claim that this Agreement or any of its parts, is invalid, illegal or otherwise voidable or void, which has not been resolved in accordance with section 11.03 hereof, will be resolved by submission to binding arbitration before one arbitrator from the list of panelists having franchise experience and referred by Judicial Arbitration and Mediation Services ("JAMS") and selected by the parties in accordance with JAMS' (i) Streamlined Arbitration Rules and Procedures (if the amount in controversy is less than \$250,000) or (ii) Comprehensive Arbitration Rules and Procedures (if the amount in controversy is \$250,000 or more). Each

party shall bear its own costs and expenses in preparing for and participating in the arbitration hearing except that each party shall pay one-half of the compensation payable to the arbitrator, one-half of any fees to JAMS and one-half of any other costs related to the hearing proceedings. Both parties may by mutual agreement select a different Arbitration Group. THE ARBITRATOR HAS NO AUTHORITY TO UNILATERALLY AMEND OR DELETE ANY PROVISION OF THIS AGREEMENT. The arbitrator shall have the authority to award attorney's fees to the prevailing party. The arbitration award shall be final and binding on the parties, and judgment on the award may be entered in any Federal or State court having Jurisdiction. It is explicitly agreed by each of the parties hereto that no such arbitration shall be commenced except in conformity with this section 11.04.

(b) Except as specifically modified by this Article 11 and section 14.01 hereof, Kentucky law shall be applied to determine all arbitrated Issues. The Federal Arbitration Act (9 U.S.C. §1 et seq.) and the federal common law of arbitration govern the enforceability of the agreement to arbitrate contained herein. All hearings and other proceedings shall take place in Hardin County, Kentucky, or other county where the principal place of business of Franchisor is then located.

(c) Prior to any arbitration proceeding taking place, either party may, at its option, elect to have the arbitrator conduct, in a separate proceeding prior to the actual arbitration, a preliminary hearing, at which hearing testimony and other evidence may be presented and briefs may be submitted, including without limitation a brief setting forth the then applicable statutory or common law methods of measuring damages in respect of the controversy or claim being arbitrated.

(d) This arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after expiration or termination of this Agreement. Franchisor and Franchisee agree that arbitration proceedings will be conducted individually by a single plaintiff, and not as a class or by multiple plaintiffs in one action. In the event either party fails to appear at any properly noticed arbitration proceedings, an award may be entered against such party by default or otherwise notwithstanding said failure to appear. Judgment upon an arbitration award may be entered in any court having competent Jurisdiction and shall be binding, final and non-appealable.

(c) The provisions of this section 11.04 shall be construed as independent of any other covenant or provision of this Agreement; provided however, that if a court of competent Jurisdiction determines that any such provisions are unlawful in any way, such court shall modify or interpret such provisions to the minimum extent necessary to have them comply with the law.

Franchisor's Initials: \_\_\_\_\_ Franchisee's Initials: \_\_\_\_\_

Principal's Initials: \_\_\_\_\_

#### **11.05 Court Proceedings.**

(a) If the dispute is within the purview of section 11.02, either party may avail itself of the right to seek relief from a court of competent jurisdiction in Hardin County, Kentucky, in accordance with the provisions of this Article 11.

(b) If, in an action commenced in a court pursuant to section 11.02 of this Agreement, a party seeks temporary or preliminary injunctive relief, the court hearing the matter shall proceed to adjudicate the issues before it with respect to such relief and shall not delay the entry of any order with respect to such relief; provided however, that except for matters fully determined in connection with proceedings for temporary or preliminary relief, the dispute resolution procedures set forth herein shall be used. If in an action commenced in court pursuant to section 11.02, the opposing party shall raise a legally sufficient claim by way of defense, cross-claim or counterclaim which is otherwise subject to the dispute resolution provisions of this Article 11, the court hearing the matter shall proceed to adjudicate the issues before it; provided however, that the court may elect to use the dispute resolution procedures set forth herein with respect to any such defense, counterclaim or cross-claim to the maximum extent feasible, so long as the use of all such dispute resolution procedures may be completed within sixty (60) days from the date the matter is referred to the mediator for that purpose.

**11.06 Venue; Submission of issues to Court; Limitation of Damages.** The parties hereby agree that in view of the fact that the books, records and business personnel of Franchisor are located, for the most part, in Franchisor's headquarters, and in order to minimize disruption or interference with operation of the franchise system as a whole, Franchisee and Franchisor agree as follows:

(a) Any and all court proceedings arising from matters described in section 11.02 hereof shall be brought in, and only in, a federal or state court of competent jurisdiction in Hardin County, Kentucky. Franchisor and Franchisee hereby consent to the exercise of Jurisdiction by such federal or state courts.

(b) The parties agree that all disputes admitted to the federal or state court pursuant to section 11.02 shall be held to the federal or state court sitting without a jury, notwithstanding any state or federal constitutional or statutory rights or provisions.

(c) No punitive or exemplary damages shall be awarded against Franchisor, Franchisee, any Principal, or entities related to any of them, in arbitration proceedings, court actions or otherwise under this Article 11, and all claims to such damages are hereby waived. However, the federal or state court is authorized and empowered to award costs and attorney's fees to the prevailing party.

Franchisor's Initials:\_\_\_\_\_ Franchisee's Initials:\_\_\_\_\_

Principal's Initials:\_\_\_\_\_

## **ARTICLE 12. OBLIGATIONS AND RIGHTS UPON TERMINATION OR EXPIRATION**

### **12.01 Franchisee's Obligations.**

(a) Except as otherwise set forth with respect to assignment by Franchisor of any or all of its interest in this Agreement, in the event of termination or expiration of this Agreement whether by reason of Franchisee's breach, default, non-renewal, lapse of time, or other cause, in addition to any other obligations provided for in this Agreement, Franchisee shall within seven (7) days discontinue the use or display of the Marks in any manner whatsoever and all materials containing or bearing same and shall not thereafter operate or do business under the Business Name or any other name or in any manner that might tend to give the general public the impression that Franchisee is in any way associated or affiliated with Franchisor, or any of the

businesses conducted by Franchisor. In such event, Franchisee also shall comply with the terms of the standard De-Identification Checklist (the form is attached as Exhibit-5) and section 12.02 respecting the return to Franchisor of certain materials and shall not thereafter use, in any manner, or for any purpose, directly or indirectly, any of Franchisor's trade secrets, procedures, techniques, or materials acquired by Franchisee by virtue of the relationship established by this Agreement, including, without limitation, (i) any training or other materials, manuals, bulletins, instruction sheets, or supplements thereto, or (ii) any equipment, videotapes, video discs, forms, advertising matter, Marks, devices, insignias, slogans or designs used from time to time in connection with the Franchised Business. At such time as requested by Franchisor, Franchisee shall make its books and records available to Franchisor's representatives who shall conduct a termination audit. If Franchisee fails to complete within thirty (30) days after the date of termination Franchisee's de-Identification from the Athletic Revolution system and a termination inspection, Franchisee must pay a fee of \$1,000 for each day thereafter until the termination inspection and de-identification have been completed.

(b) If there is a termination or expiration as described in section 12.01(a) above, Franchisee shall promptly de-identify as a franchisee, fully complying with the De-Identification Checklist attached as Exhibit-5 and other de-identification procedures listed under the Success System, including without limitation the following:

(1) Remove at Franchisee's expense all signs erected or used by Franchisee and bearing the Marks, or any word or mark indicating that Franchisee is associated or affiliated with Franchisor,

(2) Erase or obliterate from letterheads, stationery, printed matter, advertising or other forms used by Franchisee the Marks and all words indicating that Franchisee is associated or affiliated with Franchisor,

(3) Permanently discontinue all advertising of Franchisee to the effect that Franchisee is associated or affiliated with Franchisor,

(4) Refrain from doing anything which would indicate that Franchisee is or ever was an authorized Franchisee including, without limitation, indicating, directly or indirectly, that Franchisee was licensed to use the Marks or any other distinctive System features or that Franchisee at any time operated under any name, word or mark associated or affiliated with Franchisor.

(5) If Franchisee engages in any business thereafter, it shall use trade names, service marks or trademarks (if any) which are significantly different from those under which Franchisee had done business and shall use sign formats (if any) which are significantly different in color and type face; and take all necessary steps to ensure that its present and former employees, agents, officers, shareholders and partners observe the foregoing obligations; and

(6) Assign all interest and right to use all telephone numbers and all listings applicable to the Franchised Business in use at the time of such termination to Franchisor and take all action necessary to change all such telephone numbers immediately and change all such listings as soon as possible.

(c) If Franchisee shall fail or omit to make or cause to be made any removal or change described in section 12.01(b) above, then Franchisor shall have the right to enter upon Franchisees premises upon which the Franchised Business is being conducted without being

deemed guilty of trespass or any other tort, and make or cause to be made such removal and changes at the expense of Franchisee, which expense Franchisee agrees to pay to Franchisor promptly upon demand; and Franchisee hereby irrevocably appoints Franchisor as its lawful attorney upon termination of this Agreement with authority to file any document in the name of and on behalf of Franchisee for the purpose of terminating any and all of Franchisee's rights in the Business Name and any of the Marks.

(d) If the Franchised Business Center is abandoned or otherwise closed for a period of seven consecutive days without Franchisor's prior written consent, Franchisee shall promptly take action to remove any indication that the center is associated or affiliated with either Franchisee or Franchisor, and remove at Franchisee's expense all signs erected or used by Franchisee on, in or in connection with such center and bearing either the Marks or any word or mark indicating that such center is associated or affiliated with either Franchisee or Franchisor, except as otherwise required by law.

(e) For eighteen (18) months after termination, assignment, cancellation or expiration of this Agreement, Franchisee and Franchisee's principals agree not to engage in wellness or youth athletic development business within 25 miles of the Franchised Business Center location or any other Athletic Revolution Center. Should this restriction violate the laws of the State of Kentucky or any state, the maximum restriction permitted in Kentucky governs this provision.

**12.02 Rights of Franchisor and Franchisee.** The expiration or termination of this Agreement shall be without prejudice to any rights of Franchisor against Franchisee and such expiration or termination shall not relieve Franchisee of any of its obligations to Franchisor existing at the time of expiration or termination or terminate those obligations of Franchisee which, by their nature, survive the expiration or termination of this Agreement.

(a) Franchisee is obligated to return, at no expense to the Franchisor, any and all computer equipment, video equipment, video tapes, videodiscs, software, software manuals and documentation, and any other communications media and material provided for Franchisee's use in connection with the operation of the Franchised Business. In addition, Franchisee's login and password for the Success System shall be inactivated.

(b) Within thirty (30) days after termination or the expiration of the Franchise, Franchisor will have the option to purchase all or any portion of Franchisee's business forms as well as all other supplies, marketing materials, signs and documents using any of the Marks. Franchisor will be permitted to deduct and withdraw from the purchase price to be paid to Franchisee all sums due and owing Franchisor, including related reasonable attorneys' fees. Franchisor's purchase price for such materials will be at reasonable used equipment or used material rates, less a reasonable amount for wear and tear as determined by the parties or an independent equipment appraiser. Franchisee shall receive no payment or adjustment whatsoever for any goodwill that Franchisee may have established either prior to or during its operation of its Franchise.

(c) Within thirty (30) days after termination or expiration of this Agreement, Franchisor shall have the option to purchase all or any portion of Franchisee's inventory, equipment, parts, supplies, fixtures and furnishings owned and used by Franchisee in its franchised operation. Franchisor will be permitted to deduct and withdraw from the purchase price to be paid to Franchisee all sums due and owing to Franchisor. The purchase price for any inventory of merchandise purchased by Franchisor shall be at fair market value or as otherwise negotiated. Nothing contained herein shall be construed as an agreement of Franchisor to

purchase any of the above items. If the parties are unable to decide on an appraiser and there is no agreement to repurchase inventory, then all Athletic Revolution center items will be destroyed.

**12.03 Franchisor's Right to Cure Defaults by Franchisee.** In addition to all other remedies herein granted, if Franchisee shall default in the performance of any of its obligations or breach any term or condition of this Agreement or any related agreement involving third parties, Franchisor may, at its election, immediately or at any time thereafter, without waiving any claim for breach hereunder and without notice to Franchisee, cure such default for the account of and on behalf of Franchisee, and all costs or expenses including attorney's fees incurred by Franchisor on account thereof shall be due and payable by Franchisee to Franchisor on demand.

**12.04 Waiver and Delay.** No waiver by Franchisor of any breach or series of breaches or defaults in performance by Franchisee and no failure, refusal or neglect of Franchisor either to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of Franchisee's obligations under this Agreement or the Success System, shall constitute a waiver of the provisions of this Agreement or the Success System with respect to any subsequent breach thereof or a waiver by Franchisor of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

**12.05 Attorney's Fees and Expenses.** Should any party hereto commence any action or proceeding for the purpose of enforcing or preventing the breach of any provision hereof, whether by judicial or quasi-judicial action, arbitration, or otherwise or any appeal there from or for damages for any alleged breach of any provision hereof, or for a declaration of such party's rights or obligations hereunder, then the prevailing party shall be reimbursed by the losing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorney's fees for the services rendered to such prevailing party.

### **ARTICLE 13. GENERAL CONDITIONS AND PROVISIONS**

**13.01 Relationship of Franchisee to Franchisor.** It is expressly agreed that the parties intend by this Agreement to establish between Franchisor and Franchisee the relationship of Franchisor and Franchisee. It is further agreed that Franchisee has no authority to create or assume in Franchisor's name or on behalf of Franchisor, any obligation, express or implied, or to act or purport to act as agent or representative on behalf of Franchisor for any purpose whatsoever, nor to create or assume in Franchisor's name or on behalf of Franchisor, any obligation, express or implied, or to act or purport to act as agent or representative on behalf of Franchisor for any purpose whatsoever. Neither Franchisor nor Franchisee is the employer, employee, agent, partner, fiduciary or co-venturer of or with the other, each being independent. Franchisee agrees that it will not hold itself out as the agent, employee, partner or co-venturer of Franchisor. All employees or agents hired or engaged by or working for Franchisee shall be only the employees or agents of Franchisee and shall not for any purpose be deemed employees or agents of Franchisor, nor subject to Franchisor's control; and in particular, Franchisor shall have no authority to exercise control over the hiring or termination of such employees, independent contractors, or others who work for Franchisee, their compensation, working hours or conditions, or the day-to-day activities of such persons, except to the extent necessary to protect the Marks. Franchisee agrees to respond to customer indications of dissatisfaction with services rendered by Franchisee in a diligent and professional manner and agrees to cooperate with representatives of Franchisor in any investigation undertaken by Franchisor of complaints respecting Franchisee's activities. Each of the parties agrees to file its own tax, regulatory and payroll reports with respect to its respective employees or agents and operations, saving and

indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof.

**13.02 Indemnity.** Except as otherwise expressly provided, Franchisee hereby agrees to protect, defend and indemnify Franchisor, and their direct or indirect parents, subsidiaries, affiliates, designees, officers and directors and hold each and all of them harmless from and against any and all costs and expenses actually incurred by them or for which they are liable, including attorney's fees, court costs, losses, liabilities, damages, claims and demands of every kind or nature, and including those incurred pursuant to a settlement entered into in good faith, arising out of or in connection with the Franchised Business, including specifically without limitation any claim or controversy arising out of any: (1) damages to property or injuries to persons occurring at a Franchised Business Center or other location; (2) misrepresentation by Franchisee, their employees and agents or any third party; (3) physical or monetary injury caused by Franchisee, its employees or agents; or (4) a breach of any agreement, law, rule or regulation by Franchisee, including but not limited to: (i) any Transfer by Franchisee, (ii) acts or omissions of Franchisee which are not in strict compliance with this Agreement and the Success System in respect of use or display of the Marks, or (iii) acts or omissions of Franchisee, which tend to create an impression that the relationship between the parties hereto is other than one of Franchisor and Franchisee. Notwithstanding the foregoing, Franchisee shall have no obligation to protect, defend or indemnify Franchisor, or their direct or indirect parents, subsidiaries, affiliates or designees from and against any such costs or expenses arising from conduct of Franchisor found to be willful, malicious or grossly negligent.

**13.03 Survival of Covenants.** The covenants contained in this Agreement which by their terms require performance by the parties after the expiration or termination of this Agreement shall be enforceable and survive notwithstanding said expiration or other termination of this Agreement for any reason whatsoever.

**13.04 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Franchisor and shall be binding upon and inure to the benefit of the Franchisee and its or their respective heirs, executors, administrators, successors and assigns, subject to the restrictions on Assignment by Franchisee contained herein.

**13.05 Joint and Several Liabilities.** If Franchisee consists of more than one person or entity, or a combination thereof, the obligation and liabilities to Franchisor of each such person or entity are joint and several.

**13.06 Counterparts.** This Agreement may be executed in any number of copies, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

**13.07 Notices.**

(a) All notices which the parties hereto may be required or may desire to give under or in connection with this Agreement shall be in writing and shall be either delivered in person or sent by reliable overnight delivery service, for delivery on the next business day and addressed as follows:

If to Franchisor.

Athletic Revolution International, LLC

110 Chase Way, Suite 5  
Elizabethtown, KY 42701

If to Franchisee, to the address indicated in section 16.02(c) hereof.

If to a Principal, to his or her address as set forth in Exhibit-2 attached hereto.

(b) The addresses herein given for notices may be changed at any time by either party by written notice given to the other party as herein provided. Notices shall be deemed given upon the earlier of (i) when actually delivered in person or (ii) the next business day after deposit with a reliable overnight delivery service for delivery on the next business day.

#### **ARTICLE 14. CONSTRUCTION OF AGREEMENT**

**14.01 Governing Law.** To the extent applicable, the Lanham Act (15 U.S.C. §1051 et seq.) governs any federal issues involving the Mark. Otherwise, Kentucky law governs this Agreement and the totality of the legal relations among the parties hereto.

**14.02 Entire Agreement: Modification Integration.** This Agreement and the Athletic Revolution Franchise Success System contains all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof. No other agreements, oral or otherwise, shall be deemed to exist or to bind any of the parties hereto and all prior agreements and understandings are superseded hereby. No officer or employee or agent of Franchisor has any authority to make any representation or promise not contained in this Agreement. Franchisee agrees that it has executed this Agreement without reliance upon any such unauthorized representation or promise. This Agreement cannot be modified or changed except by written instrument signed by all of the parties hereto. Nothing in this Agreement or related agreement is intended to disclaim the representation made by the Franchisor in the Franchise Disclosure Document.

**14.03 Titles for Convenience Only.** Section titles used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants or conditions of this Agreement

**14.04 Gender.** All terms used in any one number or gender shall extend to mean and include any other number and gender as the facts or context of this Agreement or any section may require.

**14.05 Severability.** Nothing contained in this Agreement shall be construed as requiring the commission of any act contrary to law. Whenever there is any conflict between any provisions of this Agreement or the Success System and any present or future statute, law, ordinance, regulation or judicial decision, contrary to which the parties have no legal right under this Agreement, the latter shall prevail, but in such event the provision of this Agreement or the Success System thus affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. In the event that any part, article, section, sentence or clause of this Agreement or the Success System shall be held to be indefinite, invalid or otherwise unenforceable, the indefinite, invalid or unenforceable provision shall be deemed deleted, and the remaining parts thereof shall continue in full force and effect, unless said provision pertains to the payment of fees pursuant to this Agreement, in which case this Agreement shall terminate.

**14.06 No Third Party Beneficiaries.** This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third party beneficiary rights" or otherwise.

#### **ARTICLE 15. SUBMISSION OF AGREEMENT**

The submission of this Agreement to Franchisee does not constitute an offer and this Agreement shall become effective only upon the execution thereof by Franchisor and Franchisee. THIS AGREEMENT SHALL NOT BE BINDING ON FRANCHISOR UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY THE PRESIDENT OR OTHER EXECUTIVE OFFICER OF FRANCHISOR. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL AND UNLESS FRANCHISEE SHALL HAVE BEEN FURNISHED BY FRANCHISOR WITH ANY DISCLOSURE, IN WRITTEN FORM, AS MAY BE REQUIRED UNDER OR PURSUANT TO APPLICABLE LAW.

#### **ARTICLE 16. ACKNOWLEDGEMENTS AND REPRESENTATIONS OF FRANCHISEE**

**16.01 Certain Acknowledgements and Representations of Franchisee.** Franchisee represents and warrants that the following statements are true and accurate:

(a) Franchisee does not seek to obtain the Franchise for speculative or short term investment purposes and has no present intention to sell or transfer or attempt to sell or transfer the Franchised Business or the Franchise.

(b) Franchisee understands and acknowledges the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Success System and the necessity of operating the Franchised Business under the standards set forth in the Success System. Franchisee represents that it has the capabilities, professionally, financially and otherwise, to comply with the standards of Franchisor.

(c) If Franchisee is a corporation, Franchisee is duly incorporated and is qualified to do business in the state and any other applicable jurisdiction within which the franchise center is located.

(d) The execution of this Agreement by Franchisee will not constitute or violate any other agreement or commitment to which Franchisee is a party.

(e) Any individual executing this Agreement on behalf of Franchisee is duly authorized to do so and the Agreement shall constitute a valid and binding obligation of the Franchisee and, if applicable, all of its partners, if Franchisee is a partnership.

(f) Franchisee has, or if a partnership, corporation or other entity, its partners or its principals have, carefully read this Agreement and all other related documents to be executed by it concurrently or in conjunction with the execution hereof, that it has obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement, that it understands the nature of this Agreement, and that it intends to comply herewith and be bound thereby.

(g) It has conducted an independent investigation of the business contemplated by this Agreement and recognizes that it involves business risks making the success of the venture largely dependent upon the abilities of the Franchisee. Athletic Revolution International LLC expressly disclaims the making of, and Franchisee acknowledges that it has not received or

relied upon, any warranty or guarantee, expressed or implied, as to the potential volume, profits or success of the business contemplated by this Agreement.

(h) It is not relying upon any representations by Athletic Revolution International LLC or its officers, directors, shareholders, employees, agents or servants, about the business contemplated by this Agreement, that are contrary to the provisions of this Agreement, any related agreements or the accompanying Disclosure Document.

(i) It has received, read and understood this Agreement and any related agreements; Athletic Revolution International LLC has fully and adequately explained the provisions of each to its satisfaction; and Athletic Revolution International LLC has accorded it ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement.

(j) It is aware of the fact that other franchisees of Athletic Revolution International LLC may operate under different forms of agreements and, consequently that Athletic Revolution International LLC's obligations and rights with respect to its various franchisees may differ materially in certain circumstances.

**16.02 Additional Information Respecting Franchisee.**

(a) Attached hereto as Exhibit-2 is a schedule containing complete information respecting the owners, partners, officers and directors, as the case may be, of Franchisee.

(b) The address where Franchisees financial and other records are maintained is:

---

---

---

(c) Franchisee has delivered to Franchisor complete and accurate copies of all organizational documents relating to Franchisee, including without limitation all partnership agreements, certificates of partnership, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

(d) The initial term of this Agreement expires on \_\_\_\_\_

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date first above written:

FRANCHISEE:

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

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

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

PRINCIPALS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ACCEPTED as of the Effective Date first above written.

FRANCHISOR:

ATHLETIC REVOLUTION INTERNATIONAL, LLC

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

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

\_\_\_\_\_, President or Authorized Officer

**LIST OF EXHIBITS TO FRANCHISE AGREEMENT:**

- Exhibit 1 – Franchised Territory
- Exhibit 2 - Lease Assignment Agreement
- Exhibit 3 - Names and Addresses of Equity Owners, Directors and Officers
- Exhibit 4 - Personal Guarantee
- Exhibit 5 – De-Identification Checklist
- Exhibit 6 – Confidentiality/Non Competition Agreement
- Exhibit 7 – General Release – Renewal
- Exhibit 8 – General Release - Assignment

## **Exhibit 1- Franchised Territory**

To be selected by the Franchisee.

(Balance of This Page Intentionally Left Blank)

## **EXHIBIT 2 - LEASE ASSIGNMENT AGREEMENT**

This Lease Assignment Agreement ("Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Athletic Revolution International LLC, a Kentucky limited liability company (hereinafter "Franchisor", "we", "us" or "our") \_\_\_\_\_ (hereinafter "Franchise" or "you"), and \_\_\_\_\_ (hereinafter "Landlord") involving the Athletic Revolution center (hereinafter "center") to be located at \_\_\_\_\_ hereinafter Franchise Location") with reference from the following facts:

A. On \_\_\_\_\_, 20\_\_\_\_, you and landlord entered into a lease agreement ("Lease"), a fully executed copy of which is to be attached hereto as Exhibit 2, pursuant to the terms of which you leased the Franchise Location from Landlord to operate the Athletic Revolution center thereon.

B. On \_\_\_\_\_, 20\_\_\_\_, you and we executed a Franchise Agreement pursuant to the terms of which you obtained a franchise from us to operate the center at the Franchise location.

C. We, you and Landlord desire to enter into this Agreement to define our rights in and to the Franchise Location and to protect our interests in the continued operation of the Athletic Revolution center at the Franchise Location during the entire term of the Lease, and any and all renewals and extensions thereof, and Landlord desires to consent to this assignment on the terms and conditions set forth herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, IT IS AGREED:

### **1. ASSIGNMENT**

You hereby assign, transfer and convey to us all of your right title and interest in and to the Lease; however, this assignment shall become effective only upon our exercise of the option granted to us in Paragraph 3 herein subsequent to the occurrence of any of the following events:

a. **Default of Lease.** If you shall be in default in the performance of any of the terms of the Lease, unless such default is cured within the period required in the Lease or within ten days following written demand given by us, whichever is sooner;

b. **Default of Franchise Agreement.** The occurrence of any acts which would result in immediate termination as specified in the Franchise Agreement or the continuance beyond the period or periods specified in the Franchise Agreement or any other default by you in the performance of the Franchise Agreement particularly in failing to make the payments required under the Franchise Agreement;

c. **Non-exercise of Option to Renew or Extend.** If you shall have had an option to renew or extend the Lease and shall have failed or elected not to do so within the time

specified in the Lease for such renewal or extension, after having been directed in writing by us to do so;

d. **Sale of Center.** Upon the sale of your entire right, title and interest in and to the Athletic Revolution Center conducted at the Franchise Location as a going concern.

## **2. CONSENT TO ASSIGNMENT**

Landlord hereby consents to this assignment, which consent shall remain in effect during the entire term of the Lease and any and all renewals or extensions thereof, and agrees that the Lease shall not be amended, assigned, extended or renewed, nor shall the Franchise Location be sublet by you, without our prior written consent.

## **3. EXERCISE OF OPTION BY FRANCHISOR**

We shall exercise the option granted herein and thereby make this assignment unconditional by giving written notice to you and Landlord of our exercise of said option in the manner specified in this Paragraph 3 and by thereafter delivering to Landlord, within ten business days after Landlord requests the same, a written assumption of the obligations of the Lease.

We shall have the right, concurrently with or subsequent to our exercise of the option granted herein, to assign and transfer our rights under this Agreement to a new franchisee selected by us to operate the Athletic Revolution center, with the prior written consent of Landlord, which shall not be unreasonably withheld, provided that such new franchisee shall have a credit rating and a net worth adequate for the operation of the center. In such event, such new franchisee shall obtain the assignment of the Lease and shall assume the obligations of the Lease in place and instead of us.

## **4. TERMINATION OF RIGHTS OF FRANCHISEE**

Upon the exercise of the option granted to us herein, you shall no longer be entitled to the use or occupancy of the Franchise Location, all of your prior rights in and to the lease will have been, in all respects, terminated and, by the terms of this Agreement, assigned to us or our assignee.

## **5. VACATING OF FRANCHISE LOCATION**

You shall immediately vacate the Franchise Location within the period permitted by the Lease; however, in the event that you shall fail or refuse to do so, we shall have the right to enter the Franchise Location and take possession of the Franchise Location.

## **6. INDEMNIFICATION**

You hereby agree to indemnify and hold Landlord and us harmless from and against any and all loss, costs, expenses, (including attorneys' fees), damages, claims and liabilities, however caused, resulting directly or indirectly from, or pertaining to the exercise by us and/or Landlord of the rights and remedies granted under this Agreement.

## **7. REMEDIES CUMULATIVE**

The remedies granted pursuant to this Agreement are in addition to and not in substitution of any or all other remedies available at law or in equity to us.

## 8. NOTICES

All notices, requests, demands, payments, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when sent by registered or certified United States mail, postage prepaid, addressed as follows:

FRANCHISOR: 110 Chase Way, Suite 5, Elizabethtown, KY 42701

FRANCHISEE: \_\_\_\_\_

LANDLORD: \_\_\_\_\_

Any party may change its or his address by giving notice of such change of address to the other parties. Mailed notices shall be deemed communicated within three business days from the time of mailing if mailed as provided in this Paragraph 8.

## 9. MISCELLANEOUS

a. **Injunctive Relief.** You and Landlord recognize the unique value and secondary meanings attached to the Athletic Revolution center, our trademarks, trade names, service marks, insignia and logo designs and the Franchise Location displaying same and agree that any noncompliance with the terms of this Agreement will cause irreparable damage to us and our franchisees. You and Landlord therefore agree that in the event of any noncompliance with the terms of this Agreement, we shall be entitled to apply for both permanent and temporary injunctive relief from any court of competent jurisdiction in addition to any other remedies prescribed by law including an unlawful detainer action.

b. **Further Acts.** The parties agree to execute such other documents and perform such further acts as may be necessary or desirable to carry out the purposes of this Agreement.

c. **Heirs and Successors.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, successors and assigns.

d. **Entire Agreement** This Agreement represents the entire understanding between the parties and supersedes all other negotiation, agreements, representations and covenants, oral or written, except any other agreement executed by us, Landlord and you and any other agreement between us and you. This Agreement may not be modified except by a written instrument signed by all parties. The parties intend this Agreement to be the entire integration of all of their agreements of any nature. No other agreements, representation, promises, commitments or the like, of any nature, exist between the parties, except as set forth or otherwise referenced herein. Nothing in this Agreement is intended to disclaim representations made in the Franchise Disclosure Document.

e. **Waiver.** Failure by any party to enforce any rights under this Agreement shall

not be construed as a waiver of such rights. Any waiver, including waiver of default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance.

f. **Headings.** The headings used herein are for purposes of convenience only and shall not be used in construing the provisions hereof. As used herein, the male gender shall include the female and neuter genders; the singular shall include the plural; and the plural shall include the singular.

g. **Execution by Franchisor.** This Agreement shall not be binding on us unless and until it shall have been accepted and signed by our authorized officer.

h. **Attorneys' Fees.** If any party commences an action against any other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

## 10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. Any provision of this Agreement that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of the prohibition of unenforceability without invalidating the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement at on the date first shown above.

LANDLORD:

FRANCHISEE:

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name and Title)

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name and Title)

FRANCHISOR:

Athletic Revolution International, LLC

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name and Title)

### **EXHIBIT 3 - NAMES & ADDRESSES OF EQUITY OWNERS. DIRECTORS & OFFICERS**

1. If the prospective franchisee is a sole proprietorship, list below the name and the residence address of the sole owner

---

---

---

2. If the prospective franchisee is a partnership, list below the names, residential addresses and respective percentage ownership interests in the partnership of each partner (and whether any partner is a managing partner) and submit a copy of the partnership agreement, if any, to FRANCHISOR (if more space is required, attach additional sheets hereto):

a. _____	b. _____
_____	_____
_____	_____
_____	_____
% _____	_____ %
c. _____	d. _____
_____	_____
_____	_____
_____	_____
% _____	_____ %

FRANCHISEE INITIAL HERE ( )  
( )

3. If the prospective franchisee is a corporation or limited liability company ("LLC"), list below the names, residential addresses and percentage ownership of each shareholder of the corporation or member of the LLC (more space is required, attach additional sheet hereto):

a. \_\_\_\_\_ b. \_\_\_\_\_

c. \_\_\_\_\_ d. \_\_\_\_\_

4. If the prospective franchisee is a corporation or LLC, list below the names and residential addresses of each director of the corporation or manager of the LLC, if not previously provided herein (if more space is required, attach additional sheets hereto):

a. \_\_\_\_\_ b. \_\_\_\_\_

c. \_\_\_\_\_ d. \_\_\_\_\_

FRANCHISEE INITIAL HERE ( )  
( )

5. If the prospective franchisee is a corporation or LLC with officers, list below the names, residential addresses and respective offices of each applicable officer listed below, if not previously provided herein (list other officers on additional sheets attached hereto):

a. President:

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

b. Secretary:

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

c. Vice President:

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

d. Treasurer:

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

FRANCHISEE INITIAL HERE ( )

**Exhibit 4 - Personal Guarantee of Franchisee's Obligations**

In consideration of, and as an inducement to, the execution of the above Franchise Agreement (the "**Agreement**") by Athletic Revolution International, LLC:

(1) Each of the undersigned ("**Guarantors**") hereby personally and unconditionally:

- a. Guarantees to Athletic Revolution and its affiliates and their successors and assigns for the term of the Agreement and thereafter as provided in the agreement, that \_\_\_\_\_ ("**Franchisee**") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and
- b. Agrees personally to be bound by and personally liable for the breach of each and every provision in the Agreement.

(2) Each of the undersigned waives all of the following:

- a. Acceptance and notice of acceptance by Athletic Revolution International, LLC and its affiliates of the foregoing undertakings.
- b. Notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed.
- c. Protest and notice of default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed.
- d. Any right he may have to require that an action be brought against Franchisee or any other person as a condition of liability.
- e. Any and all other notices and legal or equitable defenses to which he may be entitled.

(3) Each of the undersigned consents and agrees to all of the following:

- a. His or her direct and immediate liability under this guaranty shall be joint and several.
- b. He or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so.
- c. This liability shall not be contingent or conditioned upon pursuit by Athletic Revolution or its affiliates of any remedies against Franchisee or any other person.
- d. This liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Athletic Revolution

International, LLC or its affiliates may from time to time grant to Franchisee or to any other person; including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement.

- e. He or she will be bound by the covenant not to compete and other restrictive covenants, the confidentiality provisions, the audit provisions, and the indemnification provisions contained in the Agreement.

(4) The arbitration, injunctive relief, governing law and jurisdiction provisions contained in the Agreement will govern this Guarantee, and those provisions are incorporated into this Guarantee by this reference.

PERCENTAGE OF OWNERSHIP INTEREST IN FRANCHISE	GUARANTOR(S)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

DATE OF AGREEMENT: \_\_\_\_\_

## **EXHIBIT 5 - DE- IDENTIFICATION CHECKLIST**

### **CONFIDENTIAL**

1. Date:\_\_\_\_\_
2. Franchise Agreement Date:\_\_\_\_\_
3. Franchisees names:\_\_\_\_\_
4. Master Developers name:\_\_\_\_\_
5. Address of location:\_\_\_\_\_
6. Escrow Instructions:\_\_\_\_\_
7. First right of refusal
8. Reason for de-Identification:\_\_\_\_\_
9. Lease assignment designate new tenant, inventory and submit to Franchisor for consent
10. Date of proposed closing: \_\_\_\_\_
11. De-Identification Inspection (to occur within 30 days of closing)
12. Profit & Loss statements from club opening to present.
13. Physical inventories from club opening to present.
14. Audit compliance
15. Royalties and marketing current and paid in full to Franchisor
16. Owners names and addresses which will be assuming the location:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
17. New owners name of business which will be assuming the location.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 18.** Success System discontinue using, inventory, and return to Franchisor.
- 19.** Marketing materials since club inception discontinue using, inventory and return to Franchisor.
- 20.** Telephone numbers, websites, email addresses which reference the Franchisor location, discontinue using, and assign to Franchisor.
- 21.** Exterior and interior signage, graphics, logos, door signs, window displays, hour signs, directional signage, and any other graphics remove, destroy, and provide photographs to Franchisor.
- 23.** In club graphic materials remove, destroy, and provide photographs to Franchisor.
- 24.** Employee handbook and all employee related printed materials returned to Franchisor.
- 25.** Trade marks, trade names, copyright Information, and phrases discontinue using all information.

Note: All items that are specified to be inventoried and returned to Franchisor must be sent via FedEx overnight with verified tracking number. All items specified to be destroyed must be photographed afterwards indicating the process has been followed.

## **Exhibit 6 - Confidentiality/Non Competition Agreement**

This Nondisclosure and Noncompetition Agreement ("Agreement") is made and entered into effective the \_\_ day of \_\_\_\_\_, 20\_\_, by and between **Athletic Revolution International, LLC ("Company")**, located at 110 Chase Way, Suite 5, Elizabethtown, KY 42701 and \_\_\_\_\_ ("Associate"), who resides at \_\_\_\_\_.

### **RECITALS**

A. The Company is engaged in the business of operating, and selling franchises for the operation of, Athletic Revolution International, LLC that offer youth wellness and athletic development programs.

B. The Company has developed distinctive methods for establishing, operating and promoting their business and related licensed methods of doing business (the "**Licensed Methods**") which utilize certain confidential information, plans, methods, data, processes, marketing systems, techniques, operating procedures, advertising methods, trademarks, proprietary marks and information and know-how of the Company ("**Confidential Information**"); which Confidential Information may be further developed from time to time by the Company.

C. The Company and its franchisees have established substantial goodwill and an excellent reputation with respect to the quality of services available, which goodwill and reputation have been and will continue to be of major benefit to the Company.

D. Associate is or will become involved with an Athletic Revolution International, LLC, Business in the capacity of an officer, director, limited liability manager or member, partner, shareholder, employee, representative, or as an immediate family member of a franchisee, and will or may have access to certain Confidential Information.

E. Associate and the Company have reached an understanding with regard to nondisclosure by Associate of Confidential Information and with respect to noncompetition by Associate with the Company.

**NOW THEREFORE**, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Associate and the Company, intending legally to be bound, agree as follows:

### **AGREEMENT**

1. **Confidential Information.** Associate acknowledges that much of the operations, marketing, advertising and related information and materials, and procedures that are developed and utilized in connection with the operation of a Athletic Revolution International, LLC Businesses, are the Company's Confidential Information. The Confidential Information is unique, exclusive property and a trade

secret of the Company. Associate acknowledges that any unauthorized disclosure or use of the Confidential Information would be wrongful and would cause irreparable injury and harm to the Company. Associate further acknowledges that the Company has expended a great amount of effort and money in obtaining and developing the Confidential Information, that the Company has taken numerous precautions to guard the secrecy of the Confidential Information, and that it would be very costly for competitors to acquire or duplicate the Confidential Information.

**2. Success System as Trade Secret.** Associate understands that Confidential Information constitutes trade secrets of the Company. Confidential Information is deemed to include, without limitation, any and all information contained in the Company's Success System, which may be provided as one or more separate manuals, or written instructional guides, as they are changed or supplemented from time to time, customer lists, the Licensed Methods and any information of whatever nature which gives the Company an opportunity to obtain an advantage over its competitors that do not have access to, know, or use, the confidential written materials or information.

**3. Nondisclosure of Confidential Information.** Associate shall not at any time (1) publish, disclose, divulge or in any manner communicate, any of the Confidential Information to any person, firm, corporation, association, partnership or any other entity whatsoever; or (2) use, directly or indirectly, the Confidential Information for his or her own benefit, or for the benefit of any person, firm, corporation or other entity; other than to or for the use of the Company or the Company's franchise Business with which Associate is associated.

**4. Noncompetition Covenant.**

a. Associate covenants and agrees that (i) during the term of his or her association with the Company, a franchise of the Company or and affiliate entity, and (ii) for a period of eighteen (18) months after the end of his or her association with any of those entities, neither Associate nor any member of his or her immediate family, within a twenty-five (25) mile radius of the Licensed Location (as defined in the Company's Franchise Agreement) or any other Company franchise location shall:

1. have any direct or indirect interest as a disclosed or beneficial owner in a "Competitive Business," (defined below);

2. perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a "Competitive Business"; or

3. divert or attempt to divert any business related to, or any customer or account of, any Company's or its franchisees or affiliates' (if any) businesses by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of any of the Company's, its franchisees or its or affiliates' (if any) businesses to any "Competitive Business" by any direct inducement or otherwise.

b. The term "Competitive Business" as used in this Agreement means any business operating, or granting franchises or licenses to others to operate a business that offers youth wellness and athletic development. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Associate from owning securities in a Competitive Business if the securities are listed on a stock exchange or traded on the over-the-counter market and represent 5% or less of that class of securities issued and outstanding.

c. Associate expressly acknowledges that he or she possesses skills and abilities of a general nature and has other opportunities for exploiting those skills. Consequently, enforcement of the covenants in this paragraph will not deprive Associate of his or her ability to earn a living.

d. If a court of competent jurisdiction determines that restrictions in the preceding paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

**5. Injunction.** Associate acknowledges and agrees that in the event of any breach or threatened breach of this Agreement by Associate, the Company shall be authorized and entitled to obtain, from any court of competent jurisdiction, preliminary and permanent injunctive relief, as well as an equitable accounting of all profits or benefits arising out of any such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled.

**6. Effect of Waiver.** The waiver by Associate or the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

**7. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Associate and the Company and their respective heirs, executors, representatives, successors and assigns.

**8. Entire Agreement.** This instrument contains the entire agreement of Associate and the Company relating to the matters set forth herein. It may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

**9. Governing Law.** This instrument shall be governed by and construed under the laws of the State of Kentucky.

**10. Jurisdiction and Venue.** In the event of a breach or threatened breach by Associate of this Agreement, Associate hereby irrevocably submits to the jurisdiction of the state and federal courts of Kentucky, and irrevocably agrees that venue for any action or proceeding shall be in the state and federal courts located in Hardin County, Kentucky. Both parties waive any objection to the jurisdiction of these courts or to venue in Hardin County, Kentucky. Notwithstanding the foregoing, in the event that the laws of the state where the Associate resides prohibit the aforesaid designation of

jurisdiction and venue, then the other state's laws shall control.

**11. Severability.** If any provision of this Agreement is held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason by any court of competent jurisdiction, government authority or otherwise, that holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect.

**12. Costs of Enforcement.** In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including without limitation such costs, expenses and fees on any appeals), and if the successful party recovers judgment in any such action or proceeding, the costs, expenses and attorneys' fees shall be included as part of such judgment.

**ATHLETIC REVOLUTION INTERNATIONAL, LLC**

**"ASSOCIATE"**

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

\_\_\_\_\_

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

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

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

Business Name and Location:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Associate's Capacity with Business:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Exhibit 7 - General Release - Renewal**

This General Release entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between Athletic Revolution International, LLC, (Franchisor) and \_\_\_\_\_ (Franchisee) .

Recitals

The parties entered into a franchise agreement dated \_\_\_\_\_.

Franchisee has requested Franchisor to renew the franchise. As a conditional of the renewal, the franchisor requires a general release of any claims the Franchisee has or may have relating to their business relationship.

Now therefore, in consideration of the renewal of the franchise agreement and other consideration, Franchisee agrees to remise, release, acquit, satisfy, and forever discharge the Franchisor, of and from all manner of action(s), cause(s) of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Franchisee ever had, now has, or which any, affiliate, personal representative, successor, heir or assign of Franchisee, hereafter can, shall or may have, against said Franchisor, by reason of any matter, cause or thing whatsoever, from the beginning of time to the date of this instrument.

IN WITNESS WHEREOF, Franchisee has signed this agreement on the date indicated above.

\_\_\_\_\_  
Franchisee

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

\_\_\_\_\_  
Print Name

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged by me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
by \_\_\_\_\_ who is/are  
personally known by me or who has/have produced: \_\_\_\_\_ as  
identification and who did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public

State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

This instrument was prepared by: \_\_\_\_\_

**Exhibit 8 - General Release - Assignment**

This General Release entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between Athletic Revolution International, LLC, (Franchisor) and \_\_\_\_\_ (Franchisee) .

**Recitals**

The parties entered into a franchise agreement dated \_\_\_\_\_.

Franchisee has requested Franchisor to allow the assignment of its franchise agreement. As a conditional of the assignment, the franchisor requires a general release of any claims the Franchisee has or may have related to their business relationship.

Now therefore, in consideration of the permission of the Franchisor for the Franchisee to assign its Franchise agreement and other good and valuable consideration, Franchisee agrees to remise, release, acquit, satisfy, and forever discharge the Franchisor, of and from all manner of action(s), cause(s) of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which Franchisee ever had, now has, or which any, affiliate, personal representative, successor, heir or assign of Franchisee, hereafter can, shall or may have, against said Franchisor, by reason of any matter, cause or thing whatsoever, from the beginning of time to the date of this instrument.

IN WITNESS WHEREOF, Franchisee has signed this agreement on the date indicated above.

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

\_\_\_\_\_  
Print Name

State of \_\_\_\_\_)  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged by me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
by \_\_\_\_\_ who is/are personally known by me or  
who has/have produced: \_\_\_\_\_ as identification and who did  
not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public

State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

This instrument was prepared by: \_\_\_\_\_

**Exhibit 9 – Financing Agreement- Unsecured Promissory Note**

**UNSECURED PROMISSORY NOTE  
(AMORTIZED PAYMENTS)**

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

This promissory note (the “Note”) is made and effective the \_\_\_\_ day of \_\_\_\_\_, 2011, by and between \_\_\_\_\_, an [individual] [corporation] [limited liability company] (the “Borrower”) with [his/her/their/its] address located at \_\_\_\_\_, and Athletic Revolution International, LLC, a limited liability company (the “Payee”) with its principal business address located at 110 Chase Way, Suite 5, Elizabethtown, Kentucky 42701.

**1. Promise of Payment.** For value received, the Borrower promises to pay to the Payee, at 110 Chase Way, Suite 5, Elizabethtown, KY 42701, or at such other place as the Payee may designate in writing from time to time, the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), together with interest accruing on the unpaid balance thereof until due. The interest rate on this Note shall be an annual rate of interest equal to 10% percent, or the maximum amount allowed by applicable law, whichever is less. Interest shall be computed on the basis of a year of 365 days and the actual number of days elapsed.

**2. Monthly Installment Payments.** Borrower will pay said principal and interest to the Payee in equal installment payments of \_\_\_\_\_ (\$\_\_\_\_\_), on the 5th day of each month, until the principal and interest have been paid in full. Payments shall be to the Payee’s address as designated above. All payments will be applied first to interest and the remainder to principal, and interest shall cease to accrue on any principal so paid. Acceptance by the Payee of any payment differing from the designated installment payment listed above does not relieve the Borrower of the obligation to honor the requirements of this Note.

**3. Initial Installment Date.** The first payment under this Note is due and payable on the 5th day of \_\_\_\_\_, 201\_. A like installment shall be due on the same day of each succeeding month thereafter.

**4. Prepayment.** The Borrower may prepay this Note, in whole or in part, at any time before maturity without penalty or premium.

**5. Events of Default.** The Borrower will be deemed to be in default under this Note on the occurrence of any of the following events (each an “Event of Default”): (i) on the Borrower’s failure to make any payment when due under this Note, which failure continues for a period of ten (10) days after such due date; (ii) on the filing regarding the Borrower of any voluntary or involuntary petition for relief under the United States Bankruptcy Code or the initiation of any proceeding under federal law or law of any other jurisdiction for the general relief of debtors; or (iii) on the execution by the Borrower of an assignment for the benefit of creditors or the appointment of a receiver, custodian, trustee, or similar party to take possession of the Borrower’s assets or property.

6. **Acceleration; Remedies on Default.** On the occurrence of any Event of Default, at the option of the Payee, all principal and other amounts owed under this Note shall become immediately due and payable without notice or demand by the Payee, and the Payee, in addition to its rights and remedies under this Note, may pursue any legal or equitable remedies that are available to it.

7. **Waiver of Presentment; Demand.** The Borrower hereby waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of protest and nonpayment, notice of costs, expenses or losses and interest thereon, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under this Note, including (to the extent permitted by law) waiving the pleading of any statute of limitations as a defense to any demand against the undersigned.

8. **Successors and Assigns.** All references in this Note to the Borrower and the Payee shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon and shall inure to the benefit of the successors and assigns of the Borrower and the Payee.

9. **Notice.** Any notice or other communication provided for herein or given hereunder to a party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective party as first written above.

10. **Governing Law.** This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of Kentucky, without regards to its conflict-of-law provisions. The Borrower hereby irrevocably consents to the jurisdiction of the courts of Hardin County, KY with respect to any matter arising under this Note, and further irrevocably consents to service of process by hand delivery to the address listed above for the Borrower.

11. **Entire Agreement.** This Note constitutes the final, complete, and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the parties.

12. **No Implied Waiver.** The Payee's failure to exercise any right or remedy provided in this Note shall not be construed as a waiver of any future exercise of that right or exercise of any other right or remedy to which the Payee may be entitled.

13. **Collection Costs and Attorneys' Fees.** The Borrower agrees to pay any and all costs incurred by the Payee in collecting sums payable under this Note, including reasonable attorneys' fees and court costs in addition to other amounts due, without protest of any kind.

14. **Severability.** If one or more of the provisions of this Note shall be declared or held to be invalid, illegal, or unenforceable in any respect in any jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and any such declaration or holding shall not invalidate or render unenforceable such provision in any other jurisdiction.

**15. Headings.** Headings used in this Note are provided for convenience only and shall not be used to construe meaning or intent.

**IN WITNESS WHEREOF**, the parties have executed this Note as of the date first above written.

**PAYEE**

**ATHLETIC REVOLUTION INTERNATIONAL, LLC**

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

Name: Nick Berry

Title: VP of Operations

**BORROWER**

\_\_\_\_\_

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

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

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

**Exhibit 10 – Supplemental Addenda**

**ADDENDUM  
RELATING TO  
Athletic Revolution Elite Franchise  
and  
Athletic Revolution Independent Coach Franchise  
  
FRANCHISE AGREEMENT**

THIS ADDENDUM (Addendum) is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by Athletic Revolution International, LLC, located at 110 Chase Way, Suite 5, Elizabethtown, KY, 42701 (the “Franchisor”), and \_\_\_\_\_, located at \_\_\_\_\_ (the “Franchisee”).

**RECITALS**

**WHEREAS**, Franchisor and Franchisee entered into a Franchise (or License) Agreement on \_\_\_\_\_, 2011, (the “Franchise Agreement”) whereby the Franchisee agreed to operate and maintain an Athletic Revolution Elite Franchise/Athletic Revolution Independent Coach Franchise located at \_\_\_\_\_ designated by Franchisor as Unit # \_\_\_\_\_ (“Unit”).

**WHEREAS**, Franchisee has obtained from a lender a loan (Loan) in which funding is provided with the assistance of the United States Small Business Administration (“SBA”) and therefore Franchisee and Franchisor are subject to, and must comply with, the SBA’s Standard Operating Procedures (“SOP’s”) as a condition to Franchisee receiving the Loan.

**WHEREAS**, The Franchise Agreement may contain certain terms and conditions which are contrary to, or in violation of, the SOP’s and therefore such terms and conditions shall be superseded by, and/or replaced with this Addendum to render the Franchise Agreement in full compliance with the SBA program and its SOP’s.

**WHEREAS**, SBA requires the execution of this Addendum as a condition for obtaining the SBA assisted financing.

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

- A. As of the date of this Addendum, The Franchise Agreement is in full force and effect, and Franchisor has sent no official notice of default to Franchisee under the Franchise Agreement that remains uncured on the date hereof.
- B. If the Franchisor must operate the business under Section 9.02(a) of the Franchise Agreement, Franchisor may operate the business for a period of no more than sixty (60) days, with renewable periods of up to one (1) year, during which time the Franchisor will periodically discuss the status with the Franchisee or its heirs. Upon the expiration of the sixty (60) days and any and all renewal periods, Franchisor must cease its management of the franchise and appoint a successor.

- C. If the Franchise Agreement is terminated and the Franchised Site or its contents are to be sold under Sections 10.01(d) and 12.02(b) of the Franchise Agreement and the parties are unable to agree as to a purchase price and terms, the fair market value of such premises and property shall be determined by three Appraisers chosen in the following manner. Franchisee shall select one and Franchisor shall select one, and the two appraisers so chosen shall select a third appraiser. The decision of the majority of the appraisers so chosen shall be conclusive. The cost of the third appraiser shall be shared equally by the parties.
- D. Under Section 9.03 of the franchise agreement, the franchisor will not become a partial owner of the business.
- E. This Addendum automatically terminates on the earliest to occur of the following: (i) a Termination occurs under the Franchise Agreement; (ii) the Loan is paid; or (iii) SBA no longer has any interest in the Loan.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum as of the day and year first above written.

**FRANCHISOR:**

**FRANCHISEE:**

**Athletic Revolution International, LLC**

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

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

\_\_\_\_\_  
Print Name: Richard Nicholas Berry  
Title: Vice President of Operations

\_\_\_\_\_  
Print Name:  
Title:

**ADDENDUM  
RELATING TO  
Athletic Revolution International, LLC**

**FRANCHISE AGREEMENT**

THIS ADDENDUM (Addendum) is made and entered into on the \_\_\_\_\_ of \_\_\_\_\_, 2011, by Athletic Revolution International, LLC, located at 110 Chase Way, Suite 5, Elizabethtown, KY, 42701 (the "Franchisor"), and \_\_\_\_\_, located at \_\_\_\_\_ (the "Franchisee").

**RECITALS**

**WHEREAS**, Franchisor and Franchisee entered into a Franchise Agreement on \_\_\_\_\_, 2011, (the "Franchise Agreement") whereby the Franchisee agreed to operate and maintain an Athletic Revolution Elite Franchise or Independent Coach Franchise located at \_\_\_\_\_ designated by Franchisor as Unit # \_\_\_\_\_ (the "Unit").

**WHEREAS**, prior to entering into the Franchise Agreement, Franchisee had been operating a Fitness Revolution Franchise offering similar services and following a similar business model as the Athletic Revolution Franchise; and

**WHEREAS**, Franchisor's principals are the owners and operators of the Fitness Revolution franchise business, and therefore manage and oversee both the Athletic Revolution franchisees and the Fitness Revolution franchisees;

**WHEREAS**, the Franchisor's business model for the Athletic Revolution is similar to the Fitness Revolution business model in areas including but not limited to, training, resources, initial and on-going fees, pre-opening obligations, and advertising.

**WHEREAS**, Franchisor desires to extend the Athletic Revolution Elite Franchise and/or Independent Coach Franchise opportunity to existing Fitness Revolution franchisees because those franchisees are in a financial and business position to succeed as they are already familiar with the Franchisor's business model, have knowledge of the fitness industry, and are currently operating an existing franchise business and therefore have access to resources; and

**WHEREAS**, Franchisor desires to discount the initial franchise fee ("Initial Franchise Fee") of the Athletic Revolution franchise unit as an inducement for Franchisee to acquire and purchase an additional franchise business opportunity from Franchisor.

**WHEREAS**, Franchisee will operate the Unit and is therefore subject to the terms and conditions of the Franchise Agreement subject to the exceptions set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties hereby acknowledge the parties agree as follows:

- A. As of the date of this Addendum, The Franchise Agreement is in full force and effect, and Franchisor has sent no official notice of default to Franchisee under the Franchise Agreement that remains uncured on the date hereof.

### **Discounted Initial Franchise Fee**

- B. Section 4.01 of the Franchise Agreement in its entirety shall not apply to the Franchisee. Both the initial franchise fee ("Initial Fee") for the Elite Franchise (the "Initial Elite Fee") and the Initial Fee for the Independent Coach Franchise (the "Initial Independent Coach Fee") shall each be discounted eighty percent (80%) and shall be collectively referred to as the "Discounted Initial Franchise Fee." Franchisee shall pay the Discounted Initial Franchise Fee to Franchisor upon execution of the Franchise Agreement unless the Initial Fee is otherwise deferred under state law (see State Addenda).
- C. This Addendum automatically terminates upon Termination in accordance with the terms and conditions of the Franchise Agreement.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum as of the day and year first above written.

**FRANCHISOR:**  
**Athletic Revolution International, LLC**

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

\_\_\_\_\_  
Print Name: Richard Nicholas Berry  
Title: Vice President of Operations

**FRANCHISEE:**

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

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

## **Exhibit 11 – Licensing Agreements**

**ATHLETIC REVOLUTION INTERNATIONAL, LLC  
TRADEMARK LICENSE AGREEMENT**

This Trademark License Agreement ("Agreement") is entered into effective as of this 15th day of March 2009, ("Effective Date") by and between AR iProperties, LLC, a Kentucky limited liability company with its address being PO Box 1539, Elizabethtown, Kentucky, 42702, hereinafter referred to as ("Licensor") and Athletic Revolution International, LLC, a Kentucky limited liability company having a principal address of 110 Chase Way, Suite 5, Elizabethtown, Kentucky, 42701, hereinafter referred to as ("Licensee"). Licensor and Licensee shall be referred to individually as "Party," and collectively as "Parties," as context requires.

**RECITALS**

**WHEREAS**, Licensor currently claims the ownership of and has filed for the protection of the trademark "ATHLETIC REVOLUTION" with the United States Patent and Trademark Office under serial number 77641829; and

**WHEREAS**, Licensor currently claims the ownership of and has filed for the protection of the logo for the ATHLETIC REVOLUTION trademark with the United States Patent and Trademark Office under serial number 77690095; and

**WHEREAS**, licensee owns and operates Athletic Revolution International, LLC, a company which offers fitness training and education for adults through the use of seminars, classes, coaching, training, and franchises (the "Athletic Revolution Franchise") in order to promote optimal weight, physical fitness, and athletic performance (together the "Athletic Revolution Business"); and

**WHEREAS**, in order for Licensee to acquire and maintain the branding necessary to offer and operate the Business, Licensee wishes to obtain an exclusive, royalty free license and right to sublicense and use the trademark for all of its branding and desires to continue the use of the logo for the ATHLETIC REVOLUTION trademark in connection with the Athletic Revolution Business, under the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the Parties agree as follows:

**1. Definitions.**

**1.1. "Licensed Mark"** means the logo for the Trademark ATHLETIC REVOLUTION and all variants and derivatives thereof as used in connection with the Athletic Revolution Business.

**1.2. "Licensee's Businesses"** means any products, services, advertising, blogs, websites, facilities, signage, and franchise offering documents, including franchise operations by Licensee or its franchisees.

**2. License Grant.** Licensor grants Licensee a perpetual, exclusive, non-transferable, worldwide, royalty free license to use and display the Licensed Marks, in connection with the advertising and operation of Licensee's Business ("Trademark License"). Licensee hereby acknowledges and agrees that (i) except for the license rights expressly granted herein, Licensee has no rights, title or interest in or to the Licensed Marks, and (ii) all goodwill arising out of the use of the Licensed Marks by Licensee shall inure to the benefit of Licensor.

**2.1. Duty to Protect.** Licensee hereby agrees to do all things reasonably necessary to protect the Licensed Mark, including but not limited to filing any and all documents with and state agencies, maintain the integrity of the Licensed Mark by filing oppositions and cease and desist letters to actual or potential trademark infringers, and providing payment of all fees and costs necessary to protect the Licensed Mark.

**2.2. Variation.** Licensee will use the Licensed Mark exactly as specified in Section 1.1 above, in accordance with the orientation, legends and markings that are reasonably specified by Licensor from time to time. In no event shall Licensee use or display (or allow others to use or display) the Licensed Mark, or any mark confusingly similar thereto, or any service mark, trademark trade name, brand or logo containing the words "ATHLETIC REVOLUTION," except as expressly authorized in this Agreement.

**2.3. Quality Standards.** Licensee shall adhere to all operating, merchandising and advertising policies, standards and requirements, and such other quality standards that are established by Licensor for Licensee's use of the Licensed Mark. Notwithstanding the foregoing, Licensor shall have the right to review Licensee's use of the Licensed Mark from time to time and upon request Licensee shall provide complete samples of such usage.

**2.4. Supervision/Control.** Licensee shall supervise, manage and control its use of the Licensed Mark to ensure compliance with this Agreement and preserve the value of the Licensed Mark and the goodwill associated therewith. Licensee shall be solely responsible for all costs associated with such supervision and control. Licensee shall establish and implement appropriate operating methods and procedures to prevent misuse or unauthorized use of the Licensed Mark and shall provide a copy of same to Licensor upon request.

**2.5. Covenant and Representations of Licensee.** Except as unambiguously permitted herein, and as conditions of the Trademark License, Licensee represents, warrants and agrees to each of the following:

**2.5.1** Licensee shall conduct the Licensee Business in a manner that reflects favorably at all times on the reputation of Licensor, and the goodwill associated with the Licensed Mark;

**2.5.2** Licensee shall not engage in any deceptive, misleading or unethical practices, or any other business practices that are, or might be, detrimental to Licensor, the goodwill associated with the Licensed Mark, or the public, including, without limitation, any disparagement of Licensor.

**2.5.3** The Licensee Web Site shall not contain any content or information that infringes on the intellectual property or other proprietary rights of any third party, or that is disparaging, obscene, defamatory, libelous, slanderous or discriminatory, or that is materially false or misleading, or that refers in an offensive manner to the gender, race or ethnicity of any person or group.

**2.5.4** Licensee shall not use any trademark, word, symbol, letter, design or layout in combination with the Licensed Mark that violates any third party copyright, trademark, service mark, trade dress or other intellectual property right.

**2.5.5** Licensee shall not make any reference to Licensee's relationship with Licensor to any vendor, distributor or other business partner of Licensor in an effort to obtain preferential treatment or gain favorable treatment or other business advantages from such vendors, distributors or business partners without previously coordinating with Licensor's senior management. In addition, Licensee will not otherwise conduct itself in a way that would adversely affect Licensor's business relationships with any vendors, distributors or other business partners.

**3. Proprietary Rights and Ownership of the Licensed Mark.** Subject to the license herein granted to Licensee, as between the Parties, Licensor is the sole owner of all right, title and interest in the Licensed Trademark and all other intellectual property rights associated therewith ("Proprietary Rights"). Licensee agrees not to take any action challenging or opposing, on any grounds whatsoever, the ownership by Licensor of the Licensed Trademark.

**3.1. Validity of the Licensed Mark.** Licensee hereby acknowledges the validity of Licensor's right in the Licensed Mark. Licensee shall not, during or after the term of this Agreement, directly or indirectly take any action, or aid or assist any other party to take any action which would infringe upon, harm or contest the validity of Licensor's right, title or interest in any Licensed Mark.

**3.2. Cooperation.** Licensee agrees to perform, during and after the term of this Agreement, all reasonable acts deemed necessary or desirable by Licensor to permit and assist it in evidencing, perfecting, obtaining, maintaining, defending and enforcing its Proprietary Rights in the Licensed Mark. Such acts may include, but are not limited to, execution of assignments and documents acknowledging Licensor's ownership and rights, and cooperation with Licensor in the prosecution or defense of any infringement action.

#### **4. Disclaimer and Limitation of Liability**

**4.1. Disclaimer of Warranties.** THE LICENSED MARK IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE LICENSED MARK IS SUITABLE FOR LICENSEE'S BUSINESS. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR IS NOT RESPONSIBLE FOR AND WILL HAVE NO LIABILITY FOR ANY SERVICES USED BY LICENSEE IN CONNECTION WITH THE LICENSED MARK.

#### **5. Infringement, Indemnification and Insurance**

**5.1. Infringement.** Licensee shall promptly notify Licensor in the event that it knows or has reason to believe that the Licensed Mark is being infringed, either directly or indirectly, by any third party. In said event, Licensor shall have the first right, but not the obligation, to take action against such infringement including, without limitation, the prosecution of a lawsuit. Should Licensor elect not to take any action against the infringement within fifteen (15) days of written notice thereof by Licensee, then Licensee may take such action as it deems appropriate at its sole cost and expense. Both Licensee and Licensor will provide such non-financial assistance as reasonably requested by the other in prosecuting the infringement including, but not limited to, appearing as a nominal plaintiff. Licensee shall reimburse Licensor for costs and expenses incurred in providing such assistance within a reasonable period of time. The Parties agree that all recoveries and awards that may be obtained as a result of any such action shall be applied first to reimburse the costs (including attorney's fees and expenses) of taking such action against the infringing party. In the event that Licensee has borne the costs and expenses of taking action against infringement, one-half of the remainder shall be paid to Licensee to repay its damages and the other one-half shall be paid to Licensor. In the event that Licensor has borne the costs and expenses of taking action against infringement, the entire remainder shall be paid to Licensee.

**5.2. Mutual Waiver of Consequential Damages.** EXCEPT FOR LICENSEE'S OBLIGATIONS FOR INFRINGEMENT UNDER SECTION 5.1 ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF INCOME, LOSS OF PROFITS OR LOSS OF DATA, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

#### **6. Term and Termination.**

**6.1. Term.** The term of this Agreement will commence on the Effective Date and shall remain in full force and effect for perpetuity, unless earlier terminated in accordance with this Section 6.

## **6.2. Termination.**

**6.2.1 Termination for Cause.** In the event that Licensee materially or repeatedly defaults in the performance of any of its obligations, covenants or representations hereunder and fails to cure such default within thirty (30) days after being given written notice specifying the default, then Licensor may terminate this Agreement by providing written notice of termination. Both Parties agree that any breach of the covenants and representations in Sections 2.4.1 through 2.4.6 shall only trigger Licensor's ability to terminate the Trademark License if Licensee is notified of any breach of any such covenant or representation and fails to cure such breach within thirty (30) days. Notwithstanding the foregoing, if any default is capable of cure but cannot reasonably be cured within such thirty (30) day period, as the case may be, then the Agreement or the Trademark License, as the case may be, shall not terminate if the defaulting Party commences corrective action after the demand for cure is made within such thirty (30) day period, as the case may be, and diligently prosecutes such corrective action to completion within a reasonable time.

**6.2.2 Automatic Termination.** This Agreement shall automatically terminate if Licensee ceases to conduct and maintain the Athletic Revolution Business or becomes insolvent, makes an assignment for the benefit of its creditors, or in the event of the institution under any applicable law of any voluntary or involuntary insolvency proceedings against either Party (including bankruptcy, consent to a receivership, adoption of an arrangement with creditors, dissolution or liquidation, or similar action), which proceedings, consent, adoption or arrangement is not vacated within ten (10) days after inception.

## **6.3. Effect of termination.**

**6.3.1 Expiration of License.** Upon termination of this Agreement for any reason, the Trademark License shall terminate within thirty (30) days, and Licensee shall within the thirty (30) day period (i) provide written notification to its franchisees, (ii) discontinue all use of the Licensed Athletic Revolution trademark logo, (iii) remove the Licensed Athletic Revolution trademark logo from the Licensee's Web Site(s) or any of its franchisees' Web sites, (iv) modify any and all identification of the Athletic Revolution Business with, or reference to the Licensed Mark, and refrain from making any subsequent representation, advertisement or published statement or product sales using or in reference to the Licensed Mark, or the business previously conducted using the Licensed Mark, and (v) take such action as shall be necessary to change any corporate name, assumed name or equivalent registration which mentions or refers to the Licensed Mark, or any mark similar thereto.

**6.3.2 Cooperation and Title.** Licensee shall take all necessary action to re-vest in or transfer to Licensor all rights in the Licensed Mark and granted to Licensee by this Agreement, or

otherwise acquired by Licensee. Licensee shall execute such documents and take such action as Licensor may deem reasonably necessary or desirable to evidence the fact that Licensee no longer has the right to use the Licensed Mark.

## **7. General Provisions.**

**7.1. Governing Law.** This Agreement will be governed and construed solely in accordance with the laws of the State of Kentucky as applied to transactions taking place wholly within Kentucky between Kentucky residents. The state and federal courts located in Hardin County, Kentucky shall have exclusive jurisdiction for any claim arising from, or related to, this Agreement.

**7.2. Severability.** If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, such provision or provisions shall be construed by limiting and reducing it or them, so as to be enforceable to the fullest extent compatible with then current applicable.

**7.3. No Assignment.** Neither Party may assign this Agreement without both Parties written consent, and any attempted assignment without such consent shall be void and of no effect.

**7.4. Waiver.** No waiver by a Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by a Party of any right under this Agreement shall be construed as a waiver of any other right. A Party shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

**7.5. Construction of Agreement.** The numbers, titles and subtitles of the various sections of this Agreement are inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants and conditions of this Agreement. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any Party.

It is the intention of the Parties hereto that, if any provision of this Agreement is capable of two constructions, one which would render the provision valid, then the provision shall have the meaning which renders it valid.

**7.6. Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject

matter hereof and supersedes and merges all prior discussions between the Parties. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the Party to be charged.

**7.7. Notices.** All notices and other communications provided for herein must be in writing and shall be sufficiently given if delivered in person or mailed by certified or other receipted mail, to Licensor or Licensee, at their respective addresses set forth below. Either Party, by such notice, may change the address to which notices shall be sent. Notices delivered in person shall be deemed given when delivered and mailed notices shall be deemed given five (5) business days after being mailed.

**IF TO LICENSOR:**

AR iProperties, LLC  
PO Box 1539  
Elizabethtown, Kentucky 42702

**IF TO LICENSEE:**

Athletic Revolution International, LLC  
110 Chase Way, Suite 5  
Elizabethtown, Kentucky 42701

**7.8. Legal Fees.** If any dispute arises between the Parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing Party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

**7.9. Force Majeur.** Licensor and Licensee shall be excused from performing any obligation or undertaking provided for in this Agreement as long as such performance is prevented, delayed or hindered by acts of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, laws, orders of government, or any other cause whether similar or dissimilar to the foregoing, not within the reasonable control of the Party prevented, delayed, or hindered thereby.

**IN WITNESS WHEREOF,** each of the Parties have caused this Agreement to be executed by their duly authorized representative.

**Licensor:**

**AR iProperties, LLC**

By: 

Richard N. Berry, Member/Manager

**Licensee:**

**Athletic Revolution International, LLC**

By: 

Richard N. Berry, Vice President of Operations

**ATHLETIC REVOLUTION INTERNATIONAL, LLC  
TRADEMARK LICENSE AGREEMENT**

This Trademark License Agreement ("Agreement") is entered into effective as of this 10th day of January 2009, ("Effective Date") by and between AR iProperties, LLC, a Kentucky limited liability company with its address being PO Box 1539, Elizabethtown, Kentucky, 42702, hereinafter referred to as ("Licensor") and Athletic Revolution International, LLC, a Kentucky limited liability company having a principal address of 110 Chase Way, Suite 5, Elizabethtown, Kentucky, 42701, hereinafter referred to as ("Licensee"). Licensor and Licensee shall be referred to individually as "Party," and collectively as "Parties," as context requires.

**RECITALS**

**WHEREAS**, Licensor currently claims the ownership of and has filed for the protection of the trademark "ATHLETIC REVOLUTION" with the United States Patent and Trademark Office under serial number 77641829; and

**WHEREAS**, licensee owns and operates Athletic Revolution International, LLC, a company which offers fitness training and education for adults through the use of seminars, classes, coaching, training, and franchises (the "Athletic Revolution Franchise") in order to promote optimal weight, physical fitness, and athletic performance (together the "Athletic Revolution Business"); and

**WHEREAS**, in order for Licensee to acquire and maintain the branding necessary to offer and operate the Business, Licensee wishes to obtain an exclusive, royalty free license and right to sublicense and use the trademark for all of its branding and desires to continue the use of the ATHLETIC REVOLUTION trademark in connection with the Athletic Revolution Business, under the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the Parties agree as follows:

**1. Definitions.**

**1.1. "Licensed Mark"** means the Trademark ATHLETIC REVOLUTION and all variants and derivatives thereof as used in connection with the Athletic Revolution Business.

**1.2. "Licensee's Businesses"** means any products, services, advertising, blogs, websites, facilities, signage, and franchise offering documents, including franchise operations by Licensee or its franchisees.

**2. License Grant.** Licensor grants Licensee a perpetual, exclusive, non-transferable, worldwide, royalty free license to use and display the Licensed Marks, in connection with the advertising and operation of Licensee's Business ("Trademark License"). Licensee hereby acknowledges and agrees that (i) except for the

license rights expressly granted herein, Licensee has no rights, title or interest in or to the Licensed Marks, and (ii) all goodwill arising out of the use of the Licensed Marks by Licensee shall inure to the benefit of Licensor.

**2.1. Duty to Protect.** Licensee hereby agrees to do all things reasonably necessary to protect the Licensed Mark, including but not limited to filing any and all documents with and state agencies, maintain the integrity of the Licensed Mark by filing oppositions and cease and desist letters to actual or potential trademark infringers, and providing payment of all fees and costs necessary to protect the Licensed Mark.

**2.2. Variation.** Licensee will use the Licensed Mark exactly as specified in Section 1.1 above, in accordance with the orientation, legends and markings that are reasonably specified by Licensor from time to time. In no event shall Licensee use or display (or allow others to use or display) the Licensed Mark, or any mark confusingly similar thereto, or any service mark, trademark trade name, brand or logo containing the words "ATHLETIC REVOLUTION," except as expressly authorized in this Agreement.

**2.3. Quality Standards.** Licensee shall adhere to all operating, merchandising and advertising policies, standards and requirements, and such other quality standards that are established by Licensor for Licensee's use of the Licensed Mark. Notwithstanding the foregoing, Licensor shall have the right to review Licensee's use of the Licensed Mark from time to time and upon request Licensee shall provide complete samples of such usage.

**2.4. Supervision/Control.** Licensee shall supervise, manage and control its use of the Licensed Mark to ensure compliance with this Agreement and preserve the value of the Licensed Mark and the goodwill associated therewith. Licensee shall be solely responsible for all costs associated with such supervision and control. Licensee shall establish and implement appropriate operating methods and procedures to prevent misuse or unauthorized use of the Licensed Mark and shall provide a copy of same to Licensor upon request.

**2.5. Covenant and Representations of Licensee.** Except as unambiguously permitted herein, and as conditions of the Trademark License, Licensee represents, warrants and agrees to each of the following:

**2.5.1** Licensee shall conduct the Licensee Business in a manner that reflects favorably at all times on the reputation of Licensor, and the goodwill associated with the Licensed Mark;

**2.5.2** Licensee shall not engage in any deceptive, misleading or unethical practices, or any other business practices that are, or might be, detrimental to Licensor, the goodwill associated with the Licensed Mark, or the public, including, without limitation, any disparagement of Licensor.

**2.5.3** The Licensee Web Site shall not contain any content or information that infringes on the intellectual property or other proprietary rights of any third party, or that is disparaging, obscene, defamatory, libelous, slanderous or discriminatory, or that is materially false or misleading, or that refers in an offensive manner to the gender, race or ethnicity of any person or group.

**2.5.4** Licensee shall not use any trademark, word, symbol, letter, design or layout in combination with the Licensed Mark that violates any third party copyright, trademark, service mark, trade dress or other intellectual property right.

**2.5.5** Licensee shall not make any reference to Licensee's relationship with Licensor to any vendor, distributor or other business partner of Licensor in an effort to obtain preferential treatment or gain favorable treatment or other business advantages from such vendors, distributors or business partners without previously coordinating with Licensor's senior management. In addition, Licensee will not otherwise conduct itself in a way that would adversely affect Licensor's business relationships with any vendors, distributors or other business partners.

**3. Proprietary Rights and Ownership of the Licensed Mark.** Subject to the license herein granted to Licensee, as between the Parties, Licensor is the sole owner of all right, title and interest in the Licensed Trademark and all other intellectual property rights associated therewith ("Proprietary Rights"). Licensee agrees not to take any action challenging or opposing, on any grounds whatsoever, the ownership by Licensor of the Licensed Trademark.

**3.1. Validity of the Licensed Mark.** Licensee hereby acknowledges the validity of Licensor's right in the Licensed Mark. Licensee shall not, during or after the term of this Agreement, directly or indirectly take any action, or aid or assist any other party to take any action which would infringe upon, harm or contest the validity of Licensor's right, title or interest in any Licensed Mark.

**3.2. Cooperation.** Licensee agrees to perform, during and after the term of this Agreement, all reasonable acts deemed necessary or desirable by Licensor to permit and assist it in evidencing, perfecting, obtaining, maintaining, defending and enforcing its Proprietary Rights in the Licensed Mark. Such acts may include, but are not limited to, execution of assignments and documents acknowledging Licensor's ownership and rights, and cooperation with Licensor in the prosecution or defense of any infringement action.

#### **4. Disclaimer and Limitation of Liability**

**4.1. Disclaimer of Warranties.** THE LICENSED MARK IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE

AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE LICENSED MARK IS SUITABLE FOR LICENSEE'S BUSINESS. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR IS NOT RESPONSIBLE FOR AND WILL HAVE NO LIABILITY FOR ANY SERVICES USED BY LICENSEE IN CONNECTION WITH THE LICENSED MARK.

#### **5. Infringement, Indemnification and Insurance**

**5.1. Infringement.** Licensee shall promptly notify Licensor in the event that it knows or has reason to believe that the Licensed Mark is being infringed, either directly or indirectly, by any third party. In said event, Licensor shall have the first right, but not the obligation, to take action against such infringement including, without limitation, the prosecution of a lawsuit. Should Licensor elect not to take any action against the infringement within fifteen (15) days of written notice thereof by Licensee, then Licensee may take such action as it deems appropriate at its sole cost and expense. Both Licensee and Licensor will provide such non-financial assistance as reasonably requested by the other in prosecuting the infringement including, but not limited to, appearing as a nominal plaintiff. Licensee shall reimburse Licensor for costs and expenses incurred in providing such assistance within a reasonable period of time. The Parties agree that all recoveries and awards that may be obtained as a result of any such action shall be applied first to reimburse the costs (including attorney's fees and expenses) of taking such action against the infringing party. In the event that Licensee has borne the costs and expenses of taking action against infringement, one-half of the remainder shall be paid to Licensee to repay its damages and the other one-half shall be paid to Licensor. In the event that Licensor has borne the costs and expenses of taking action against infringement, the entire remainder shall be paid to Licensee.

**5.2. Mutual Waiver of Consequential Damages.** EXCEPT FOR LICENSEE'S OBLIGATIONS FOR INFRINGEMENT UNDER SECTION 5.1 ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF INCOME, LOSS OF PROFITS OR LOSS OF DATA, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

#### **6. Term and Termination.**

**6.1. Term.** The term of this Agreement will commence on the Effective Date and shall remain in full force and effect for perpetuity, unless earlier terminated in accordance with this Section 6.

##### **6.2. Termination.**

**6.2.1 Termination for Cause.** In the event that Licensee materially or repeatedly defaults in the performance of any of its

obligations, covenants or representations hereunder and fails to cure such default within thirty (30) days after being given written notice specifying the default, then Licensor may terminate this Agreement by providing written notice of termination. Both Parties agree that any breach of the covenants and representations in Sections 2.4.1 through 2.4.6 shall only trigger Licensor's ability to terminate the Trademark License if Licensee is notified of any breach of any such covenant or representation and fails to cure such breach within thirty (30) days. Notwithstanding the foregoing, if any default is capable of cure but cannot reasonably be cured within such thirty (30) day period, as the case may be, then the Agreement or the Trademark License, as the case may be, shall not terminate if the defaulting Party commences corrective action after the demand for cure is made within such thirty (30) day period, as the case may be, and diligently prosecutes such corrective action to completion within a reasonable time.

**6.2.2 Automatic Termination.** This Agreement shall automatically terminate if Licensee ceases to conduct and maintain the Athletic Revolution Business or becomes insolvent, makes an assignment for the benefit of its creditors, or in the event of the institution under any applicable law of any voluntary or involuntary insolvency proceedings against either Party (including bankruptcy, consent to a receivership, adoption of an arrangement with creditors, dissolution or liquidation, or similar action), which proceedings, consent, adoption or arrangement is not vacated within ten (10) days after inception.

### **6.3. Effect of termination.**

**6.3.1 Expiration of License.** Upon termination of this Agreement for any reason, the Trademark License shall terminate within thirty (30) days, and Licensee shall within the thirty (30) day period (i) provide written notification to its franchisees, (ii) discontinue all use of the Licensed Athletic Revolution trademark, (iii) remove the Licensed Athletic Revolution trademark from the Licensee's Web Site(s) or any of its franchisees' Web sites, (iv) modify any and all identification of the Athletic Revolution Business with, or reference to the Licensed Mark, and refrain from making any subsequent representation, advertisement or published statement or product sales using or in reference to the Licensed Mark, or the business previously conducted using the Licensed Mark, and (v) take such action as shall be necessary to change any corporate name, assumed name or equivalent registration which mentions or refers to the Licensed Mark, or any mark similar thereto.

**6.3.2 Cooperation and Title.** Licensee shall take all necessary action to reassign or transfer to Licensor all rights in the Licensed Mark and granted to Licensee by this Agreement, or otherwise acquired by Licensee. Licensee shall execute such documents and take such action as Licensor may deem reasonably necessary or desirable to evidence the fact that Licensee no longer has the right to use the Licensed Mark.

## **7. General Provisions.**

**7.1. Governing Law.** This Agreement will be governed and construed solely in accordance with the laws of the State of Kentucky as applied to transactions taking place wholly within Kentucky between Kentucky residents. The state and federal courts located in Hardin County, Kentucky shall have exclusive jurisdiction for any claim arising from, or related to, this Agreement.

**7.2. Severability.** If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, such provision or provisions shall be construed by limiting and reducing it or them, so as to be enforceable to the fullest extent compatible with then current applicable.

**7.3. No Assignment.** Neither Party may assign this Agreement without both Parties written consent, and any attempted assignment without such consent shall be void and of no effect.

**7.4. Waiver.** No waiver by a Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by a Party of any right under this Agreement shall be construed as a waiver of any other right. A Party shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

**7.5. Construction of Agreement.** The numbers, titles and subtitles of the various sections of this Agreement are inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants and conditions of this Agreement. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any Party.

It is the intention of the Parties hereto that, if any provision of this Agreement is capable of two constructions, one which would render the provision valid, then the provision shall have the meaning which renders it valid.

**7.6. Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the Parties. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the Party to be charged.

**7.7. Notices.** All notices and other communications provided for herein must be in writing and shall be sufficiently given if delivered in person or mailed by certified or other receipted mail, to Licensor or Licensee, at their respective addresses set forth below. Either Party, by such notice, may change the address to which notices shall be sent. Notices delivered in person shall be deemed given when delivered and mailed notices shall be deemed given five (5) business days after being mailed.

**IF TO LICENSOR:**

AR iProperties, LLC  
PO Box 1539  
Elizabethtown, Kentucky 42702

**IF TO LICENSEE:**

Athletic Revolution International, LLC  
110 Chase Way, Suite 5  
Elizabethtown, Kentucky 42701

**7.8. Legal Fees.** If any dispute arises between the Parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing Party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

**7.9. Force Majeur.** Licensor and Licensee shall be excused from performing any obligation or undertaking provided for in this Agreement as long as such performance is prevented, delayed or hindered by acts of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, laws, orders of government, or any other cause whether similar or dissimilar to the foregoing, not within the reasonable control of the Party prevented, delayed, or hindered thereby.

**IN WITNESS WHEREOF,** each of the Parties have caused this Agreement to be executed by their duly authorized representative.

**Licensor:**

**AR iProperties, LLC**

By: 

Richard N. Berry, Member/Manager

**Licensee:**

**Athletic Revolution International, LLC**

By: 

Richard N. Berry, Vice President of Operations