

## FRANCHISE DISCLOSURE DOCUMENT

**BRICKHOUSE CARDIO CLUB, Inc.**  
a West Virginia Corporation  
PO Box 8635, South Charleston, WV 25303  
(877) 729-1023

[www.brickhousecardio.com/franchising](http://www.brickhousecardio.com/franchising)  
[franchising@brickhousecardio.com](mailto:franchising@brickhousecardio.com)



This franchise is to operate a fitness studio under the BRICKHOUSE CARDIO CLUB® name.

The total investment necessary to begin operation of a Brickhouse franchise ranges from \$6,550-\$31,850 (not including initial real estate costs). This includes \$14,900 that must be paid to Brickhouse (financing is available).

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Brickhouse Cardio Club®, PO Box 8635, South Charleston, WV 25303, (877) 729-1023.

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

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

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance date of this Franchise Disclosure Document is March 1, 2012 as amended December 1, 2013. (See Exhibit D for State Specific Effective Dates.)

**STATE COVER PAGE**

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

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

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

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

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY LITIGATION, ARBITRATION, OR MEDIATION ONLY IN WEST VIRGINIA. OUT-OF-STATE ARBITRATION, MEDIATION, OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO LITIGATE, ARBITRATE, OR MEDIATE WITH US IN WEST VIRGINIA THAN IN YOUR OWN STATE.
2. THE FRANCHISE AGREEMENT STATES THAT WEST VIRGINIA LAW GOVERNS THE AGREEMENT. THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. BRICKHOUSE CARDIO CLUB® HAS BEEN FRANCHISING ITS FITNESS STUDIO CONCEPT SINCE 2010, THUS PROVIDING ONLY A LIMITED OPERATING HISTORY.
4. THE FRANCHISEE'S SPOUSE, AND THE SPOUSES OF THE FRANCHISE OWNERS, PARTNERS, SHAREHOLDERS, AS THE CASE MAY BE, ARE REQUIRED TO SIGN A PERSONAL GUARANTEE OF THE FRANCHISE OBLIGATIONS. SUCH SPOUSE(S) IS/ARE JOINTLY AND SEVERALLY LIABLE FOR ALL DEBTS OF THE FRANCHISE, WHETHER OR NOT INVOLVED IN THE OPERATION OF THE FRANCHISED BUSINESS. THIS REQUIREMENT PLACES THE PERSONAL AND MARITAL ASSETS OF THE FRANCHISE OWNERS AND SPOUSES AT RISK.
5. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

Brickhouse Cardio Club® does not use the services of any FRANCHISE BROKERS.

EFFECTIVE DATE: See Exhibit D for State Specific Effective Dates.

AGENTS AUTHORIZED TO RECEIVE SERVICE OF PROCESS ARE LISTED IN EXHIBIT D.

REGISTRATION OF THIS FRANCHISE WITH THE STATE DOES NOT MEAN THE STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPLICABLE STATE ADMINISTRATOR(S) LISTED IN EXHIBIT E.

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Exhibits

- EXHIBIT A: Franchise Agreement
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- EXHIBIT G: Certification
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## Item 1: The Franchisor and any Parents, Predecessors, and Affiliates

To simplify the language, this disclosure document uses “we” or “us” to mean Brickhouse Cardio Club, Inc. the franchisor. “You” means the individual, corporation, or other entity that buys a Brickhouse Cardio Club franchise.

### The Franchisor

This franchise is being sold by Brickhouse Cardio Club Inc. (“We”) whose email address is [franchising@brickhousecardio.com](mailto:franchising@brickhousecardio.com) and phone number is 1-877-729-1023. The physical address of the company is Brickhouse Cardio Club® 3719 MacCorkle Ave. SE, Charleston, WV 25304. Brickhouse Cardio Club Inc. was incorporated in the State of West Virginia on June 14, 2012 and began offering franchises on January 1, 2013. Brickhouse Cardio Club Inc. has a predecessor, Sprouse Fitness LLC.

### Our Predecessors and Affiliates

Sprouse Fitness, LLC, dba Brickhouse Cardio Club®, a West Virginia Limited Liability Company, has an address of 3719 MacCorkle Ave. SE, Charleston, WV 25304 and phone number of 1-304-720-1036. Sprouse Fitness LLC was incorporated October 1, 2005 and is the predecessor to Brickhouse Cardio Club Inc.. Sprouse Fitness LLC sold Brickhouse Cardio Club® franchises beginning December 1, 2010 until December 31, 2012. Brickhouse Cardio Club Inc. has no parent company.

On January 1, 2013, Sprouse Fitness LLC transferred the operation of the Brickhouse Cardio Club® franchise, including all assets, promissory notes, and accounts receivable to Brickhouse Cardio Club Inc. Brickhouse Cardio Club Inc. also took ownership of the headquarters building at 3719 MacCorkle Ave. SE, Charleston, WV 25304.

Brickhouse Cardio Club Inc. operates under the names Brickhouse Cardio Club®. Exhibit D provides the addresses of all the state administrators that Brickhouse has appointed as its Agent of Service of Process in each state.

Brickhouse Cardio Club Inc. and Sprouse Fitness LLC have not franchised any other business and does not operate any business other than Brickhouse Cardio Club®.

### The Brickhouse Cardio Club® Franchise

If you (sign a franchise agreement, you will operate a franchised *Brickhouse Cardio Club® studio*. Under our franchise agreement, we grant our you the right (and they accept the obligation) to operate a *Brickhouse Cardio Club® studio*, offering group fitness classes that we approve. We may periodically make changes to the systems, facility, and signage requirements. You may have to make additional investments in the franchised business periodically during the term of the franchise if those kinds of changes are made, if your studio’s equipment or facilities wear out or become obsolete, or for other reasons (for example, as may be needed to comply with a change in the system standards or code changes). All *Brickhouse Cardio Club®* studios must be developed and operated to our specifications and standards.

Brickhouse Cardio Club® Inc. operates one studio at its headquarters in Charleston, West Virginia.

Brickhouse Cardio Club Inc. has no plans to subfranchise.

### General Market and Competition

You can expect to compete in your market with locally owned businesses as well as national and regional chains that offer similar fitness offerings. The market for fitness studios is well-established and highly competitive. Studios compete on the basis of such factors as price, service, and quality of fitness offerings. Additionally, you may find there is competition for suitable studio locations. Principal factors that will vary but will impact our brand's competitive position are name recognition (which is stronger in some regions than in others), class quality, variety, studio appearance, location, and advertising. A business such as a *Brickhouse Cardio Club*® studio may also be affected by other factors such as changes in fitness offerings, economic conditions, population, and travel patterns.

### Industry-Specific Regulations

You must comply with all local, state, and federal laws that apply to your store operations, including smoking, EEOC, OSHA, discrimination, employment, and sexual harassment laws. The Americans with Disabilities Act of 1990 requires readily accessible accommodations for disabled people and may affect your building construction, site design, entrance ramps, doors, seating, bathrooms, etc. You must also obtain required real estate permits, licenses, and operational licenses. Federal, state, and local laws and regulations may apply to your business.

**Item 2: Business Experience**

*Vic Sprouse, President and Chief Executive Officer.*

<b>Brickhouse Cardio Club Inc.</b> – <u>President &amp; CEO</u> – 3719 MacCorkle Ave., SE Charleston, WV 25304	<i>June 2012 - present</i>
<b>Sprouse Fitness LLC</b> – <u>CEO</u> – PO Box 8635, S. Charleston, WV 25303	<i>August 2005 - present</i>
<b>Liberty Hydro, Inc.</b> – <u>CEO</u> – 1740 Union Carbide Drive, S. Charleston, WV 25309	<i>October 2009 – March 2012</i>
<b>Sprouse Consulting</b> – <u>CEO</u> – 5160 Washington Street, Cross Lanes, WV 25313	<i>September 2003 – December 2012</i>
<b>West Virginia Senate</b> – <u>Minority Leader</u> – 1900 Kanawha Boulevard, Charleston, WV 25305	<i>January 1995 – January 2009</i>

*Misti Janey, Corporate Secretary and Chief Operating Officer.*

<b>Brickhouse Cardio Club Inc.</b> – <u>Secretary &amp; COO</u> – 3719 MacCorkle Ave., SE Charleston, WV 25304	<i>June 2012 - present</i>
<b>Sprouse Fitness LLC</b> – <u>COO</u> – PO Box 8635, S. Charleston, WV 25303	<i>December 2010 – December 2012</i>
<b>Suddenlink Media</b> – <u>Account Executive</u> – 707 Virginia St. East, Charleston, WV 25301	<i>December 2009– August 2010</i>
<b>Lamar Advertising</b> – <u>Account Executive</u> – 1116 Rt. 75, Kenova, WV 25530	<i>September 2008 – October 2009</i>

*Marie McDavid, Corporate Treasurer and Director of Franchising.*

<b>Brickhouse Cardio Club Inc.</b> – <u>Treasurer &amp; Director</u> – 3719 MacCorkle Ave., SE Charleston, WV 25304	<i>June 2012 - present</i>
<b>Sprouse Fitness LLC</b> – <u>Director of Franchising</u> – PO Box 8635, S. Charleston, WV 25303	<i>December 2010– December 2012</i>
<b>Frontier Communications</b> – <u>Account Executive</u> – 1500 MacCorkle Ave. SE, Charleston, WV 25304	<i>July 2010 – present</i>
<b>Fibernet LLC</b> – <u>Account Executive</u> – 1600 Greenbrier Street, Charleston, WV 25311	<i>May 2009 – July 2010</i>

Brickhouse Cardio Club Inc. has no current Franchise Brokers.

**Item 3: Litigation**Pending Actions

There are no pending actions at this time.

Prior Actions

*Commonwealth of Virginia vs. Sprouse Fitness LLC and Victor Sprouse*, Case No. SEC-2012-00005, filed April 11, 2012.

On April 11, 2012 Sprouse Fitness, LLC and Victor Sprouse entered into a Settlement Order with the Virginia State Corporation Commission. The Commission alleged that the franchise was selling franchises in the State of Virginia without being properly registered. While Sprouse Fitness LLC neither admitted nor denied the allegations, we entered into a Settlement Order with the State of Virginia and agreed to reimburse the state \$1,000 for their legal expenses, \$2,500 as a monetary penalty, and share the Settlement Order with our current Virginia franchisees. Brickhouse Cardio Club® asserted a franchisee that had planned to open in West Virginia, found a better location across the border and decided to open in Virginia. As soon as Brickhouse Cardio Club® was aware of the new studio location, they quickly moved to register with the State at that time.

*In the Matter of Sprouse Fitness LLC d.b.a. Brickhouse Cardio, Administrative Proceeding Before the Securities Commissioner of Maryland*, Case No. 2011-0512, filed April 16, 2012. As a result of an inquiry into the franchise related activities of Sprouse Fitness LLC d.b.a. Brickhouse Cardio (“Brickhouse”), the Maryland Securities Commissioner (“Commissioner”) concluded that grounds existed to allege that Brickhouse violated the registration, disclosure and antifraud provisions of the Maryland Franchise Law in relation to the offers and sales of Brickhouse franchises in Maryland. In responding to inquiries from the Maryland Securities Division in connection with Brickhouse’s initial application of its franchise registration, Brickhouse disclosed it sold franchises in Maryland during the time it was not registered to offer and sell franchises in Maryland. On April 16, 2012, the Commissioner and Brickhouse agreed to enter into a consent order whereby Brickhouse, without admitting or denying any violations of the law, agreed to: immediately and permanently cease from the offer and sale of franchises in violation of the Maryland Franchise Law; diligently pursue the completion of its initial application to register its franchise offering in Maryland; and, offer rescission to the franchisees who were sold a franchise in Maryland in violation of the Maryland Franchise Registration & Disclosure Law.”

*Commonwealth of Virginia vs. Sprouse Fitness LLC and Victor Sprouse*, Case No. SEC-2012-00043, filed November, 5, 2012.

On November 5, 2012, Sprouse Fitness LLC and Victor Sprouse entered into a Settlement Order with the Virginia State Corporation Commission. The Commission alleged the franchise offered and sold franchises in the State of Virginia without proper registration. Sprouse Fitness LLC admitted the allegation and entered into a Settlement Order with the State of Virginia and agreed to offer rescissions to Virginia franchisees and was enjoined from offering or selling franchises in the State of Virginia for a period of six months. While believing at the time they were properly registered, Brickhouse Cardio Club® admitted to the violation, offered rescission to the franchisees and agreed to not violate the Act in the future. All franchisees rejected the rescission.

Litigation Against Franchisees in the Last Fiscal Year

There were no actions against franchisees in the last fiscal year.

Other than these actions, no litigation is required to be disclosed in this disclosure document.



**Item 4: Bankruptcy**

No bankruptcy information is required to be disclosed in this item.

**Item 5: Initial Fees**

You must pay an initial franchise fee of \$14,900.

You have two options for payment of the initial franchise fee:

Option 1: Full payment at the time of signature of the franchise agreement

Option 2: Signature of a promissory note at the time of signing the franchise agreement. The promissory note through Brickhouse Cardio Club® finances up to \$11,400 of the initial franchise fee at 8.5% interest rate over the five year (60 payments) term of the franchise.

In the States of Hawaii, California and Maryland, Brickhouse Cardio Club defers all initial fees and initial payments (including the Initial Franchise Fee) until all pre-opening obligations are met and you opened for business.

The Initial Franchise Fee is not refundable.

**Item 6: Other Fees**

Type of Fee <sup>2</sup>	Amount	Due Date	Remarks
Royalty Fee <sup>1</sup>	4% of all preceding month gross sales <sup>3</sup> if Initial Franchise Fee is paid at signing.	11 <sup>th</sup> of every month via ACH withdrawal.	Royalty Fee based on preceding month's gross sales. Maximum payment of \$799/month, Minimum payment of \$99/month.
Advertising Fee <sup>1</sup>	1% of all preceding month gross sales if Initial Franchise Fee is paid at signing.	20 <sup>th</sup> of every month via ACH withdrawal.	Advertising Fee based on preceding month's gross sales. Maximum payment of \$399/month, Minimum payment of \$49/month.
Royalty Fee <sup>1</sup>	7% of all preceding month gross sales if Initial Franchise Fee is financed.	11 <sup>th</sup> of every month via ACH withdrawal.	Royalty Fee based on preceding month's gross sales. Maximum payment of \$799/month, Minimum payment of \$99/month.
Transfer Fee	\$3,000	One time fee via ACH withdrawal.	Transfer Fees are charged on the sale of the franchise to a new franchisee.
Training Fee	\$1,000	One time fee via ACH withdrawal.	Training fees are charged on the day of Training.

1. Royalty and advertising fees are only refundable when, after an audit, a miscalculation has been shown.

2. All fees are uniformly imposed except in cases where a different fee schedule was used as an incentive to convert from another system to Brickhouse Cardio Club®.

3. The term "Gross Sales" shall mean all sums received or receivable by you, directly or indirectly, in and from the operation of your Facility, including, but not limited to, all revenues generated from any and all sources on account of the sale of memberships including one-time attendees, any products and goods and from the rendering of any service of any kind or nature, at or from your Facility, or under, or in any way connected with the use of, Brickhouse Marks, whether for cash, check, credit, barter or otherwise, without reserve or deduction for inability or failure to collect the same. Gross Sales shall include all such revenue described above regardless of where the sale originated or where the delivery or performance of such is made. Gross Sales shall also include any sums or receipts derived from the sale of products and memberships to employees of your Facility. There shall be deducted from Gross Sales for purposes of said computation (but only to the extent that they have been included) the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to members or customers, if such taxes are separately stated when the member or customer is charged, and the amount of any actual refunds, rebates, over-rings and allowances given to members or customers in good faith.

**Item 7: Estimated Initial Investment**

**YOUR ESTIMATED INITIAL INVESTMENT**

Type of Expenditure	Amount <sup>1</sup>	Method of Payment <sup>2</sup>	When Due	To whom payment is to be made
Initial Franchise Fee <sup>3</sup>	\$14,900 (up to \$12,400 can be financed)	EFT or Cashier's Check	Upon signing of agreement	Brickhouse
Rent – Security Deposit <sup>4</sup>	\$500-\$3,000	Check	Pre-opening	Landlord
Inside and Outside Signage <sup>5</sup>	\$1,000-\$2,000	Check	Pre-opening	Contractor
Advertising <sup>6</sup>	\$500-\$1,000	Check	Pre-opening or soon after opening	Advertising sources
Prepaid Insurance Premium <sup>7</sup>	\$500-\$650	Check	Pre-opening	Insurance Company
Computer and Member Software <sup>8</sup>	\$400-\$1,000	Check	Pre-opening or soon after opening	Vendor
Sound System <sup>9</sup>	\$500-\$700	Check	Pre-opening	Vendor
Utility Costs and Deposits <sup>10</sup>	\$250-\$500	Check	Pre-opening	Utility Company
Real Estate Expenditure <sup>11</sup>	Unknown, see notes 11.	Check	Pre-Opening	Landlord, contractor
Initial Fixtures & equipment <sup>12</sup>	\$0			

Type of Expenditure	Amount <sup>1</sup>	Method of Payment <sup>2</sup>	When Due	To whom payment is to be made
Initial Inventory <sup>13</sup>	\$0			
Franchisee Training Cost <sup>14</sup>	\$200-2,000	Check	Pre-Opening	Hotels, restaurants
Business and other applicable licenses <sup>15</sup>	\$0-500	Check	Pre-Opening	Government agencies
Additional funds to sustain business for the first three (3) months of operation. <sup>16</sup>	\$0-5,000	As required	As needed	Instructors, taxing agencies, rent, etc.
Music Licenses. <sup>17</sup>	\$200-600	As required	Pre-Opening	BMI, ASCAP, & SESAC
Total Initial Investment	\$6,550-\$31,850			

1. **Amount.** If your state, or any governmental body in your state, charges a tax on any fee you owe to us or to our affiliates, then you are required to pay an additional amount equal to the amount of this tax. This does not apply to any federal or West Virginia income taxes we have to pay.

2. **Method of Payment.** For all amounts you owe to us, we have the right to collect these fees by pre-authorized check draft or pre-authorized credit card charge.

3. **Initial Franchise Fee.** We describe the initial franchise fee in Item 5. The Initial Franchise Fee paid to Brickhouse Cardio Club® is non-refundable. In the States of Hawaii, California and Maryland, Brickhouse Cardio Club defers all initial fees and initial payments (including the Initial Franchise Fee) until all pre-opening obligations are met and you have opened for business.

Brickhouse Cardio Club® provides a financing option if you wish to finance the Initial Franchise Fee. You can refer to Item 10 of this Franchise Disclosure Document for more details. Brickhouse will finance up to \$11,400 of the \$14,900 Initial Franchise Fee. After the required \$3,500 down payment is made, Brickhouse will finance the \$11,400 at 8.5% over the 5 year term of the Franchise. The estimated loan repayments for the term are \$233.89/month.

4. Rent/Security Deposit. Security deposits and other prepaid expenses will vary. These figures include a typical studio's estimated first month's rent, with the studio varying in size from approximately 2,000 to 2,500 square feet. Rent will depend on market conditions. Security deposits or prepaid expenses are generally required, as are insurance and utilities arrangements. Generally, the leases you enter determine each security deposit amount. Security deposits are held by the landlords and sometimes refunded by contract or as required by law.
5. Inside and Outside Signage. This exterior signage goes over your Store's front door. We will supply your sign maker with approved logos and colors. You also should review your lease, Franchise Agreement, and Operations Manual for specific requirements. Your interior decals are required to be purchased through a Brickhouse Cardio Club approved vendor.
6. Advertising. New Brickhouse Cardio Club franchisees need to spend money for advertising, or promotional items through other media, during the first 120 days of operation to generate initial consumer awareness and patronage. While Brickhouse Cardio Club does not require any Grand Opening expenditures, we recommend spending up to \$1,000 for these items.
7. Prepaid Insurance Premium. You must buy and maintain certain types and amounts of insurance. Insurance costs will depend on policy limits, geographic location, type of policies procured, and other factors. This insurance will be purchased from third parties.
8. Computer and Member Software. Brickhouse requires the use of ZenPlanner software. Computer costs will vary depending on your preference, but there are no specific computer requirements.
9. Sound System. Brickhouse Cardio Club will provide a preferred supplier of sound systems, but you are not required to purchase from Brickhouse Cardio Club preferred suppliers.
10. Utility Costs and Deposits. Utility expenditures and required deposits vary.
11. Real Estate Expenditure. The cost of real estate, renovations, the decision to buy versus rent, and the variability of real estate costs from area to area prevent us from including a reasonable estimate of real estate costs and renovations; thus, they are not included in the estimates of your initial investment. The studio's approximate square footage is 2,000 sq. ft. and the inside requirements are a large open area for the dance/exercise floor. Tenant improvements include paint, flooring, and basic lighting. You may negotiate these items as part of your lease to reduce your initial investment.
12. Initial Fixture & Equipment. Brickhouse Cardio Club® does not require the purchase of any equipment package.
13. Initial Inventory. Brickhouse Cardio Club® does not require the purchase of any inventory.
14. Franchisee Training Cost. The figures are for expenses you will incur to attend our training program in Charleston, West Virginia for 3 days. The low end of the range is for a franchisee located in West Virginia within driving distance, who pays only for a hotel room and meals, while the high end of the range is for 2 people traveling by plane to and from West Virginia and includes hotel rooms and meals. The required amount depends on a number of factors, including the distance you must travel and the type of accommodations you choose.
15. Business and other applicable licenses. Various permits and licenses from health, labor, or fire departments, sales tax bureaus, and other similar state or local governmental agencies are required by governmental regulations as either isolated or recurring expenditures. Those fees are determined by governmental authorities and are paid to them directly.
16. Additional Funds. This estimates the funds needed to cover your expenses during the first 3 months of operation. It includes instructor costs (but not any draw or salary for you), utilities, and supplies. This amount does not include the cost of obtaining a bond for your business. If you choose to sell prepaid memberships, under some state laws, you must obtain a bond

to secure your obligations to pre-paid members. Because the requirements vary by state, and may depend on your net worth, we cannot estimate the amount you will need to obtain a bond, or the assets you may need to collateralize that bond.

17. Music Performance Licenses. Brickhouse Cardio Club recommends purchasing performance licenses for your studio. You may purchase one or all three Performance licenses with the companies ASCAP, SESAC and BMI.

This is only an estimate, and it is possible you will need additional working capital during the first 3 months you operate your studio and for a longer time period after that. This 3-month period is not intended, and should not be interpreted, to identify a point at which your studio will break even. We cannot guarantee when or if your studio will break even. Your costs will depend on your management skill, experience, business acumen, local economic conditions, competition and your studio's sales during the initial period.

These figures are estimates based on our experience in setting up Brickhouse Cardio Club studios in the last 2 years. Your actual expenses of establishing and operating this business could vary significantly from these estimates. It is possible to significantly exceed costs in any of the areas above. Some states have laws that require staffing or operational requirements that will significantly increase the amounts you will have to spend to open and operate your Brickhouse Cardio Club fitness studio. If your state requires you to have someone on the premises full-time or additional equipment on the premises, these costs may increase by \$5,000 or more a month. You should review these figures carefully with a business and a legal advisor before making any decision to purchase the franchise. Our estimates do not include any finance charges, interest or debt service obligations.



**Item 8: Restrictions on Sources of Products and Services**Marketing and Website

9/8 Central of Greenville, South Carolina is the only approved supplier of website and e-newsletter services to franchisees and does not issue specifications. Screen Graphics, Inc., Nitro, West Virginia is the only approved supplier of inside and outside wall decals.

Information System

ZenPlanner of Denver, Colorado is the only approved supplier of membership software services.

Apparel and Merchandise

All Brickhouse Cardio Club apparel and merchandise must be purchased from Brickhouse Cardio Club Inc.

Brickhouse Cardio Club Lease Approval

You must send us for approval your lease, purchase, or other occupancy agreement for the studio before you sign it. The occupancy agreement must contain the following types of provisions: (i) requiring that we receive a copy of any written default notice and granting us the right (but not the obligation) to cure any default within 30 business days after the expiration of your cure period; (ii) evidencing your right to display the Marks according to our standards; (iii) granting us the right (but not the obligation) to replace you under the occupancy agreement if the Franchise Agreement expires or is terminated for any reason; and (iv) allowing the Store to be used only for the operation of a Brickhouse Cardio Club studio.

Advertising and Promotion

Before you begin any advertising or promotion, graphics and a copy of all advertising, marketing, or promotional materials or a description of all marketing plans not prepared, licensed, or previously approved by us must be submitted to us for approval by receipted mail. If we do not grant approval in writing within 10 business days after we receive the items, they will be deemed approved. You must use proper copyright and other proprietary notices on all materials. You may not, except under programs we offer, use the Internet in any sales or marketing capacity, including websites, e-commerce sites, referrals, or any other computer-aided sales or advertising tool. You may not engage in mail order marketing except under programs we offer nor engage in mail order marketing outside your Territory.

We must approve any additional signage before you use it. The printed or written copy for all signs displayed inside and outside the Store must be sent to us for approval before use.

Insurance

You must purchase at your own expense and maintain in effect at all times during the franchise term all insurance we require (including at least \$1 million in general liability insurance), naming us as additional insureds, from an "A" or better rated insurance company registered in the jurisdiction where the Territory is located or through our preferred supplier. We periodically may increase the amounts of coverage required and require different or additional kinds of insurance at any time, including excess liability insurance, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances. If you do not maintain required insurance, we may (but are not required to) obtain that insurance for you through our agents and insurance companies. You must send us and/or our designated agent certificates of insurance no later than 10 days before the studio opens and all replacement policies upon issuance. We do not represent that any insurance will adequately cover you. Insurance requirements are to protect us and the other named insureds. You should consult with your own insurance agents, brokers, and attorneys to determine what level of insurance protection you need and desire (besides the coverage we require).

Supplier Approval

We periodically may designate other suppliers for Brickhouse Cardio Clubs. We may designate a single supplier for any category or item and a supplier only as to certain categories of items. We may concentrate purchases with one or more

suppliers to obtain lower prices, the best advertising support and/or the best services for any group of Brickhouse Cardio Clubs.

For goods and services other than Products obtainable only from approved suppliers, we will entertain your proposals to approve additional suppliers. If you propose to purchase goods or services from any supplier we have not previously approved, you first must send us all information, specifications, and samples we request. Upon your request, we will provide our standards and specifications and other approved supplier criteria to a supplier you propose, but if we determine that these standards, specifications, or criteria contain confidential information, we may require the proposed supplier to execute a confidentiality agreement as a condition of evaluating the supplier. Our representatives have the right, at your expense, to inspect the proposed supplier's facilities and to take samples from the proposed supplier for evaluation and testing.

We have the sole right to decide whether or not to approve any supplier. Due to required review and testing procedures, we normally will review, inspect, and approve or disapprove a suggested supplier within 6 months after the request. Supplier approval may be conditioned on frequency of delivery, standards of quality and service, including prompt attention to complaints, other criteria, work environment, and concentration of purchases; may be conditioned on the supplier's giving us adequate insurance protection, signing reasonable license, indemnity, and confidentiality agreements, and paying fees to us and our affiliates for the right to do business with our system; and may be temporary or conditional pending our further evaluation of the supplier. We reserve the right to re-inspect a supplier's facilities, products and/or services and to revoke our approval if the supplier no longer meets our then current criteria.

#### Negotiations with Approved Suppliers

We may negotiate agreements with suppliers to provide products and services to all Brickhouse Cardio Club studios. Certain agreements may be negotiated with potential affiliates, and those affiliates may profit from the agreements. These agreements may provide that revenue be paid to us and our affiliates for services rendered, license fees, or the like and that we may collect monies from these suppliers. We will negotiate these agreements to promote the overall interests of the Brickhouse Cardio Club system and our interests as the franchisor. We make no representation or warranty that these agreements will provide any specific Brickhouse Cardio Club with the lowest cost products or services available or that any individual Brickhouse Cardio Club will benefit proportionately from any supplier arrangement. We are not responsible if a supplier fails to perform its obligations to you.

Except as described in this Item 8, there are no goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the studio that you currently must buy or lease from us (or an affiliate) or designated suppliers.

#### Development of Standards

We will develop our standards and specifications in consultation with our suppliers. We will issue standards and specifications for the studio and information on approved suppliers through the Operations Manual and other communications. We will make our approved supplier criteria available to franchisees and to prospective suppliers of any product or service other than the Products.

#### Revenues from Sourcing Activities Generally

Based on internal records, Brickhouse Cardio Club revenues from the sale of apparel and merchandise to franchisees were \$26,445 or 4.9% of total revenue of \$511,612 for Fiscal Year 2012. Approved suppliers did not pay Brickhouse Cardio Club any amount based on the purchases our franchisees made from them.

There are no approved suppliers in which any of our officers owns an interest.

#### Extent of Your Commitment

We estimate that your required purchases of Products and other goods and services from us or our affiliates, our designees, or approved suppliers, or according to our specifications, will be less than 20% of your total purchases and leases to establish and then operate your studio. We do not provide material benefits to you (for example, renewal or granting additional franchises) for purchasing particular products or services or using particular suppliers. There currently are no purchasing or distribution cooperatives in the Brickhouse Cardio Club System.

**Item 9: Franchisee’s Obligations**

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

Obligation	Section of Franchise Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	Section 4 of Franchise Agreement	Item 7 and 11
b. Pre-opening purchases/leases	Section 4 of Franchise Agreement	Item 7
c. Site development and other pre-opening requirements	Section 4 of Franchise Agreement	Item 7 and 11
d. Initial and ongoing training	Section 9 of Franchise Agreement	Item 11
e. Opening	Section 5 of Franchise Agreement	Item 6
f. Fees	Section 3, 4D, 5C, 6B, 10, 16, and 22L of Franchise Agreement	Item 5, 6, and 7
g. Compliance with standards and policies/operations manual	Section 6 and 9 of Franchise Agreement	Item 11
h. Trademarks and proprietary information	Section 12A of Franchise Agreement	Item 13 and 14
i. Restrictions on products offered	Section 6 and 7 of Franchise Agreement	Item 8 and 16
j. Warranty and customer service requirements	Not Applicable	Not Applicable
k. Territorial development and sales quotas	Not Applicable	Not Applicable
l. Ongoing product/service purchases	Section 6 and 7 of Franchise Agreement	Item 8 and 16

Obligation	Section of Franchise Agreement	Disclosure Document Item
m. Maintenance, appearance, and remodeling requirements	Section 6 of Franchise Agreement	Item 11
n. Insurance	Section 14A of Franchise Agreement	Item 7 and 8
o. Advertising	Section 10B of Franchise Agreement	Item 6 and 11
p. Indemnification	Section 14B of Franchise Agreement	Item 6, 13, and 14
q. Owner participation/management/staffing	Section 6J and 11C of Franchise Agreement	Item 11 and 15
r. Records and reports	Section 11 of Franchise Agreement	Item 6
s. Inspections and audits	Section 6H and 9D of Franchise Agreement	Item 6 and 11
t. Transfer	Section 16 of Franchise Agreement	Item 17
u. Renewal	Section 2 of Franchise Agreement	Item 17
v. Post-termination obligations	Section 19 of Franchise Agreement	Item 17
w. Non-competition covenants	Section 20B of Franchise Agreement	Item 17
x. Dispute resolutions	Section 21 of Franchise Agreement	Item 17
y. Other: guaranty of franchise obligations <sup>1</sup>	Personal Guaranty (which follows the Franchise Agreement)	Item 15

1. Each individual who is an owner of any business entity that is the franchisee, and their spouses, must sign a personal guaranty of all the obligations of the franchisee. This Guaranty also includes an agreement to be bound by the confidentiality and non-compete provisions of the Franchise Agreement.

**Item 10: Financing**

Financing of the initial franchise fee is available through Brickhouse. Rates and terms vary.

**SUMMARY OF FINANCING OFFERED**

Item Financed	Source of Financing <sup>4</sup>	Down Payment	Amount Financed	Term (Yrs)	Interest Rate	Monthly Payment	Prepay Penalty	Security Required	Liability Upon Default	Loss of Legal Right on Default <sup>1</sup>
Initial Franchise Fee	Brickhouse Cardio Club Inc. <sup>2</sup>	\$3,500	\$11,400 <sup>3</sup>	60 months	8.5%	\$233.89	No	None	Principal balance plus 21% interest or highest amount allowed by law. Plus legal fees and costs of collection	Yes. See below for details.

1. Loss of legal rights upon default details: Borrower and all persons obligated under the promissory note shall waive demand, presentment, protest, notice of dishonor or nonpayment, notice of protest, and any and all lack of diligence in collection. A sample promissory note is attached.

2. The lender does not intend to sell or assign any promissory notes.

3. A sample promissory note is provided in EXHIBIT C. A personal guarantee from the franchisee is required to obtain financing.

4. Brickhouse Cardio Club Inc. is the source of financing. Franchisees of the Brickhouse Cardio Club® system are also eligible for expedited and streamlined SBA loan processing through the SBA’s Franchise Registry Program, [www.franchiseregistry.com](http://www.franchiseregistry.com).

**Item 11: Franchisor’s Assistance, Advertising, Computer Systems, and Training**

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

Pre-Opening Obligations

1. Designate your territory (Franchise Agreement, Section 1.A).
2. Loan you a copy of our operations manual that contains mandatory and suggested specifications, standards and procedures. We may loan this to you by providing you a user number and password to our website that will give you access to the manual. The manual contains 34 pages. A copy of the table of contents of the manual is attached to this Disclosure Document as Exhibit B. (Franchise Agreement, Section 6.A)
3. Provide you with a sample floor plan, as well as a list of preferred suppliers for the contents of your studio. Although we provide you with this information, we do not conform our sample plans to your space, or obtain any required permits for you, or conform the premises to local ordinance or building codes, and we do not construct, remodel or decorate your premises. (Franchise Agreement, Section 6.A)
4. Provide, at our expense, an initial training program to educate and acquaint your management team with the business of operating a Brickhouse Cardio Club studio. You are expected to attend this training program at least 30 days before you open your Brickhouse Cardio Club studio. (Franchise Agreement, Section 9.A)

Post-Opening Obligations

1. Approve suppliers, products and services and regularly inform you as to new approved suppliers and new preferred supplier contracts. (Franchise Agreement, Section 7.B.1)
2. Make available additional training we feel is necessary to familiarize you and your management team on changes and updates in the franchise system. (Franchise Agreement, Section 9.B)
3. Establish and maintain an Internet website or Home Page for you, and provide a link from our Home Page to your webpage. (Franchise Agreement, Section 6.B)
4. Maintain and administer the Brickhouse Cardio Club Advertising and Marketing Fund. (Franchise Agreement, Section 10.B)

Site Selection and Opening

We will provide you with consulting services to assist you in evaluating and selecting a site for your Brickhouse Cardio Club studio. It is your obligation to select a site for your business and obtain our approval of that site. While we will assist you, we do not locate or select a site for you, or negotiate the purchase or lease of a site, and we do not own the premises and lease them to you. Before you acquire any site, you must submit to us information and materials we require and obtain our approval to your site. The factors we take into account in approving a site are the visibility of the site, the retail feel of the site, the location of competitors whether the site is easily accessible and similar factors.

A Brickhouse Cardio Club studio should have at least 2,000 square feet of space.

We expect the typical length of time between the signing of your Franchise Agreement and the opening of your Brickhouse Cardio Club studio to be between 60 and 90 days, unless you are converting an existing fitness facility, in which case the time should be less than 60 days.

Advertising

You agree in your Franchise Agreement to contribute amounts to the Brickhouse Cardio Club Advertising and Marketing Fund, in the amount of 1% of the gross sales of your studio’s preceding month. We require all our franchisees to contribute to this fund. Our company-owned centers also pay 1% of gross sales.

We account for the contributions to this fund separately from our other revenues, and we do not use them to pay any of our general operating expenses other than our costs of administering the fund, including salaries and overhead in administering the fund. The purpose of the fund is to develop marketing and advertising programs that benefit the Brickhouse Cardio Club brand. This means we may use monies in the fund for any purpose that promotes the Brickhouse Cardio Club name, including to create advertising materials or public relations campaigns, or to implement advertising. We work with a national agency. It is our responsibility to determine how these monies are spent. We are not required to use monies in this fund to benefit any individual

market, or on a pro rata or other basis. During 2008, these monies were spent for the following purposes:

#### Length of time between agreement/payment of fees and opening of franchise

The typical length of time between signing of the agreement and the payment of the initial franchise fees is 2-4 months. The determining factor usually is site selection and lease negotiation (typically 1-2 months) and renovations (1-2 months).

#### Advertising Fees/Pricing

You are required to pay 1% advertising fees based on monthly revenue. Brickhouse will provide assistance in determining membership pricing for your studio.

#### Franchise-owned locations: Advertising Fees

Locations owned by the franchise (currently one location, Charleston, WV) is required to pay advertising fees.

#### Management of Advertising Fee Fund

Brickhouse Cardio Club® manages the advertising fund. While we are not obligated to spend any amount on advertising in your area or territory, every attempt will be made to support your local market. An accounting of the Advertising Fund Is available upon request by mailing a request for accounting letter by certified mail to Brickhouse Cardio Club®, PO Box 8635, South Charleston, WV 25303.

#### Use of Advertising Fee Fund

Advertising Fee Fund usage is at the sole discretion of Brickhouse Cardio Club® and is administered. We are not obligated to provide detailed accounting of the advertising fees. We may at times support Grand Opening advertising for new franchisees, but are not obligated to, use print, broadcast and internet modes of advertising in any local, regional or national market.

Brickhouse Cardio Club® collects advertising fees from all franchisees. Each franchisor-owned store of Brickhouse Cardio Club® contributes to the Fund on the same basis as franchisees. All payments to the Fund must be spent on advertising, promotion, and marketing of goods and service provided by Brickhouse Cardio Club. You must contribute the amounts described in Item 6, under the heading "Advertising fees and expenses."

The advertising fee fund shall not be used to solicit new buyers. 100% of the advertising funds in the past fiscal year were spent on media placement in support Grand Openings.

Brickhouse advertising materials will be produced in house.

#### Advertising Fee Fund yearly carryover

Any advertising fee funds not used during a fiscal year shall remain in the Advertising Fee Fund and available for use in the following fiscal year.

#### Advertising by You

Advertising purchased by you must be provided by Brickhouse or an approved Brickhouse Cardio Club® vendor, or be approved by Brickhouse Cardio Club®.

Promotional materials, flyers, handouts, etc. may be produced by you with approval of Brickhouse Cardio Club®.

There is no advertising council.

You are not obligated to participate in a local or regional cooperative.

#### Computer systems

You are not obligated to use electronic pos or cash register. You are required to use the ZenPlanner Membership software.

Table of Contents

The Operations Manual Table of Contents may be found in Exhibit F.

The following represents a summary of our initial training program as of June 1, 2013.

**TRAINING PROGRAM**

<u>Subject</u> <sup>1</sup>	<u>Hours of Classroom Training</u>	<u>Hours of On-the-Job Training</u> <sup>2</sup>	<u>Location</u>
Brickhouse Cardio Club® Philosophy	2.0 hours	0	Our offices in West Virginia
Pre-Opening Checklists	1.0 hours	0	Our offices in West Virginia
Telephone and pre-sales	1.0 hours	0	Our offices in West Virginia
Drop-In to Member Procedure	1.0 hour	0	Our offices in West Virginia
Franchisee Success	1.0 hour	0	Our offices in West Virginia
Studio Policies	1.0 hour	0	Our offices in West Virginia
Inside Your studio and Instructors	2.0 hours	0	Our offices in West Virginia
Charity Events	0.25 hours	0	Our offices in West Virginia
Studio Schedules	1.0 hours	0	Our offices in West Virginia
Commission Guidelines	0.25 hours	0	Our offices in West Virginia
Membership Software	2.0 hours	0	Our offices in West Virginia
Overall Business Systems and Paperwork	0.5 hours	0	Our offices in West Virginia
Total	12.0 hours		

1. If you have more than one Franchise Agreement with us, we may, at our option, provide this training one time for multiple agreements.

2. While all of the initial training program will be classroom training, you will have an option to receive additional training by visiting one of our clubs for up to 2 days.

Although we do not have any obligation to provide any other training or services to you, we do currently hold a national conference, and we provide additional monthly training, either regionally or at our principal offices. The monthly training typically includes a conference call or webinar or both of up to one hour in one or more of the following areas: marketing, telephone inquiries, qualifying leads and tours, and processing. We offer this training approximately once a month. The same people who provide the initial training, and are responsible for the initial training, will provide and be responsible for this training. We do not require you to attend this training after the first year you operate your business. However, during the first 12 months following the opening of your Brickhouse Cardio Club studio, you must either attend our annual conference, or one of our monthly training programs. If you do attend, you will not have to pay us any fees for attendance, but you will be responsible for travel costs, room and board, and the salaries, fringe benefits, and other expenses you and your employees incur in attending the training program. The materials we use for this training are developed each time from a variety of sources.

We will use our Operations Manual, and Sales and Marketing Journal as the instructional materials for this training.



We offer this training approximately once a month. The people who provide this training are as follows:

<u>Name</u>	<u>Subject</u>	<u>Background</u>
Vic Sprouse	Brickhouse Cardio Club® Philosophy	Mr. Sprouse is founder of Brickhouse Cardio Club. He has a scientific background as a chemical engineer. He has been involved in fitness in all his life. He was a franchisee in the Curves franchise and owned 13 Curves fitness centers. He created the Brickhouse concept and provides overall direction for the company.
Vic Sprouse	Pre-Opening Checklists	See Mr. Sprouse’s info above.
Vic Sprouse	Telephone and pre-sales	See Mr. Sprouse’s info above.
Vic Sprouse	Drop-In to Member Procedure	See Mr. Sprouse’s info above.
Abby Honaker	Franchisee Success	Ms. Honaker was the fourth franchisee to join Brickhouse Cardio Club and has been one of its most successful franchisees. She mentors new franchisees.
Misti Janey	Studio Policies	Ms. Janey is one of the originators of the Brickhouse Cardio Club concept and serves as its Chief Operating Officer. Ms. Janey leads and operates the Headquarters studio in Charleston, West Virginia.
Misti Janey	Inside Your studio and Instructors	See Ms. Janey’s info above.
Misti Janey	Charity Events	See Ms. Janey’s info above.
Marie McDavid	Studio Schedules	Ms. McDavid is one of the originators of the Brickhouse Cardio Club concept and serves as its Director of Franchising. Ms. McDavid assists in the operation the Headquarters studio in Charleston, West Virginia.
Marie McDavid	Commission Guidelines	See Ms. McDavid’s info above.
Marie McDavid	Membership Software	See Ms. McDavid’s info above.
Marie McDavid	Overall Business Systems and Paperwork	See Ms. McDavid’s info above.

The principal operator of your business must attend and complete this training to our satisfaction before you open your Brickhouse Cardio Club studio. In addition, if your principal operator is not also the person that will own a controlling interest in your Brickhouse Cardio Club studio, then the person holding the controlling interest must also attend and complete this training to our satisfaction before you open. If more than one person signs the Franchise Agreement as the Franchisee, and none of them own a controlling interest, then at least one person who signed the Franchise Agreement as Franchisee must complete this training. You can send an additional person to the training, at no additional charge, if you provide us at least 10 days notice before the scheduled start of the training and provide us a copy of a confidentiality agreement they have signed that is satisfactory to us. The period of the training program will be at our discretion, but generally will be for 2- 3 days. You will be responsible for travel costs, room and board, and the salaries, fringe benefits, and other expenses you and your employees incur in attending the training program.

**Item 12: Territory**

When you sign a Franchise Agreement, you will receive the right to operate one Brickhouse Cardio Club studio. If the site for that center has been identified before you sign the Franchise Agreement, then you must operate the center at that site. If the site becomes unavailable to you for any reason, it is your obligation to select a new location, and to obtain our approval of that location before you acquire the site, and before you obtain any rights in the location. If a site has not been identified, then we will designate an area, and you may locate your Brickhouse Cardio Club studio at any place within that area, so long as the site you select is not also within a territory of another Brickhouse Cardio Club. Until a site has been identified, you will not have any exclusive rights in the area identified in the Franchise Agreement.

Once the location for your Brickhouse Cardio Club has been approved, we will give you an exclusive territory. The limitations on us in that territory are described below. We may attach a map to your Franchise Agreement that will identify the territory or we may simply describe an area surrounding your location. The map or description may not be a specific radius from your center, because it will take into account traffic patterns and natural boundaries. However, the territory will range from approximately one-half mile from your center (in densely populated metropolitan areas) to as much as 5 miles (in small towns).

We do not have the right to unilaterally change your territory, and there are no minimum quotas required; as long as your Franchise Agreement is in effect, you will retain the rights described in this paragraph.

The criteria we use for determining the boundaries of the territory include density of population, growth trends of population, apparent degree of affluence of population, the density of residential and business entities, traffic generators, driving time, and natural boundaries. During the term of your Franchise Agreement, we will not place or license to anyone else the right to place a Brickhouse Cardio Club in your territory. However, we do have the right to place Brickhouse Cardio Club studios, or grant others the right to do so, outside your territory, even if they compete for members with your center.

We do not restrict the customers you may serve, and you may solicit customers outside your territory, including through channels of distribution such as the Internet, telemarketing or other direct marketing sales. We and our affiliates also have the right to operate, and to grant franchises or licenses to others to operate, fitness centers and other businesses offering similar services in your territory under trademarks other than "Brickhouse Cardio Club®," but we do not have any plans to do so at this time. In addition, we and our affiliates have the right to sell products and services (like apparel or health-related services) to your members and to others in and outside your territory, using the "Brickhouse Cardio Club®" name, or using any other name, through any channel of distribution, including the Internet, catalog sales, telemarketing, or other direct marketing, and may do so in your territory.

**Item 13: Trademarks**

Publication of the Brickhouse Cardio Club® trademark in the USPTO general register was on September 6, 2011. The Brickhouse Cardio Club® trademark was approved on November 22, 2011.

<u>Mark</u>	<u>Registration/Application Number</u>	<u>Date</u>
Brickhouse Cardio Club®	85246681	2/18/2011

No agreement limits our right to use or license the use of the *Brickhouse Cardio Club*® trademarks. No material determinations, proceedings, or litigation affect your right to use the trademarks other than as may be stated in this Disclosure Document. We do not know of any infringing use that could materially affect your use of our trademarks other than as may be stated in this Disclosure Document.

As of the date this Disclosure Document was prepared, there were no effective material determinations of the Patent and Trademark Office, Trademark Trial and Appeal Board, the trademark administrator of this state, or any court. There were also no pending infringement, no opposition or cancellation of the trademarks, and no pending material litigation involving the principal trademarks other than as may be stated in this Disclosure Document.

You must notify us immediately when you learn about an infringement of or challenge to your use of our trademark. We will take the action we think appropriate. We are not required to defend you against a claim against your use of our trademarks or to pay for any costs you incur as a result of such a claim.

You must modify or discontinue the use of a trademark if we modify or discontinue it. If this happens, we are not required to reimburse you for your tangible costs of compliance (for example, changing signs). You must not directly or indirectly contest our right to our trademarks, trade secrets, or business techniques that are part of our business.

You must follow our rules in using these marks. You cannot use a name or mark as part of a corporate limited liability company (L.L.C.), other entity name, or Internet domain name. You cannot use any of our names or marks with modifying words, designs, or symbols except for those we expressly license to you. For example, your business name may not include any of our trademarks or any variation of them, and you may not use your name in advertising your store (such as “John Smith’s Brickhouse Cardio Club®”). You may not use our trademarks in connection with the sale of unauthorized products or services or in any manner we have not authorized in writing and in advance. You may use our trademarks on vehicles only if you first obtain our written consent.

**Item 14: Patents, Copyrights, and Proprietary Information**

There are no patents currently held by Brickhouse Cardio Club®.

No patents or registered copyrights are material to the franchise. We do, however, claim copyright interests in our training manuals, magazines, posters, toys, pamphlets, brochures, television advertisements, and all other printed and pictorial materials we produce, although these materials have not been registered with the U.S. Copyright Office in the Library of Congress. These materials are proprietary and confidential and are considered our property. They may be used by you only as long as you are a franchisee and only as provided in your Franchise Agreement.

You do not receive the right to use an item covered by a patent or copyright unless it is expressly incorporated as proprietary information in our operations manuals. You may use these materials, in the manner we approve, in the operation of your Studio during the term of your Franchise Agreement. However, you may not use these materials in any other way for your own benefit or communicate or disclose them to, or use them for the benefit of, any other person or entity. These materials include any trade secrets, knowledge or know-how, confidential information, advertising, marketing, designs, plans, or methods of operation. This includes information about our sources of supply and our recommendations on pricing. You may disclose this information to your employees but only to the extent necessary to operate the business and then only while your Franchise Agreement is in effect. You must also promptly tell us when you learn about unauthorized uses or challenges to our uses of this proprietary information. We are not obligated to take any action but will respond to this information as we think appropriate. We will indemnify you for losses brought by a third party concerning your use of this information. At this time, there are no infringing uses known to us that could materially affect your use of the copyrights.

There is no effective decision, ruling, or order of the United States Patent and Trademark Office, U.S. Copyright Office in the Library of Congress, or any court that could materially affect the ownership or use of any patents or copyrighted materials. Our right to use or license these patents and copyrighted items is not materially limited by any agreement or known infringing use.

There are no agreements currently in effect that significantly limit our rights to use or license the use of such patents or copyrights in any manner material to you.

We may use and incorporate into any System changes and improvements that you or your employees or contractors develop. We do not have an obligation to you or the developer of these changes or improvements in connection with such use.

Brickhouse Cardio Club® is under no obligation to defend you against claims arising from your use of copyrighted items.

**Item 15: Obligations to participate in the actual operation of the franchise business**

While we do not require that you personally supervise your Brickhouse Cardio Club, we recommend that you do so. If you are not the "on-premise" supervisor of the business, then you must designate a Principal Supervisor to serve as your on premises supervisor. We do not impose any limitations on who you can hire as your Principal Supervisor, but that person must complete our initial training requirements and all other training we reasonably designate, and that person must sign a confidentiality agreement with you that meets our requirements and that you provide to us before they attend training.

You and personnel involved in your business must not disclose or use our confidential information except to operate your Brickhouse Cardio Club (See Confidentiality Agreement in Exhibit J). At our request, you will deliver to us confidentiality and non- compete agreements from your owners (and their spouses), and your Principal Supervisor, in a form satisfactory to us. We do not require the Principal Supervisor of your business to have any ownership interest in your business.

Depending on the sales volume of the studio, you should expect to work in your studio most days. If sales and profits are high, you may not be required to do this, but you should not enter into the business unless you are willing and able to meet this requirement.

Because a sizable portion of this operation is a cash business, you must have effective, vigilant cash management procedures to avoid employee theft.

You can minimize these demands on you personally by attracting, motivating, and retaining capable development, supervisory, production, transportation, and sales personnel. We may provide you with certain suggested basic procedures and guidelines to use in recruiting, training, and motivating your personnel. However, recruiting, training, and motivating employees are your responsibility.

You and your spouse are required to sign a personal guarantee attached to the franchise agreement.

**Item 16: Restrictions on What the Franchisee May Sell**

We require you to offer and sell only those goods and services that we have approved (see Item 9).

We do not require you to sell fitness products of any kind including supplements, merchandise or apparel.

We will not restrict you from soliciting any customers no matter who they are or where they are located.

We may change the types of goods and services offered without any limitation.

**Item 17: Renewal, Termination, Transfer, and Dispute Resolution**

**THE FRANCHISE RELATIONSHIP**

The table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

Provision	Section of Franchise Agreement	Summary
a. Length of the franchise term	Franchise Agreement – Section 2	Term is 5 years.
b. Renewal or extension of the term	Franchise Agreement – Section 2	We can grant or deny you a renewal. If we grant a renewal and you accept it, you must sign a new Franchise Agreement for a term of 5 additional years; however, you do not have a right to renew.
c. Requirement for you to renew or extend	Franchise Agreement – Section 2	You cannot be in default with any provision of the current Agreement. You must give Brickhouse written notice as required by the current Agreement of Your desire to renew. You must sign a new Agreement that may be materially different as to the terms and conditions from Your original Agreement, including a possible adjustment to your territory. You must update Your location site to comply with the then-current standards. You must sign a general release.
d. Termination by you	Franchise Agreement – Section 13, 16, and 18	By mutual agreement with Us, by sale of the franchise, or if We open a Brickhouse Cardio Club® franchise in your territory.
e. Termination by Brickhouse without cause	Not applicable	We cannot terminate Your Agreement without cause.
f. Termination by Brickhouse with cause	Franchise Agreement – Section 18	We can terminate only if You are in default of the Agreement.

Provision	Section of Franchise Agreement	Summary
g. “Cause” defined – curable defaults	Franchise Agreement – Section 18B	Any default by You of any provision of Your Agreement and not covered by Section 18A of Your Agreement has 10 days to cure (subject to local state law).
h. “Cause” defined – non-curable defaults	Franchise Agreement – Section 18A	Listed defaults in Section 18A of the Agreement can cause immediate termination of the Franchise Agreement.
i. Your obligations on termination/nonrenewal	Franchise Agreement – Section 19	Obligations include complete de-identification and payments of amounts due (also see <i>r</i> below).
j. Assignment of contract by Brickhouse	Franchise Agreement – Section 19	No restriction on Our right to assign.
k. “Transfer” by You – defined	Franchise Agreement – Section 16	Include any change of interest in the ownership of the franchise or franchise agreement.
l. Brickhouse approval of transfer by You	Franchise Agreement – Section 16	We have the right to approve all requests for transfers.
m. Conditions for Brickhouse approval of transfer	Franchise Agreement – Section 16	You are not in default, You notify Us of requested transfer properly as required under the Agreement, You provide Us with a copy of a purchase agreement that meets Our approval, You comply with all conditions listed in Section 16C of the Agreement. Some of these conditions include qualification of prospective buyer, payment of all fee and escrow amounts, payment of all debts owed by You associated with Your business, training arranged as required for the prospective buyer, release signed by You, copy of letter from certified public accountant acknowledging review of the transfer and a then-current agreement signed by new franchisee.



<b>Provision</b>	<b>Section of Franchise Agreement</b>	<b>Summary</b>
n. Brickhouse’s right of first refusal to acquire your business	Franchise Agreement – Section 17	We can match offer for Your business.
o. Brickhouse’s option to purchase your business	Not applicable	
p. Death or disability of buyer	Franchise Agreement – Section 15I	Franchise must be assigned by estate to approved buyer within 90 days.
q. Non-competition covenants during the term of the franchise	Franchise Agreement – Section 20B	No involvement in competing business anywhere in the US.
r. Non-competition covenants after the franchise is terminated or expires	Franchise Agreement – Section 20B	No competing business for 1 year within 10 miles of Your location site or another Brickhouse Cardio Club® franchise (including after assignment).
s. Modification of the Agreement	Franchise Agreement – Section 22K	No modification except by written agreement signed by both parties.
t. Integration / merger clause	Franchise Agreement – Section 22P	No modifications without consent by all parties, but our manuals are subject to change. No modifications without consent of all parties.
u. Dispute resolution by arbitration or mediation	Franchise Agreement – Section 21	If You have a dispute regarding Your Franchise Agreement, it must be mediated.
v. Choice of forum	Franchise Agreement – Section 22C	Litigation must be where Franchisor’s principal business address is then located unless local state law supersedes this provision.
w. Choice of law	Franchise Agreement – Section 22C	West Virginia law applies unless local state law supersedes this provision.

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.

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

Any general release required as a condition of renewal, sale, and/or assignments/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

**Item 18: Public Figures**

Mr. Vic Sprouse is the former Minority Leader of the West Virginia Senate. Mr. Sprouse will at times be used in the promotion and advertising of this franchise.

Mr. Sprouse receives no specific compensation for his endorsement of this franchise.

Mr. Sprouse is the Founder and President of Brickhouse Cardio Club, Inc. At this time of the preparing of this Disclosure Document has provided the majority of the investment in this franchise both personally and through his company Sprouse Fitness LLC.

As of the date of preparing this Disclosure Document, no other public figures are used to promote our franchise. However, in the future, we may offer certain celebrities a discount on their Initial Franchise Fee on the condition that they make one or more public appearances and announcements to the media and allow their names, photographs, and information about their celebrity history to be included in news releases.

**Item 19: Financial Performance Representations**

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

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Victor A. Sprouse, Brickhouse Cardio Club Inc., PO Box 8635, South Charleston, West Virginia 25303, 1-877-729-1023, the Federal Trade Commission, and the appropriate state regulatory agencies.

**Item 20: Outlets and Franchisee Information**

**TABLE 1**  
**Systemwide Outlet Summary**  
**For years 2011-2013**

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2011	2	15	+13
	2012	15	34	+19
	2013	34	61	+27
Company-Owned	2011	2	1	-1
	2012	1	1	0
	2013	1	1	0
Total Outlets	2011	4	16	+12
	2012	16	35	+19
	2013	35	62	+27

**TABLE 2**

**Transfers of Outlets from Franchisees to New Owners (other than to us)  
For years 2011 -2013**

Column 1 State	Column 2 Year	Column 3 Number of Transfers
PA	2011	0
	2012	1
	2013	0
OH	2011	0
	2012	0
	2013	1
TX	2011	0
	2012	0
	2013	1
VA	2011	0
	2012	1
	2013	2
WV	2011	0
	2012	1
	2013	1
Total	2011	0
	2012	3
	2013	5

**TABLE 3**  
**Status of Franchised Outlets**  
**For years 2011-2013**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Termina- tions	Col. 6 Non- Renewals	Col. 7 Reacquired	Col. 8 Ceased Operations – Other Reasons	Col. 9 Outlets at End of the Year
CA	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	1	0	0	0	0	2
CO	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	1	0	0	0	0	1
DE	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	0	0	0	0	0	1
FL	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	5	0	0	0	0	6
GA	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	1	0	0	0	0	1
KS	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	1	0	0	0	0	1
MA	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	1	0	0	0	0	1
MD	2011	0	1	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	1	0	0	0	0	2

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Termina- tions	Col. 6 Non- Renewals	Col. 7 Reacquired	Col. 8 Ceased Operations – Other Reasons	Col. 9 Outlets at End of the Year
MO	2011	0	1	0	0	0	0	1
	2012	1	1	0	0	0	0	2
	2013	2	0	0	0	0	0	2
MS	2011	0	0	0	0	0	0	0
	2012	0	2	0	0	0	0	2
	2013	2	0	0	0	0	1	1
NC	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	2	0	0	0	0	2
NJ	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	1	0	0	0	0	2
NY	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	2	0	0	0	0	2
OH	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	3	0	0	0	0	3
OK	2011	0	1	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
PA	2011	0	2	0	0	0	0	2
	2012	2	1	0	0	0	0	3
	2013	3	1	0	0	0	1	3



Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of Year	Col. 4 Outlets Opened	Col. 5 Termina- tions	Col. 6 Non- Renewals	Col. 7 Reacquired	Col. 8 Ceased Operations – Other Reasons	Col. 9 Outlets at End of the Year
RI	2011	0	0	0	0	0	0	0
	2012	0	2	0	0	0	0	2
	2013	2	0	0	0	0	1	1
SC	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	2	0	0	0	0	2
TX	2011	0	1	0	0	0	0	1
	2012	1	3	0	0	0	0	4
	2013	4	4	0	0	0	1	7
VA	2011	0	1	0	0	0	0	1
	2012	1	4	0	0	0	0	5
	2013	5	4	0	0	0	0	9
WA	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	1	0	0	0	0	1
WV	2011	2	6	0	0	0	0	8
	2012	8	1	0	0	0	0	9
	2013	9	2	0	0	0	0	11
Totals	2011	2	13	0	0	0	0	15
	2012	15	19	0	0	0	0	34
	2013	34	29	0	0	0	4	61

**TABLE 4**  
**Status of Company Owned Outlets**  
**For years 2011-2013**

Col. 1 State	Col. 2 Year	Col. 3 Outlets at Start of the Year	Col. 4 Outlets Opened	Col. 5 Outlets Reacquired	Col. 6 Outlets Closed	Col. 7 Outlets Sold	Col. 8 Outlets at End of the Year
WV	2011	2	0	0	0	1	1
	2012	1	0	0	0	0	1
	2013	1	0	0	0	0	1
Totals	2011	2	0	0	0	1	1
	2012	1	0	0	0	0	1
	2013	1	0	0	0	0	0

**TABLE 5**  
**Projected Openings As Of December 31, 2013**

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet In The Next Fiscal Year	Column 4 Projected New Company-Owned Outlet In the Next Fiscal Year
CA	1	10	0
CO	1	5	0
DE	0	3	0
FL	1	10	0
GA	1	5	0
KS	1	3	0
NJ	1	5	0
NY	1	5	0
MA	1	5	0
MO	0	5	0
MS	0	5	0
NC	2	8	0
OK	0	2	0
OH	0	5	0
PA	0	5	0
RI	0	2	0
SC	1	5	0
TX	2	10	0
VA	1	7	0
WA	1	7	0
WV	1	5	0
Total	15	117	0

Current Franchise Owners

See Exhibit I – List of Current Franchisees

Franchise Owners terminating/canceling/not renewing or ceasing to do business within the previous fiscal year

<p>Karen Copenhaver 5225 Elk River Road, North, Elkview, WV 25071 304-421-2230 (sold)</p>	<p>Christie Kraft 3380 Goodman Road, Southaven, MS 38672 (901) 218-0868 (closed)</p>
<p>Angie Nash 103 Spring Street, Bluefield, VA 24605 (304) 920-1220 (sold)</p>	<p>Heather Rounds (McKinney, TX) 1720 N. Central Expressway, Ste 100, McKinney, TX 75454 828-308-8776 (closed)</p>
<p>Tami Bliss (Frisco, TX) 3245 Main St. Suite 239, Frisco, TX 75034 214-436-5506 (sold)</p>	<p>Kathleen Gemma 450 Pavillion Avenue, Warwick, RI 02888 (401) 429-3853 (closed)</p>
<p>Juanita Frye 9267 County Road 107, Proctorville, OH 45669 (740) 886-6439 (sold)</p>	<p>Holly Calvetti 712 Front Street, Cresson, PA 16630 814-935-8557 (closed)</p>
<p>Traci Burton 930 Roanoke Street, Christiansburg, VA 24073 (276) 722-0082 (sold)</p>	<p>Amy Woodall 103 Camino Drive, Victoria, TX 77905 (805) 305-5599 (did not open)</p>
<p>Corrine Donavan Marysville, WA (425) 905-8977 (did not open)</p>	

Of the five sales TWO sales were to one current franchisee, Lisa Householder, who acquired her second and third franchise locations in Bluefield and Christiansburg, VA in addition to her first territory in Tazewell, VA.

Franchise Owners who have not communicated with Brickhouse within 10 weeks of the disclosure document issuance date

None

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

There are no Brickhouse Cardio Club Franchisee Associations.

### Confidentiality

All buyers in the last 3 fiscal years have signed a confidentiality agreement. In some instances, current and former franchise owners sign provisions restricting their ability to speak openly about their experience with Brickhouse Cardio Club®. You may wish to speak with current and former operators, but be aware that not all such will be able to communicate with you.

**Item 21: Financial Statements**

Attached to this disclosure document as Exhibit B are the unaudited financials of Brickhouse Cardio Club Inc. through August 30, 2013.

Attached to this disclosure document in Exhibit B are the unaudited fiscal year end financials of our predecessor, Sprouse Fitness LLC for 2011 and 2012.

**Item 22: Contracts**

See Exhibit A- Franchise Agreement

See Exhibit C – Promissory Note

See Exhibit H- General Release

**Item 23: Receipts**

The FTC and state regulatory agencies require the receipts to be the 2 last page of this document. Please see the LAST 2 PAGES of this document for receipts.



**Exhibit A: Franchise Agreement**



**Brickhouse Franchise Agreement**

**Franchise Number:**

**Franchise Territory:**

## FRANCHISE AGREEMENT

Master Franchisee No. XXXXX

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is made and entered into this

\_\_\_\_\_ day of January, 2014, by and between BRICKHOUSE CARDIO CLUB, Inc. a West Virginia Corporation having its principal place of business at 3719 MacCorkle Ave. SE, Charleston, WV 25304, mailing address PO Box 8635, South Charleston, WV 25304, hereinafter referred to as "BRICKHOUSE;" and, XXXXXXXXX of \_\_\_\_\_

\_\_\_\_\_, hereinafter referred to as "Franchisee."

### INTRODUCTION AND RECITALS

WHEREAS, BRICKHOUSE has invested considerable time, effort and money to develop a fitness studio franchise catered to offering group fitness classes (the "Brickhouse Franchise") and has developed public goodwill and certain trade names, service marks and logos including, but not limited to, the *Brickhouse Cardio Club®*, its logo, and services throughout the United States of America; and

WHEREAS, Brickhouse is the exclusive licensee of certain applied-for trademarks and service marks, including, but not limited to, *Brickhouse Cardio Club®*, which are registered with the United States Patent and Applied-for trademark Office (applied-for trademark pending), and is the owner or exclusive licensee of other marks authorized for use in Brickhouse Franchises (the "Brickhouse Marks"); and

WHEREAS, Brickhouse is engaged in the business of granting franchises to operate Brickhouse Franchises using certain standards, product specifications and operating procedures (the "Brickhouse System") and the Brickhouse Marks; and

WHEREAS, Franchisee recognizes the benefits to be derived from being identified with the Brickhouse System and licensed by Brickhouse to use its name and the Brickhouse Marks; and

WHEREAS, Franchisee recognizes the value of uniformity in a system of fitness studios and Franchisee further recognizes the value of Brickhouse' knowledge and experience gained through the operation of Brickhouse Franchises and the value of the Brickhouse Marks; and

WHEREAS, Franchisee has studied and fully understands the Brickhouse System, Brickhouse Marks, and logos of Brickhouse, the importance of maintaining Brickhouse' high standards and the terms and conditions herein, has reviewed a complete copy of this Agreement; and

WHEREAS, Franchisee desires to acquire and operate a Brickhouse Franchise at the location specified in this Agreement ("Franchisee's Facility") for the entire Term of this Agreement (as defined below), Franchisee has had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this Agreement by financial and legal counsel of Franchisee's own choosing prior to its execution, and is entering into this Agreement after having made an independent investigation of Brickhouse' operations and not upon any representation as to the profits and/or sales volume which Franchisee might be expected to realize, nor upon any representations or promises by Brickhouse which are not contained in this Agreement; and

WHEREAS, FRANCHISEE ACKNOWLEDGES THAT (1) THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED HEREIN INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON THE ABILITY OF THE FRANCHISEE AS AN INDEPENDENT BUSINESS PERSON AND HIS/HER ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND (2) NO ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE GROSS REVENUES, VOLUME OR EARNINGS LIKELY TO BE ACHIEVED, AND (3) NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS SET FORTH HEREIN, IS BINDING ON BRICKHOUSE CARDIO CLUB, INC. IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

BEFORE SIGNING THIS AGREEMENT, THE FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions contained herein and other good and valuable consideration, the parties hereto agree as follows:

## **1. GRANT OF FRANCHISE**

A. Brickhouse hereby grants to Franchisee, and Franchisee accepts, one (1) Brickhouse Franchise to open and operate for the following stated terms, and on the conditions hereinafter set forth, and to use the Brickhouse Marks, trade names, logos and emblems associated with and developed by Brickhouse. The Brickhouse Franchise is granted for the area set out in Exhibit A herein (the "Franchised Territory").

B. Franchisee's Facility shall be conducted by Franchisee at one (1) location only, located within the limits or boundaries of the Franchised Territory. For the purpose of this Agreement, Franchisee's Facility shall be deemed to include any and all activities in the nature of exercise, diet, diet supplements and weight loss. Franchisee shall be restricted from operating any other type of business other than a Brickhouse Franchise in the same building where the Franchisee's Facility is located.

C. In order to adequately respond to changing market conditions, subject to the restrictions described in this Agreement, Brickhouse reserves the right to, and may, use other channels of distribution, or license the use of alternative proprietary marks or methods in connection with the operation of businesses which may be similar to or different from the Brickhouse Franchise at any location on any terms and conditions Brickhouse deems advisable without granting Franchisee any right thereto.

## **2. TERM OF AGREEMENT**

A. The term of this Agreement shall be for a period of five (5) years from the date of this Agreement (the "Term of this Agreement"). Upon the expiration of the Term of this Agreement, Brickhouse shall have the sole right to renew this Agreement for an additional period of five (5) years ("Renewal"); however, Franchisee shall be required to execute a new franchise agreement in the form then being used by Brickhouse. Brickhouse shall notify Franchisee at least ninety (90) days, and no more than one hundred eighty (180), prior to the expiration of this Agreement as to Brickhouse' exercising of its sole right to grant Franchisee a Renewal. Franchisee is required to provide written notice to Brickhouse within thirty (30) days of receiving such notice from Brickhouse in the event Franchisee does not accept such Renewal. Failure to provide Brickhouse such written notice of not accepting such Renewal shall result in Franchisee accepting such Renewal and executing a new franchise agreement in the form then being used by Brickhouse and complying with the conditions set out below. In the event Brickhouse does not approve an extension to the Term of this Agreement, Brickhouse shall provide Franchisee written notice of the denial of extension to the Term of this Agreement at least ninety (90) days, and no more than one hundred and eighty (180) days, prior to the expiration of the Term of this Agreement. Upon extension, Franchisee expressly agrees to the following:

1. Franchisee shall add or replace studio, fixtures and signs and modify Franchisee's Facility and location to bring it into compliance with specifications and standards then applicable for new Brickhouse Franchises, including any applicable re-imaging; and

2. Franchisee and its owners shall execute a general release of any and all claims that Franchisee and its owners have or may have at that time against Brickhouse, its officers, directors, agents, and employees in the form prescribed by Brickhouse; notwithstanding, Any general release required as a condition of renewal, sale, and/or assignments/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law, and

3. Franchisee and its owners shall execute a new franchise agreement in the form then being used by Brickhouse, which may differ from this Agreement as to fees, services, terms, provisions and obligations.

B. There are no conditions contained in this Agreement under which Franchisee may terminate this Agreement prior to the expiration of the Term of this Agreement except by mutual agreement with Brickhouse and execution of a mutual release, or by sale of the Brickhouse Franchise to another franchisee in good standing or to a qualified third party in accordance with this Agreement.

**3. FEES AND PAYMENTS**

A. **Method of Payment.** All payments made by Franchisee to Brickhouse under this Agreement shall be made by electronic funds transfer or cashier's check as set out herein or in any other form that Brickhouse, in its sole right, accepts. Brickhouse has the sole right to determine which method of payment will be acceptable in regards to all payments under this Agreement. Personal and/or company checks are not acceptable. All electronic funds transfers for payments owed to Brickhouse by Franchisee may be initiated by Brickhouse. Franchisee, upon signing this Agreement, shall provide Brickhouse with a bank account from which Franchisee and Brickhouse are legally authorized to withdraw funds ("Franchisee's Bank Account"). Such legal authorization to Franchisee's Bank Account shall be provided to Brickhouse in writing by Franchisee; however, such authorization to Brickhouse shall be deemed given and effective by Franchisee's signature on this Agreement and Brickhouse can act on such authorization to initiate an electronic funds transfer from Franchisee's Bank Account for any and all payments due under this Agreement. Franchisee further agrees that it will not terminate such authorization as long as this Agreement is in effect. Franchisee agrees not to close Franchisee's Bank Account without prior notice to Brickhouse and the establishment of a substitute bank account authorizing electronic funds transfers initiated by Brickhouse. Failure of the Franchisee to provide Brickhouse with a bank account from which Franchisee and Brickhouse are legally authorized to withdraw funds and written authorization to Brickhouse for transferring funds electronically from Franchisee's Bank Account shall be a material intentional default of this Agreement. A return of an electronic funds transfer unpaid for any reason for any payment due under this Agreement by Franchisee to Brickhouse or failure of Franchisee to timely make each payment due under this Agreement to Brickhouse as set out herein shall be a material default of this Agreement and result in the termination of this Agreement and forfeiture of all monies paid by Franchisee to Brickhouse.

B. **Initial Franchise Fee.** In consideration of the Brickhouse Franchise granted in this Agreement by Brickhouse to Franchisee, Franchisee shall pay to Brickhouse the sum of Fourteen Thousand Nine Hundred Dollars (\$14,900.00) (the "Initial Franchise Fee") upon execution of this Agreement. The Initial Franchise Fee includes the territory listed in Appendix A of this Agreement ("Brickhouse Territory"). The Initial Franchise Fee must be paid in the form of a cashier's check, or any other form as determined solely by Brickhouse, payable to Brickhouse Cardio Club Inc. in Charleston, WV.

The Initial Franchise Fee is allocated as follows:

Franchise Rights, training and processing.....\$14,900

(Includes all intellectual property rights and territory rights)

The Initial Franchise Fee does not include any amount for taxes. As required by Section 15 of this Agreement, Franchisee is responsible for all taxes owed for any part of the Initial Franchise Fee. In the event Brickhouse is required by law to collect taxes from Franchisee for any part of the Initial Franchise Fee, Franchisee shall remit payment to Brickhouse for such taxes in addition to the Initial Franchise Fee upon execution of the Agreement.

Franchisee hereby acknowledges and agrees that the grant of this Brickhouse Franchise and the agreements of Brickhouse contained in this Agreement including without limitation pre-opening assistance and training constitute the sole and only consideration for the payment of the Initial Franchise Fee, and the Initial Franchise Fee shall be fully earned by Brickhouse upon execution of this Agreement as defined in this Agreement. In that regard, upon the payment of the Initial Franchise Fee, it shall be deemed fully earned and non-refundable in consideration of the administrative and other expenses incurred by Brickhouse granting this Brickhouse Franchise and for Brickhouse' lost or deferred opportunity to offer to sell or sell this franchise to others. In the event Franchisee does not open Franchisee's Facility to be operated under this Agreement within one hundred and eighty (180) days from the date of execution of this Agreement by Brickhouse in accordance with Section 5A of this Agreement by Brickhouse, Brickhouse shall have the sole right to terminate this Agreement without refunding any part of the Initial Franchise Fee.

For franchisees in California, Hawaii, Washington and Maryland, all fees will be deferred until Brickhouse has satisfied all material pre-opening obligations to the franchisee that are contained in this disclosure document and the franchise agreement.

**C. Training Fee.** In the event the Brickhouse Franchise granted to Franchisee herein was a result of a transfer of any interests of the Brickhouse Franchise by another owner to Franchisee, whether by purchase or by gift, the sum of Five Hundred Dollars (\$500.00) shall be transferred electronically from Franchisee's Bank Account as a Training Fee prior to the transfer of any such interests.

**D. Applicable Law.** Franchisee understands that it may be required, under applicable federal, state, or local law, to secure permission from the appropriate government authority to operate a Brickhouse Cardio Club®. It shall be Franchisee's responsibility to familiarize itself with all applicable laws and regulations of their state or locality, and Brickhouse has made no representations as to the nature of such laws or Franchisee's ability to qualify under such laws. Franchisee shall be responsible for any local or state sales tax, or any other tax applicable to the purchase of the franchise and/or the fitness equipment included in the Initial Franchise Fee and any bond requirements.

#### 4. FRANCHISE FACILITY LOCATION

**A. Location of Franchise.** Franchisee shall be solely responsible for site selection and securing a lease for the premises, which location site must be approved by Brickhouse. Franchisee shall have Franchisee's Facility completed and furnished in accordance with Brickhouse' specifications prior to the opening of Franchisee's Facility to the general public.

**B. Pre-Approval.** Prior to execution of any lease by Franchisee for the location site of Franchisee's Facility, Franchisee must receive written approval from Brickhouse for said location site. Brickhouse has the sole right and discretion to approve or not approve said location site. Franchisee must have a location site approved by Brickhouse at least thirty (30) days prior to the Scheduled Opening Date (as defined below) of Franchisee's Facility.

**C. No Guarantee.** Brickhouse, by reason of the granting of a license or approval of any location site by Brickhouse as set out herein to Franchisee, does not warrant, represent, guarantee or assure Franchisee that the Brickhouse Franchise herein granted will be successful or profitable, nor that the location site selected by the Franchisee will be a viable one for the operation of a Brickhouse Franchise, nor that the Brickhouse Franchise granted herein will meet Franchisee's expectations. Franchisee hereby waives and releases any right or claim in connection therewith against Brickhouse or any of its affiliates, including, but not limited to, any claim relating to the selection or location of Franchisee's Facility, as well as the location and profitability of Franchisee's Facility not meeting Franchisee's expectations. Franchisee understands and acknowledges that the suitability of a location and the success of any franchise operation, including the one licensed pursuant to this Agreement, depends on many factors outside the control of Brickhouse or Franchisee (including, without limitation, such factors as interest rates, unemployment rates, demographic trends, social fads and the general economic climate), but depends primarily upon the Franchisee's efforts, and abilities in the operation of the franchise thereon.

**D. Re-Location.** Franchisee shall not move or relocate Franchisee's Facility without the prior written approval by Brickhouse and the payment by Franchisee to Brickhouse of a Re-Location Fee in the amount of Five Hundred Dollars (\$500.00) in accordance with Section 3A herein. Such Re-Location Fee is not refundable regardless of whether Franchisee actually relocates Franchisee's Facility/ Brickhouse has the sole right and discretion to approve or not approve said new location site. In the event Franchisee desires to relocate Franchisee's Facility, Franchisee shall submit to Brickhouse a written request stating the new proposed location and a copy of the proposed lease for the proposed location at least sixty (60) days prior to the date of intended relocation. Failure by Brickhouse to respond to such request shall not be deemed as an approval of the new location site. The new location must remain within the boundaries of the Franchised Territory.

## 5. OPENING

**A. Opening.** Franchisee shall open Franchisee's Facility and start paying its Monthly Royalty Fee and Monthly Advertising Fee within one hundred eighty (180) days from execution of this Agreement by Brickhouse. Upon written request by Franchisee, Brickhouse may grant Franchisee an extension for its opening date, and Franchisee must receive such approval, if granted, in writing from Brickhouse. If Brickhouse, in its sole right, grants such an extension, Franchisee must begin paying to Brickhouse the Minimum Monthly Royalty Fee and the Minimum Monthly Advertising Fee as defined in Section 10 below beginning the first month after the expiration of one hundred eighty (180) days from execution of this Agreement by Brickhouse and continue such payments until Franchisee opens the Franchise for which Franchisee will pay its Monthly Royalty Fee and Monthly Advertising Fee in accordance with Section 10 below or until this Agreement is terminated for any reason. Nothing in this provision shall restrict Brickhouse' right to terminate this Agreement in accordance with Section 18 below.

**B. Opening Date.** Brickhouse, upon written request by Franchisee, has the sole right in granting an opening date for Franchisee's Facility ("Scheduled Opening Date"). In exercising such right, Brickhouse will consider the following factors: (i) Franchisee's strict compliance with all provisions of this Agreement and any other agreement between Franchisee and Brickhouse; (ii) the availability of independent contractors used by Brickhouse to assist Franchisee. Brickhouse reserves the sole right to cancel or delay Franchisee's Scheduled Opening Date. If Franchisee's Scheduled Opening Date is delayed due to no fault of Franchisee and such delay would result in Franchisee's violation of Section 5A herein, then Brickhouse will grant an extension of the time period set out in Section 5 A, but such extension shall be limited to the earliest date for which Brickhouse can provide a Scheduled Opening Date for Franchisee's Facility.

**C. Delay of Opening.** If Brickhouse has not received all payments as required by Section 3 at least thirty (30) days prior to the Scheduled Opening Date of Franchisee's Facility, or if Brickhouse has not approved Franchisee's location site of Franchisee's Facility at least thirty (30) days prior to the Scheduled Opening Date of Franchisee's Facility, or if Franchisee fails to provide documentary evidence of insurance as required in Section 14A of this Agreement at least thirty (30) days prior to the Scheduled Opening Date of Franchisee's Facility, or if Franchisee is in violation of any provision of this Agreement or any other agreement between Franchisee and Brickhouse, Brickhouse has the sole right to cancel Franchisee's Scheduled Opening Date and reschedule each to a date solely determined by Brickhouse and in accordance with Section 5A herein. If Franchisee does not open Franchisee's Facility by the Scheduled Opening Date for any reason or if Franchisee, after already having a Scheduled Opening Date, has to receive approval from Brickhouse for a different Scheduled Opening Date, then Franchisee shall remit to Brickhouse a fee for such change in the amount of One Thousand Dollars (\$1,000.00) which shall be transferred electronically from Franchisee's Bank Account to Brickhouse or remitted in any other form as determined solely by Brickhouse. If such delay under this subsection results in Franchisee not opening within one hundred and eighty (180) days from



execution of this Agreement by Brickhouse in accordance with Section 5A herein, Brickhouse shall have the right to terminate this Agreement without refunding any part of the Initial Franchise Fee.

## **6. STANDARDS AND CONSISTENCY OF OPERATION**

**A. Manuals and the Brickhouse System.** In order to protect the reputation and goodwill of Brickhouse, to promote uniform standards of service and operation under Brickhouse Marks and Brickhouse System, to promote the goodwill of the Brickhouse System, and for the mutual benefit of Brickhouse and Franchisee, Franchisee shall operate Franchisee's Facility in strict compliance with the standard procedures, policies, rules and regulations established by Brickhouse and incorporated in Brickhouse' operations manual(s) as same may be amended and revised from time to time, including all bulletins, supplements, ancillary manuals, videos, and any electronic medium (collectively referred to herein as the "Confidential Operations Manual"). Brickhouse shall make available to Franchisee, for the exclusive use of the Franchisee and its employees in the operation of Franchisee's Facility, one (1) copy of the Confidential Operations Manual. The Confidential Operations Manual shall remain the property of Brickhouse, and Franchisee acknowledges that such Manual is confidential, proprietary and trade secrets, and Franchisee does not acquire any right, title or interest in the Confidential Operations Manual. Franchisee shall only divulge any part of the Confidential Operations Manual and Brickhouse System to those employees of Franchisee who must have access to it in order to participate in the operation of Franchisee's Facility. Franchisee shall also cause its spouse, all its employees and, if Franchisee is a corporation, partnership or other legal entity, its shareholders, officers, members, directors and partners, to sign a non-competition agreement and a confidentiality agreement in forms acceptable to Brickhouse concerning the Confidential Operations Manual and Brickhouse System and provide Brickhouse with a copy of such agreements. To the extent not prohibited by any laws, rules or regulations of duly-constituted governmental bodies relating to Franchisee's Facility, Franchisee shall conduct the operation of Franchisee's Facility in accordance with the Confidential Operations Manual and the Brickhouse System. The Confidential Operations Manual may include, but not be limited to, any of the following: forms, information regarding services provided, cash control, general operations, labor schedules, personnel, Gross Sales (defined below) reports, employee forms and information; design specifications for the operation of Franchisee's Facility; display of signs and notices; authorized and required equipment and fixtures; usage of Brickhouse Marks; insurance requirements; decor; standards for management and personnel, hours of operation; yellow page and local advertising formats; standards of maintenance and appearance of Franchisee's Facility.

Brickhouse shall have the right to make additions to, deletions from, revisions to or any other modifications to the Confidential Operations Manual at any time as Brickhouse deems necessary, and such additions, deletions and modifications shall become part of the Confidential Operations Manual. Such modifications shall be binding upon Franchisee immediately after Franchisee's actual or deemed receipt of such modifications; provided, however, that such modifications shall not alter Franchisee's status and rights under this Agreement. Franchisee agrees that such

modifications may become necessary and desirable from time to time and agrees to accept and comply with such modifications to the Confidential Operations Manual which Brickhouse in the good faith exercise of its judgment believes to be desirable and reasonably necessary. The Confidential Operations Manual, as modified from time to time as hereinabove provided, shall be an integral part of this Agreement.

Franchisee acknowledges and agrees that prompt adoption of and adherence to Brickhouse' comprehensive facility format and operating system, including design, decor, color scheme and style of building and signage, standards, specifications and procedures of operation, quality of products and services offered and the provisions of the Confidential Operations Manual, as amended from time to time, are reasonable, necessary and essential to the image and success of all Brickhouse Franchises. The Confidential Operations Manual contains the official mandatory franchise operating standards, specifications and procedures prescribed from time to time by Brickhouse for the operation of a Brickhouse Franchise. Access to the Confidential Operations Manual and any and all subsequent changes or additions thereto made by Brickhouse shall be made available by Franchisee at Franchisee's Facility at all times . Franchisee shall not make, cause or allow to be made any copies or reproductions of all or any portion of the Confidential Operations Manual without Brickhouse' express prior written consent. In the event of any conflict between the Confidential Operations Manual kept at Franchisee's Facility and the master copy maintained by Brickhouse in Charleston, WV (or such other place as may be designated by Brickhouse), the master copy shall control. Upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee shall immediately return any copy of the Confidential Operations Manual to Brickhouse.

Franchisee also acknowledges that Brickhouse has developed, and may continue to develop or revise in the future, the Brickhouse System pertaining to Franchisee's Facility, and further acknowledges that this Brickhouse System, together with information pertaining to customers of the Brickhouse System, are trade secrets of Brickhouse which have been developed through the research of and at the expense of Brickhouse.

**B. Internet Site for Franchisee.** Brickhouse provides an internet site accessible only to Brickhouse franchisees ("Brickhouse Community Website"). Any information provided on Brickhouse Community Website is confidential, proprietary and owned by Brickhouse. Franchisee shall not provide to any third party access to Brickhouse Community Website except to the manager of Franchisee that has signed a non-competition agreement and a confidentiality agreement in accordance with Section 6A above. In the event a third party receives or acquires access to Brickhouse Community Website through Franchisee's password due to no fault of Brickhouse, Franchisee shall be responsible to take all necessary action to prevent said third party from accessing Brickhouse Community Website, including notifying Brickhouse in writing of any unauthorized access to Brickhouse Community Website.

**C. Franchisee's Facility.** Franchisee's Facility will be constructed, improved and/or decorated in the manner authorized and approved by Brickhouse, and the appearance of Franchisee's Facility will not thereafter be altered except as approved in writing by Brickhouse. Franchisee shall, at its expense, continuously throughout the Term of

this Agreement maintain Franchisee's Facility in good condition and repair in accordance with Brickhouse' current repair and maintenance standards. Franchisee shall improve, alter and remodel Franchisee's Facility to bring it into conformance with the national and local plans, specifications and/or other standards for new or remodeled Brickhouse Franchises as may hereafter be reasonably changed and defined from time to time by Brickhouse.

D. **Signs.** The Brickhouse Marks will only be erected and displayed in the manner and at such locations as are approved and authorized by Brickhouse, in writing. Franchisee agrees to maintain and display signs reflecting the current image of Brickhouse Franchises and shall not place additional signs or posters at Franchisee's Facility without the prior written consent of Brickhouse. Franchisee shall discontinue the use of and destroy such signs as are declared obsolete by Brickhouse within the reasonable time specified by Brickhouse. Such signs are fundamental to the Brickhouse System, and Franchisee hereby grants to Brickhouse the right to enter Franchisee's Facility to remove and destroy unapproved or obsolete signs in the event that Franchisee has failed to do so within thirty (30) days after the written request of Brickhouse. Brickhouse reserves the right to proceed under Section 18B of this Agreement in the event Franchisee is in violation of this provision.

E. **Equipment.** Brickhouse does not allow the use of any heavy fitness equipment, including but not limited to, dumbbells above 25 pounds, treadmills, elliptical and other cardio machines, fitness benches or equipment of any kind. Use of such equipment within a Brickhouse location shall constitute a breach of the franchise agreement and will initiate automatic revocation of the Franchise Territory.

F. **Products and Services.** Franchisee shall offer and sell only the products and services which are approved by Brickhouse in writing and no other products and services. Franchisee shall offer all goods and services that Brickhouse designates as required for all franchisees. Brickhouse restricts services provided by Franchisee to fitness classes and to offering for sale weight-loss related products approved by Brickhouse. Brickhouse reserves the right to add additional authorized services and products that Franchisee is required to offer. Brickhouse, or its authorized representatives, at all reasonable times, shall have the right to inspect and remove all products and services offered or made available by Franchisee's Facility and shall have access to Franchisee's Facility for this purpose.

G. **Hours of Operation.** Franchisee's Facility shall be open for business for at least one class Monday through Thursday, as well as Saturday, fifty-two (52) weeks a year, excluding federal holidays, unless otherwise authorized or directed by Brickhouse in writing or unless prohibited by applicable law.

H. **Vending Machines. Etc.** Public telephones, newspaper racks, juke boxes, cigarette, gum and candy machines, rides, lottery ticket terminals, video games or any other games, vending or amusement machines, or any unapproved products will not be installed at Franchisee's Facility without the prior written approval of Brickhouse.

**I. Manner of Operation.** Franchisee shall maintain the highest standards of quality and service in its operation of Franchisee's Facility in accordance with the standards established by Brickhouse in order to provide the highest quality service to customers of Franchisee and to preserve and enhance the value of the Brickhouse Marks licensed hereunder. Unless Brickhouse consents in writing, Franchisee is required to personally operate and/or exercise personal supervision over the operation of Franchisee's Facility. Franchisee shall keep and maintain a safe, neat, clean and orderly facility at a location in keeping with the standards established in the Brickhouse Operational Manual. To maintain uniformity within the Brickhouse System and to maintain the standard practices that are necessary to promote the goodwill of the Brickhouse System, Franchisee shall use in the operation of Franchisee's Facility only the standard form of reports, stationery and printed material uniformly prescribed by Brickhouse for use by members of its Brickhouse System to the extent such materials are not prohibited by any laws, rules or regulations of duly-constituted governmental bodies relating to Franchisee's Facility. Franchisee shall purchase all such materials from Brickhouse or Brickhouse' approved vendor. The charge for such material, together with all costs for postage and handling, shall be paid in advance by Franchisee.

**J. Advertising and Promotional Materials.** Only those advertising and promotional materials or items which are authorized by Brickhouse in writing prior to use shall be used, sold or distributed by Franchisee, and no display or use of the Brickhouse Marks shall be made without the prior written approval of Brickhouse. Franchisee shall place in the yellow pages of the telephone directory serving its market area advertisement(s) as prescribed by Brickhouse in the Confidential Operations Manual. Additional yellow page advertisements may be placed by Franchisee, but only in the most recent form prescribed by Brickhouse.

From time to time during the Term of the Agreement, Brickhouse shall have the right to establish and conduct promotional campaigns on a national or regional basis, which may by way of illustration and not limitation promote particular products or marketing themes. Franchisee agrees to participate in such promotional campaigns upon such terms and conditions as Brickhouse may establish. Franchisee acknowledges and agrees that such participation may require Franchisee to purchase point of sale advertising material, posters, flyers, product displays and other promotional material. Nothing herein shall be construed to require Franchisee to charge any prices for any goods and services offered at Franchisee's Facility other than those determined by Franchisee in its sole and absolute discretion.

Franchisee shall not engage in any deceptive, misleading, unlawful or unethical advertising which, in the sole discretion of Brickhouse, might be injurious or detrimental to Brickhouse, Brickhouse Marks, the Brickhouse System or the public. Franchisee shall use the Brickhouse Marks only in the forms prescribed by Brickhouse. All advertising or promotional materials, signs or other items which Brickhouse designates to bear the Brickhouse Marks shall be in the form, color, location and manner prescribed by Brickhouse and shall either be furnished by Brickhouse or approved in writing by Brickhouse.

K. **Right of Entry and Inspection.** Brickhouse, or a representative of Brickhouse, shall have the unrestricted right to enter Franchisee's Facility to conduct such activities as it deems necessary to ascertain Franchisee's compliance with this Agreement. The inspections may be conducted without prior notice at any time when Franchisee or one of Franchisee's employees is at Franchisee's Facility. The inspections will be performed in a manner which minimizes interference with the operation of Franchisee's Facility.

L. **Interference With Employment Relations of Others.** Franchisee agrees not to attempt, directly or indirectly, to entice or induce, or attempt to entice or induce any employee of Brickhouse or of another franchisee of Brickhouse to leave such employment.

M. **Management of Franchisee's Facility.**

1. Franchisee acknowledges, represents and warrants that an individual manager who has successfully completed the training program described in Section 9 herein and periodically retrained in the Brickhouse System, shall be identified by Franchisee to Brickhouse and be granted the authority by Franchisee to direct any action necessary to ensure that the day-to-day operation of Franchisee's Facility is in compliance with the Confidential Operations Manual, with this Agreement, and with the terms of any lease and any other agreements relating to Franchisee's Facility. The manager shall devote full time and best efforts to the overall supervision of Franchisee's Facility and any other Brickhouse Franchises owned by Franchisee as to which he/she is the manager.

2. If Franchisee is a corporation, partnership or other legal entity, Franchisee must designate a shareholder, partner or member as the "operating principal" who must be acceptable to Brickhouse, and furnish all organizational and other documents regarding the formation of Franchisee's entity, together with any and all amendments and modifications thereto, to Brickhouse, as well as such other documents as Brickhouse may request from time to time.

N. **Information Technology Requirements.** Franchisee shall have available in Franchisee's Facility the necessary computer hardware and software to carry on business with Brickhouse over the internet. Franchisee shall maintain an active Brickhouse Cardio Club email assigned by Brickhouse. Franchisee shall be responsible for all communications sent to Franchisee by Brickhouse via such e-mail address. Franchisee shall be responsible for all communications sent to that assigned e-mail address. Franchisee is required to purchase and use the Brickhouse approved software program in the operation of Franchisee's Facility and purchase the necessary computer hardware to run the approved software program.

O. **Franchisee Website and Social Media.** If the franchise decides to have its own website on the Internet to promote the Franchisee's facility, the website must be developed by a vendor approved by Brickhouse. Prior to Franchisee creating and having its own website, featuring the Brickhouse Marks or any part of the Brickhouse Marks, Franchisee will comply with the following:

1. Franchisee must obtain Brickhouse prior written approval for Franchisee's domain name and the form and content of Franchisee's website before it is used on the Internet so that Brickhouse can maintain the common identity of the franchise network. Franchisee will not use any of the Brickhouse Marks or similar words as part of Franchisee's domain name. The domain name will be registered in the name of Brickhouse and licensed to Franchisee for the Term of this Agreement; and
  2. Franchisee shall provide on its own website a hyperlink to the Brickhouse website. Prior to placing any hyperlinks to third party websites, Franchisee must obtain written approval of such hyperlinks from Brickhouse. Franchisee will not indulge in unlawful or unethical activities including any activities detailed in the Confidential Operations Manual; and
  3. Franchisee must have taken appropriate legal advice regarding the content of Franchisee's website and ensure that it complies with all relevant legislation and regulations;
  4. Franchisee must obtain written approval by Brickhouse Cardio Club® before developing any social media page referring to Brickhouse Cardio Club® in any way and must comply with Brickhouse requirements for development, name and look of the page to maintain consistency across the brand. Brickhouse Cardio Club® shall always be included as an administrator and has the ability to remove anything it deems improper in the promotion of the Brickhouse Cardio Club® brand and has the unilateral right to terminate such page at its sole discretion, and
  5. Franchisee agrees that e-commerce is a rapidly developing field and that the provisions of this Clause may need to be modified in the future or that guidelines on use of the Internet may be introduced in the Confidential Operations Manual. In the event of such modification or the issue of such guidelines by Brickhouse, Franchisee agrees that they will be legally binding on Franchisee; and
  6. On termination of this Agreement for any reason Franchisee will immediately assign ownership of all domain names and websites operated pursuant to this Clause to Brickhouse or to another person or entity as directed by Brickhouse, and Franchisee will undertake all such actions as Brickhouse requires to dissociate Franchisee with the website and the domain name; and
  6. Franchisee will fully indemnify Brickhouse against any and all claims made against Brickhouse relating to Franchisee's website; and
- P. Cash Control System.** Franchisee, at its sole expense, shall install and use any necessary computers, hardware and computer accessories to use in Franchisee's Facility a computer-based cash control, management, operation or "point of sale" system or any other system as approved and required by Brickhouse. Such system shall be implemented and operated in Franchisee's Facility in strict compliance with the Confidential Operations Manual and any other communications provided to Franchisee from Brickhouse regarding such system.

**Q. Electronic Funds Transfer.** Franchisee shall facilitate electronic transfers for membership dues for its members through Brickhouse approved membership software program. Brickhouse reserves the right to prohibit Franchisee from using any form of point of sale terminal, reports, stationery or printed matters purchased from other suppliers that deviate in any way, either in content or in the standards of quality that have been established by Brickhouse in the past or may be established by Brickhouse in the future.

**R. Compliance with Laws, Rules and Regulations.** Franchisee shall, at all times, comply with all requirements set forth in this Agreement and in the Confidential Operations Manual and with all laws, rules and regulations of duly-constituted governmental bodies relating to Franchisee's Facility. Franchisee is solely responsible for knowing and understanding all such requirements, laws, rules and/or regulations, and any information acquired from Brickhouse regarding such shall not be construed as legal advice nor as any representation by Brickhouse as to the interpretation of any such requirements, laws, rules and/or regulations.

## 7. SERVICES AND SUPPLIES

**A. Services Available to Franchisee.** Brickhouse agrees to make available certain services to Franchisee and use reasonable efforts to provide such services in a manner reasonably designed for the Brickhouse System, the content of and manner by which any and all services are to be delivered by Brickhouse shall be and remain within Brickhouse' sole reasonable discretion and right. Such services and items may include the following:

1. Brickhouse will make available a reproducible copy of the standard Brickhouse Marks and specifications for current approved logo and signage reproductions. Any modifications of the Brickhouse Marks and specifications, whether requested or required by planning and zoning boards, building codes, landlords, or otherwise, shall be the responsibility of Franchisee and must be approved in writing by Brickhouse and shall be paid for by the Franchisee.
2. A pre-opening training program conducted at Brickhouse' training facilities as set out in Section 9 A of this Agreement.
3. Brickhouse, at its sole discretion and right, may provide opening assistance to Franchisee by independent contractors of Brickhouse at Franchisee's Facility for up to two (2) days or such other times as Brickhouse deems appropriate under the circumstances. Brickhouse is not required to provide such opening assistance and, in exercising its own discretion and right, may consider the following factors: the experience of Franchisee, whether the assistance is for a new opening or the re-opening after a transfer of ownership of an already operating Brickhouse facility, the prior Brickhouse System experience of Franchisee's management, and any other factors that Brickhouse deems appropriate for consideration.

4. Periodic training seminars for Franchisee at such times and in such locations as selected by Brickhouse. Franchisee's attendance at those seminars may be required at the sole discretion and right of Brickhouse. All expenses of Franchisee and its personnel incident to attendance at the training seminars shall be borne by Franchisee.
5. Provided Franchisee is in current compliance with all obligations in this Agreement and upon Franchisee's written request, Brickhouse shall periodically analyze Franchisee's sales, promotional efforts and financial status and furnish Franchisee with suggestions as to any improvements which Brickhouse believes to be necessary, and Brickhouse shall provide Franchisee with such other on-going advice and assistance as Brickhouse deems necessary and appropriate.
6. Confidential Operations Manual in an approved format, a copy of which will be loaned to Franchisee for the Term of this Agreement. Such copy may be provided to Franchisee via the Brickhouse Community Website.
7. Such merchandising, marketing and advertising research data and advice as may be developed, from time to time, by Brickhouse and deemed by it to be helpful in the operation of a Brickhouse facility. Franchisee shall be responsible for ensuring that such marketing is lawful in the Franchised Territory and notify Brickhouse immediately in writing of any concerns that Franchisee has in this regard. Brickhouse shall decide in its sole discretion and right what amendments (if any) to make to such marketing due to such Franchisee's comments.
8. Communication of new developments, techniques and improvements to the Brickhouse System.
9. Such ongoing support as Brickhouse deems reasonably necessary to continue to communicate and advise Franchisee as to the Brickhouse System, including the operation of Franchisee's Facility.

**B. Brickhouse System Supply.**

1. Franchisee shall purchase all fixtures, furnishings, signs, equipment, inventory, uniforms, advertising materials, services, and other supplies, products and materials required for the operation of Franchisee's Facility solely from suppliers who demonstrate, to the continuing reasonable satisfaction of Brickhouse, the ability to meet Brickhouse' standards, specifications and requirements for such items regarding quality, variety, service, safety and health; who possess adequate quality controls and capacity to supply Brickhouse' needs promptly and reliably; who have a sound financial condition and business reputation; who will supply such items to a sufficient number of franchises to enable Brickhouse to economically monitor compliance by the supplier with Brickhouse' standards, specifications, and requirements; and who have been approved for such items in writing by Brickhouse and not thereafter disapproved. Brickhouse reserves the right to increase or decrease the number of approved suppliers and to designate itself an approved supplier and to make a profit or otherwise receive value in kind or rebates from the designation of approved suppliers and/or from the sale of supplies to Franchisee.



2. If Franchisee, during the Term of this Agreement, desires to purchase any products for use in Franchisee's Facility from a supplier who has not been approved by Brickhouse, Franchisee may request, in writing, approval by Brickhouse of such supplier. Brickhouse shall approve such proposed supplier if, in its sole judgment and discretion, it is satisfied that the supplier can meet and maintain Brickhouse' specifications, standards and requirements. Franchisee, in making such request, shall furnish Brickhouse, at Franchisee's cost, with adequate samples of the items for which approval is being requested, or if that is not feasible, then with copies of descriptions, specifications, pictures of such items and any other information concerning the supplies that Brickhouse may reasonably request. A lack of response by Brickhouse to such request by Franchisee shall not be deemed as approval of such request. Franchisee shall not sell, dispense or use any such items until such approval has been granted and notice thereof given to Franchisee in writing.

Nothing contained herein shall be construed to require Brickhouse to approve an unreasonable number of suppliers for any particular item or service. Brickhouse reserves the right, as a condition precedent to approving or disapproving any request for a new or additional supplier of any item or service, to charge such proposed supplier the reasonable costs and expenses incurred by Brickhouse in evaluating, investigating and determining any such request. Nothing contained in this Agreement shall be construed as an attempt by Brickhouse to limit the sources from which Franchisee may procure supplies, products, services or other items.

## **8. FRANCHISEE'S FACILITY**

During the Term of this Agreement, the site at which Franchisee shall operate Franchisee's Facility must be used exclusively for the purpose of operating a franchised Brickhouse facility and no other business. In the event Franchisee's Facility shall be damaged or destroyed by fire or other casualty, or be required to be repaired or reconstructed by any governmental authority, Franchisee shall, at its own expense, repair or reconstruct Franchisee's Facility within a reasonable time under the circumstances. The minimum acceptable appearance for the restored Franchisee's Facility will be that which existed just prior to the casualty; however, every effort should be made to have the restored Franchisee's Facility reflect the then current image, design and specifications of Brickhouse facilities.

## **9. TRAINING**

A. **Initial Training.** Brickhouse shall provide training classes for Franchisee at a location and time designated by Brickhouse (the "Initial Training Program"). The Initial Training Program shall consist of three (3) to five (5) days of training in marketing, sales, business systems and instructions on Brickhouse System. Attendance by Franchisee prior to opening is mandatory, and Franchisee shall attend such training prior to opening, or, in the event of a resale, within ninety (90) days of the execution of this Agreement by Brickhouse.

- B. Owner.** The Initial Training Program must be satisfactorily completed by Franchisee before Franchisee can open Franchisee's Facility. Brickhouse reserves the right to terminate this Agreement should Franchisee fail, in the sole opinion of the Brickhouse, to satisfactorily complete the Initial Training Program.
- C. Charges and Costs.** There is no additional fee charged for the Initial Training Program. The Initial Franchise Fee covers the costs of this training. All expenses of Franchisee and its personnel incident to attendance at the Initial Training Program, including travel, lodging, meals, transportation, compensation of and worker's compensation insurance for the attendees enrolled in the Initial Training Program and any other personal and/or incidental expenses, shall be borne by the Franchisee.
- D. Franchisee Training and Staffing.** Franchisee shall train and instruct each person employed in the operation of Franchisee's Facility, other than those instructed by Brickhouse, in the methods and techniques developed by Brickhouse. Such training and instruction shall be based upon and given in accordance with the Confidential Operations Manual and shall be provided prior to participation by such employee in Franchisee's Facility. If Franchisee requests training in addition to that provided for above, Brickhouse shall provide such instruction to Franchisee or its employees at such time and place and for such duration as may be mutually convenient; provided, however, that the costs of such additional training, including transportation, subsistence and a reasonable charge for the services of Brickhouse' representative, shall be borne by Franchisee and, if requested by Brickhouse, shall be paid in advance.

## 10. ROYALTY AND ADVERTISING CONTRIBUTION

- A. Monthly Royalty Fee.** Franchisee agrees to pay to Brickhouse, subject to the limitations listed below, a continuing monthly royalty fee ("Monthly Royalty Fee") in United States Dollars in an amount equal to four percent (4%) of Franchisee's monthly Gross Income as hereinafter defined and in accordance with Section 10D below for the use of the Brickhouse System and the Brickhouse Marks. From time to time Brickhouse offers financing of either the franchise fee or in rare cases, support and infrastructure of certain franchisees. In the cases where Brickhouse has a finance agreement with Franchisee, the royalty fee charge will be seven percent (7%) of Franchisee's monthly Gross Income defined in Section 10D below. The Monthly Royalty Fee shall be payable on or before the fifth (5th) day of each month in accordance with Section 10F below for the Term of this Agreement commencing either upon the opening of Franchisee's Facility to the general public or the expiration of one hundred eighty (180) days from the execution of this Agreement by Brickhouse, whichever occurs first. Monthly Royalty Fees shall be paid in accordance with Section 3A herein.

Notwithstanding anything to the contrary in this Agreement, in no event shall the Monthly Royalty Fee be less than ninety-nine dollars (\$99.00) ("Minimum Monthly Royalty Fee") nor more than seven hundred ninety-nine dollars

(\$799.00) ("Maximum Monthly Royalty Fee") for the Term of this Agreement. The Monthly Royalty Fee is not refundable, with the exception of any fees that may have been overpaid to Brickhouse in error by Franchisee.

**B. Advertising, Sales Promotion and Public Relations.** Franchisee agrees to pay to Brickhouse, subject to the limitations listed below, a continuing monthly advertising fee ("Monthly Advertising Fee") in United States Dollars in an amount equal to one percent (1%) of Franchisee's monthly Gross Income as hereinafter defined and in accordance with Section 10D below. The Monthly Advertising Fee shall be payable on or before the twentieth (20<sup>th</sup>) day of each month in accordance with Section 10F below for the Term of this Agreement commencing either upon the opening of Franchisee's Facility to the general public or the expiration of one hundred eighty (180) days from the execution of this Agreement by Brickhouse, whichever occurs first. Monthly Advertising Fees shall be paid in accordance with Section 3 A herein.

Notwithstanding anything to the contrary in this Agreement, in no event shall the Monthly Advertising Fee be less than four-nine dollars (\$49.00) ("Minimum Monthly Advertising Fee") nor more than three hundred ninety-nine dollars (\$399.00) ("Maximum Monthly Advertising Fee") for the Term of the Agreement. The Monthly Advertising Fee is not refundable, with the exception of any fees that may have been overpaid to Brickhouse in error by Franchisee.

Brickhouse will assist in developing all advertising materials, and Franchisee must have written approval from Brickhouse of all materials developed or altered by Franchisee prior to the use of same. All Monthly Advertising Fee contributions, interest, dividends and other amounts earned thereon ("Advertising Fund"), less direct administrative expenses, will be used, with any interest being used first in its entirety before any other component of the Advertising Fund, for (a) market research expenditures directly related to the development and evaluation of the effectiveness of advertising and sales promotions, (b) creative, production and other costs incurred in connection with the development of advertising, sales promotions and public relations, both the market area of Franchisee's Facility, as reasonably defined from time to time by Brickhouse, and on a national basis, and (c) various methods of delivering the advertising or promotional message, including, without limitation, television, radio, outdoor and print. If less than the total of all contributions to the Advertising Fund are expended during any fiscal year, such excess may be accumulated for use during subsequent years. If Brickhouse advances money to the Advertising Fund, Brickhouse will be entitled to be reimbursed for such advances.

The Advertising Fund will be used on national, regional or local media or other marketing techniques or programs designed to promote and enhance the image, identity or patronage of the franchises and to communicate the services of the franchises to the public in the sole discretion and right of Brickhouse, as well as for any creation and production costs incurred by Brickhouse and for any reasonable accounting, administrative and legal expenses associated with the Advertising Fund and for other purposes deemed appropriate by Brickhouse to enhance and promote the general recognition of the Brickhouse System and Brickhouse Marks. The allocation of the Advertising Fund between national, regional and local expenditures and administrative expenditures shall be made by Brickhouse in its sole business

judgment. Brickhouse shall not be liable for any act or omission with respect to the Advertising Fund which is consistent with this Agreement or done in good faith.

**C. Other Fees, Costs, Expenses, Taxes, Etc.** Franchisee shall remit to Brickhouse any and all payments fees, costs, expenses, taxes and charges which are from time to time paid by Brickhouse, in Brickhouse' sole discretion and without any obligation to do so, on behalf of Franchisee in connection with products, services, supplies, marketing materials, equipment, goods, materials or inventory furnished to Franchisee by Brickhouse or by any third party, or otherwise, including, but not limited to, amounts paid to vendors, contractors, insurance carriers and any sales, use, transfer or other taxes, assessments or charges paid to governmental agencies arising from the existence, operation or maintenance of Franchisee's Facility. Any payment due under this paragraph shall be remitted in accordance with Section 3A of this Agreement. Brickhouse, upon making any such payment as described in this paragraph, shall deliver a written invoice to Franchisee which shall be paid within seven (7) days of receipt of such written invoice.

**D. Gross Sales.** The term "Gross Sales" as used in this Agreement shall mean all sums received or receivable by Franchisee, directly or indirectly, in and from the operation of Franchisee's Facility, including, but not limited to, all revenues generated from any and all sources on account of the sale of memberships including one-time attendees, any products and goods and from the rendering of any service of any kind or nature, at or from Franchisee's Facility, or under, or in any way connected with the use of, Brickhouse Marks, whether for cash, check, credit, barter or otherwise, without reserve or deduction for inability or failure to collect the same. Gross Sales shall include all such revenue described above regardless of where the sale originated or where the delivery or performance of such is made. Gross Sales shall also include any sums or receipts derived from the sale of products and memberships to employees of Franchisee's Facility. There shall be deducted from Gross Sales for purposes of said computation (but only to the extent that they have been included) the amount of all sales tax receipts or similar tax receipts which, by law, are chargeable to members or customers, if such taxes are separately stated when the member or customer is charged, and the amount of any actual refunds, rebates, over-rings and allowances given to members or customers in good faith.

**E. Reporting.** On or before the fifth (5<sup>th</sup>) day of each month of the Term of this Agreement, Franchisee shall submit to Brickhouse a monthly sales report signed by Franchisee, on electronic format through the Brickhouse Community Website or other means prescribed by Brickhouse, reporting all Gross Sales for Franchisee's Facility for the preceding month and such additional financial information as Brickhouse may from time to time request ("Monthly Gross Sales Report"). Any Monthly Gross Sales Reports not submitted electronically to Brickhouse shall not be deemed as received by Brickhouse.

**F. Payments.** In accordance with Section 3A of this Agreement, Brickhouse shall automatically withdraw from Franchisee's Bank Account Monthly Royalty Fees at any time after the fifth (5<sup>th</sup>) day of each month. In accordance with Section 3A of this Agreement, Brickhouse shall also automatically withdraw from Franchisee's Bank Account

Monthly Advertising Fees on the twentieth (20<sup>th</sup>) day of each month. Each Monthly Royalty Fee and Monthly Advertising Fee shall be computed in accordance with this Section based upon the Gross Sales for the preceding month as provided by Franchisee in the Monthly Gross Sales Report. If Franchisee does not provide Brickhouse with its Monthly Gross Sales Report each month in strict compliance with Section 10E above, Franchisee shall by default owe Brickhouse the Maximum Royalty Fee and the Maximum Advertising Fee without any opportunity for a refund of any part, and Brickhouse shall have the right to automatically withdraw from Franchisee's Bank Account the Maximum Royalty Fee at any time after the fifth (5<sup>th</sup>) day of that month and shall have the right to automatically withdraw from Franchisee's Bank Account the Maximum Advertising Fee on the twentieth (20<sup>th</sup>) day of that month as payment of that month's Monthly Royalty Fee and Monthly Advertising Fee.

G. **Late Payments and Remedies.** Any Monthly Royalty Fee or Monthly Advertising Fee or any other fee or payment owing to Brickhouse that is more than five (5) days late shall incur a fee of Thirty-Five Dollars (\$35.00), or the maximum allowed by law, whichever is less. Brickhouse shall have the right to automatically withdraw from Franchisee's Bank Account any fees as provided in this paragraph at the time such fees become due.

H. **Place of Payment.** All payments required to be made to Brickhouse Cardio Club® under this Agreement shall be made at an address designated by Brickhouse Cardio Club or to such addresses and to such parties as Brickhouse may designate in writing from time to time.

## 11. ACCOUNTING PROCEDURES: RIGHT OF AUDIT

A. **Accounting.** Franchisee agrees to keep true, accurate and complete records of its business in such form as Brickhouse now or hereafter may require and to furnish Brickhouse with a quarterly and fiscal year-to-date profit and loss statement in the format prescribed by Brickhouse. Franchisee shall also submit to Brickhouse quarterly balance sheets, the first of which shall be for the quarter of the fiscal year ending after Franchisee's Facility opens. All profit and loss statements and balance sheets shall be prepared in accordance with generally accepted accounting principles and shall be submitted to Brickhouse within thirty (30) days after the end of the period covered by the report. All of the accounts, books, records and federal, state and local sales and income tax returns and reports of Franchisee, to include all supporting and back up information and documents, so far as they pertain to the business transacted under this Agreement, shall be open to inspection, examination and audit by Brickhouse and its authorized representatives at any and all times, and copies thereof may be made by Brickhouse and retained for its own use. All of such records shall be maintained and retained by Franchisee for the full term hereof and for five (5) years thereafter.

B. **Annual Financial Statements.** Franchisee's fiscal year shall begin on January 1 and end on December 31 of each year. Within one hundred and twenty (120) days after the close of each fiscal year, Franchisee shall submit a full disclosure of all persons with any interest in Franchisee's Facility and a complete annual financial statement, including, but not limited to, a profit and loss statement and a balance sheet, for Franchisee's Facility, which statement shall be

certified by a certified public accountant (“Annual Financial Statement”). The Annual Financial Statement must be signed by all owners of Franchisee’s Facility representing the Annual Financial Statement is true and correct and is the financial position of Franchisee and the results of the operations of Franchisee’s Facility during the period covered.

C. **Audits.**

1. Franchisee agrees that Brickhouse or its representatives shall, at all reasonable times, have the right to examine or audit the books, records, tax returns or accounts of Franchisee. Any such inspection, examination and audit shall be at Brickhouse’ cost and expense unless Gross Sales as shown by Franchisee’s records is found to be understated by more than three percent (3%). Then, in any such event, the cost and expense for such inspection, examination and audit shall be borne and paid by Franchisee. Any such cost and expense and any amounts found to be due but not paid shall be set forth in a written invoice delivered to Franchisee by Brickhouse. Franchisee shall reimburse Brickhouse for the invoice amount within seven (7) days after the invoice has been delivered to Franchisee.

2. Brickhouse shall similarly have the right to examine or audit the books, records, tax returns or accounts of any and all persons or entities who are guarantors of the Franchisee’s performance under this Agreement in those instances in which Franchisee has failed to make payments of the royalty or advertising fees or any other fees due under this Agreement or any reports required under this Agreement in a timely fashion or has otherwise defaulted under this Agreement. Then, in any such event, the cost and expense for such inspection, examination and audit shall be borne and paid by Franchisee. Any such cost and expense and any amounts found to be due but not paid shall be set forth in a written invoice delivered to Franchisee by Brickhouse. Franchisee shall reimburse Brickhouse for the invoice amount within seven (7) days after the invoice has been delivered to Franchisee.

D. **Membership Information.** To assist Brickhouse in providing Franchisee with on-going advice and assistance, and to determine whether Franchisee is complying with the terms of this Agreement and with the specifications, standards and procedures established for operation of Franchisee’s Facility, Brickhouse, or its authorized representative, shall have the right, during regular business hours, or at such other times as maybe mutually agreed upon, to inspect all customer/membership records, both active and inactive, and any other related records. By the first of each month after opening Franchisee’s Facility and on or before December 31 of each year, and subject to any applicable state or federal data protection laws, Franchisee shall furnish to Brickhouse in whatever electronic format required by Brickhouse, which may be via a designated site on the internet or intranet, all member lists and records for Franchisees Facility, both active and inactive, which shall include, but not be limited to, names, addresses, and telephone numbers of such members (hereinafter collectively referred to as “Membership Lists”). Franchisee acknowledges and agrees that Brickhouse is the sole owner of the Membership Lists and that Franchisee shall not distribute, in any form or manner, the Membership Lists to any third party without the prior written consent of Brickhouse.

## 12. LIMITATIONS OF FRANCHISEE

### A. Trademarks, Trade Names, Service Marks and Trade Secrets.

1. **Brickhouse' Ownership of the Trademarks.** Franchisee agrees that the trademark *Brickhouse Cardio Club®*, and all goodwill arising from all the foregoing, are the exclusive properties of Brickhouse, and Franchisee asserts no claim and will hereafter assert no claim to the ownership thereof. Franchisee will not contest Brickhouse' ownership of the Brickhouse Marks or their validity and will not do or permit any act or thing to be done in derogation of any of the rights of Brickhouse in connection with the Brickhouse Marks either during the Term of this Agreement or thereafter. Nothing in this Agreement shall be construed to give Franchisee any right, title or interest in or to the Brickhouse Marks except for a non-exclusive revocable privilege and license to display and use the Brickhouse Marks during the Term of, and pursuant to the conditions contained in, this Agreement. Franchisee expressly understands and agrees that it has not acquired and will not acquire any ownership interests, equitable rights, goodwill or other interests in any Brickhouse Marks by virtue of this Agreement, its relationship with Brickhouse, or Franchisee's use of the Brickhouse Marks and will not represent that it has. Franchisee also understands and agrees that following the expiration or termination of this Agreement for any reason, it shall not attribute any monetary amount to any goodwill associated with its use of the Brickhouse Marks or in connection with its operation of Franchisee's Facility.

2. **Trade Secrets.** Franchisee agrees that all materials loaned or otherwise made available to it and all disclosures made to Franchisee and not to the general public by or at the direction of Brickhouse at any time before or during the Term of this Agreement relating to the Brickhouse System, including, without limitation, the Confidential Operations Manual in its entirety, financial information, marketing strategy and marketing programs, are considered trade secrets of Brickhouse for purposes of this Agreement and shall be kept confidential and used by Franchisee only in connection with the operation of Franchisee's Facility and other franchised Brickhouse facilities. Franchisee agrees not to divulge any of the trade secrets to any person other than its employees and then only to the extent necessary for the operation of Franchisee's Facility and, specifically, that Franchisee will not, nor permit anyone to, reproduce, copy or exhibit any portion of the Confidential Operations Manual or any other trade secrets of Brickhouse. At Brickhouse' request, Franchisee shall require each owner and manager to execute an agreement similar in substance to this Section in a form acceptable to Brickhouse and naming Brickhouse as a third party beneficiary with the independent right to enforce such agreement.

3. **Modification of Brickhouse Marks.** If Brickhouse, in its sole discretion and right, decides to modify or discontinue use of the Brickhouse Marks and/or to adopt or use one or more additional or substituted trademarks, Franchisee shall promptly conform its use of the Brickhouse Marks as directed, in writing, by Brickhouse. It shall be the sole obligation of Franchisee in any such event to purchase new signs, letterhead, etc. so as to comply with the Brickhouse Marks, and Franchisee waives any other claim arising from or relating to any such change, modification or substitution of Brickhouse Marks.

4. **Franchisee's Use of the Brickhouse Marks.** Franchisee acknowledges that Brickhouse' prior written consent is required for the use of any or all of the Brickhouse Marks, or any other mark Brickhouse owns or will own, except as granted herein. Franchisee shall not use the Brickhouse Marks, any variations or abbreviations, or any words confusingly similar to the Brickhouse Marks, as part of its name if Franchisee is or becomes a corporation or other legal entity. Franchisee shall use the Brickhouse Marks and/or any applied-for trademark or service mark or trade name adopted by Brickhouse, or other written instructions from Brickhouse, including the form and manner and appropriate legends as may be prescribed by Brickhouse from time to time. Franchisee agrees not to use any other applied-for trademark, service mark or trade name in combination with the Brickhouse Marks without Brickhouse' prior written consent. Franchisee shall not use the Brickhouse Marks, or any other mark Brickhouse owns or will own, in any advertising that has not been provided to Franchisee by Brickhouse or previously approved in writing by Brickhouse. Franchisee shall permit Brickhouse to inspect Franchisee's uses of the Brickhouse Marks at all reasonable times for the purpose of ascertaining compliance with this Agreement. Except when necessary to comply with this Agreement, Franchisee shall not place the Brickhouse Marks, nor provide any third party the Brickhouse Marks for the purpose of placing the Brickhouse Marks, on any products, supplies or any other item in any form for any purpose, unless Franchisee acquires prior written approval from Brickhouse. Except when necessary to comply with this Agreement, Franchisee shall not use or associate in any way the Brickhouse Marks with any services not approved by Brickhouse in writing.

5. **Defense of the Brickhouse Marks.** Franchisee will not, directly or indirectly, at any time during the Term of this Agreement or thereafter, do or cause to be done any act or thing disputing, attacking or in any way impairing or tending to impair Brickhouse or Brickhouse' right, title or interest in the Brickhouse Marks or the Brickhouse System. If Franchisee learns of any claim, suit or demand against Franchisee or the Brickhouse Marks on account of any alleged infringement, unfair competition, or similar matter relating to the Brickhouse Marks, or any unauthorized use of the Brickhouse Marks, Franchisee shall promptly notify Brickhouse, in writing. Brickhouse may, but is not obligated to, take such action, if any, as Brickhouse, in its sole discretion, deems necessary or appropriate in connection therewith. Brickhouse shall have the sole right to defend, compromise or settle any such claim at Brickhouse' sole cost and expense, using attorneys of its own choosing. Franchisee agrees to cooperate fully with Brickhouse in connection with the defense of any such claim and hereby irrevocably appoints Brickhouse to defend or settle all of such claims, demands or suits. Franchisee may participate at its own expense in such defense or settlement, but Brickhouse' decisions shall be final and binding upon Franchisee. Franchisee shall not settle or compromise any such claim without the prior written consent of Brickhouse. Brickhouse agrees to indemnify and hold Franchisee harmless against any claim or demand arising from Franchisee's authorized use of the Brickhouse Marks provided Franchisee has promptly notified Brickhouse of the claim or demand as required by this Section.

6. **Trademarks and Trade Names.** In connection with the operation of Franchisee's Facility, including advertising, Franchisee shall use no name or service mark other than the names *Brickhouse®* or *Brickhouse Cardio*



Club® or any derivative of such name, or such other name as may be specified by Brickhouse. Franchisee shall not use the Brickhouse Marks, or any other mark Brickhouse owns or will own, in any advertising that has not been provided to Franchisee by Brickhouse or previously approved in writing by Brickhouse. Franchisee shall identify itself as a holder of a license from Brickhouse International, Inc., unless applicable law requires other or additional identification. Franchisee shall use the name and service mark in such format and with such suffix or prefix as Brickhouse may from time to time designate. Franchisee shall not register the Brickhouse Marks with any authority unless required to do so by this Agreement. Except when necessary to comply with required purchases in accordance with this Agreement, Franchisee shall not place the Brickhouse Marks nor give any third party the Brickhouse Marks for the purpose of placing the Brickhouse Marks on any products, supplies, or any other item in any form for any purpose unless Franchisee acquires prior written approval by Brickhouse.

7. **Assumed Name Registration.** In the event that Franchisee is required to do so by any statute or ordinance, Franchisee shall promptly upon the execution of this Agreement by Brickhouse file with applicable government agencies or offices, notice of its intent to conduct its business under the name "Brickhouse". Promptly upon the expiration or termination of this Agreement for any reason whatsoever, Franchisee shall promptly execute and file such documents as may be necessary to revoke or terminate such assumed name registration, and if Franchisee shall fail to promptly execute and file such documents as may be necessary to effectively revoke and terminate such assumed name registration, Franchisee hereby irrevocably appoints Brickhouse as its attorney-in-fact to do so for and on behalf of Franchisee.

B. **Independent Contractor.**

1. It is specifically acknowledged, understood and agreed by the Franchisee and Brickhouse that this Agreement does not create a fiduciary relationship between Franchisee and Brickhouse, that Franchisee is an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of the other for any purpose whatsoever. Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Brickhouse' behalf, or to incur any debt or other obligation in Brickhouse' name.

2. During the Term of this Agreement, and any extension hereof, Franchisee shall hold itself out to the public as an independent contractor operating Franchisee's Facility pursuant to a franchise agreement with Brickhouse. Franchisee agrees to conspicuously post notices to that effect in such locations and by such means determined reasonably necessary by Brickhouse to inform the public, customers and suppliers. Brickhouse reserves the right to specify the content of such notices as well as where and when the notices shall be posted.

3. Franchisee shall be responsible for, and shall promptly pay when due, all expenses of Franchisee's Facility, including all taxes and levies of any kind in connection with Franchisee's Facility and the income arising from such Franchisee's Facility. Brickhouse shall not be liable for any such expenses, taxes, levies, or disbursements otherwise

paid or incurred in connection with the establishment and operation of Franchisee's Facility. Failure of Franchisee to timely make all tax payments referred to herein shall be a material default of this Agreement.

4. Brickhouse shall not regulate the hiring or discharge of Franchisee's employees, officers or agents, the parties from whom Franchisee may accept business, the working conditions of Franchisee's employees, officers or agents or Franchisee's contracts with customers, suppliers or others.

5. Franchisee shall represent that it is doing business as a Franchisee under the trade name and style of *Brickhouse* or *Brickhouse Cardio Club®*. For this purpose, Franchisee shall publicly display at Franchisee's Facility during all times this Agreement is in effect Brickhouse' certificate of good standing as required by Brickhouse. Franchisee shall prominently display a notice or certificate in the public area of Franchisee's Facility, as well as a statement on Franchisee's letterhead and on all forms, printed materials and advertising materials to be distributed to the public, which clearly states that "EACH FACILITY IS INDEPENDENTLY OWNED AND OPERATED."

### 13. COMPETITION AND ECONOMIC DEVELOPMENT

A. **Unfair Competition.** Franchisee acknowledges the uniqueness of the Brickhouse System and that Brickhouse is making its knowledge, know-how and expertise available to it for the purpose of operating Franchisee's Facility. Franchisee agrees that it would be an unfair method of competition for Franchisee to use or duplicate or to allow others to use or duplicate any of the knowledge, know-how and expertise received from Brickhouse for any use other than for the operation of Franchisee's Facility. Franchisee, therefore, warrants that, during the Term of this Agreement, it will utilize its best and continuing efforts to promote and develop the business at Franchisee's Facility and during the Term of this Agreement and at all times thereafter will not directly or indirectly engage in the operation of any facility, other than Franchisee's Facility and other Brickhouse' only facilities franchised from Brickhouse, which utilizes or duplicates the Brickhouse System, any trade secrets of Brickhouse, the Brickhouse Marks or the present or any former Brickhouse current image.

B. **Impact of Brickhouse's Economic Development.**

1. **Franchised Territory.** Franchisee and Brickhouse agree that there are no other territorial rights that arise or will be inferred under this Agreement except those rights expressly given to Franchisee in this Agreement. Brickhouse expressly reserves the right to own, operate or license another person to own or operate or license a Brickhouse facility outside of the Franchised Territory. In consideration of the grant of the Franchised Territory, Franchisee agrees that there are no implied covenants of good faith and/or fair dealing or other theories that limit or modify Brickhouse' rights herein.

2. **Other Brickhouse' Brands, Replacements, and Development.** Brickhouse shall have the absolute right, without regard to the economic impact on Franchisee, to own, operate or license a person to own or operate any business not identified as a *Brickhouse Cardio Club®* even if using the Brickhouse's name and other Brickhouse' facilities or time-share concepts or other business operations of any type whatsoever at any location other than the Brickhouse, including locations within the Franchised Territory. Brickhouse has the right during the Term of this Agreement to develop or authorize another person to develop a *Brickhouse Cardio Club®* franchise and conduct normal pre-opening activities in the Franchised Territory so long as such Brickhouse does not open until the expiration or termination of this Agreement.
  
3. **Chain Acquisition.** Brickhouse may acquire a brand, the rights to license a brand, or commonly owned group of Brickhouse' facilities of four or more units through merger, acquisition, or otherwise, and, without regard to the economic impact on Franchisee, to license or operate such units as *Brickhouse Cardio Club®*. If the acquired brand has businesses operating in the Franchised Territory that will continue to operate in the Franchised Territory after acquisition by Brickhouse, and Franchisee objects to such acquisition, then Franchisee shall be entitled to terminate this Agreement by giving six (6) months written notice no later than twelve (12) months after the *Brickhouse Cardio Club®* has commenced operation in the Franchised Territory, and Brickhouse will release Franchisee from this Agreement provided that Franchisee timely fulfills its obligations under Sections 19 and 20.
  
4. **Coordination With Other Systems.** In addition to *Brickhouse Cardio Club®*, Brickhouse owns or has rights with respect to other brands or businesses that may now or during the Term of this Agreement have locations within the Franchised Territory. Brickhouse may use or benefit from, or may authorize others to use or benefit from, common corporate and executive personnel, reservations and other systems, communications, equipment, services, administrative systems, marketing and advertising programs, personnel, and central purchasing.
  
5. **Termination of Franchised Territory.** The Franchisee's rights to the designated Franchised Territory described in Exhibit A herein terminates upon five (5) years from the date of this Agreement, subject only to renewals in accordance with Section 2A of this Agreement.
  
6. **The "Harm" Standard.** Brickhouse is free to pursue its own business interests as it seeks them, and is not obligated to do or refrain from doing anything except as expressly set forth in this Agreement, regardless of any adverse effect on Franchisee's Facility and without any duty to consider such effect.

## 14. INSURANCE; INDEMNIFICATION

A. **Insurance.** At Franchisee's sole cost and expense, Franchisee shall purchase and maintain, in effect at all times during the Term of this Agreement, a policy or policies of insurance, naming Brickhouse as an additional insured on the face of each policy, as follows:

1. General liability in no less than the following amounts, which amounts may be changed from time to time on written notice by Brickhouse: Bodily injury-One Million Dollars (\$1,000,000) each person, One Million Dollars (\$1,000,000) each accident; and, property damage-One Million Dollars (\$1,000,000) each accident;
2. Workers' compensation insurance as required by state law; and,
3. Automobile liability insurance as required by state law.

All such policies of insurance shall contain a statement that they cannot be canceled without thirty (30) days' prior written notice to Franchisee and to Brickhouse. Franchisee shall provide documentary evidence to Brickhouse that such insurance is in full force and effect at least thirty (30) days prior to the opening of Franchisee's Facility. Franchisee shall promptly notify Brickhouse of any and all claims against Franchisee and/or Brickhouse. All policies shall be renewed, and a renewal certificate of insurance mailed to Brickhouse Cardio Club®, S. Charleston, West Virginia, 25303 or at such other location as may be specified by Brickhouse prior to the expiration date of the policies. All policies must be purchased and maintained by an insurance company with an "A" rating or better. This obligation of Franchisee to maintain insurance is separate and distinct from its obligation to indemnify Brickhouse under the provisions of Section 14B.

### B. **INDEMNIFICATION.**

1. **Franchisee agrees to indemnify and hold harmless Brickhouse, its officers, agents and employees from any and all liability, loss or damage Brickhouse may suffer as a result of claims, demands, costs or judgments against Brickhouse arising out of the operation of Franchisee's Facility or any acts of Franchisee, its officers, agents or employees, whether the liability, loss or damage is caused by or arises out of the negligence of Brickhouse, its officers, agents, employees, or otherwise. The indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement. Brickhouse' right to indemnity under this Agreement shall arise and be valid notwithstanding that joint or concurrent liability may be imposed on Brickhouse by statute, ordinance, regulation or other law. The indemnification of Brickhouse by Franchisee shall not be limited by the amount of insurance**

required under Section 14A. This indemnity obligation shall include, but not be limited to, claims related to the employment of Franchisee's employees. This obligation of Franchisee to indemnify and defend Brickhouse is separate and distinct from its obligation to maintain insurance under the provisions of Section 14A.

2. Franchisee agrees to defend, indemnify and save Brickhouse and Brickhouse' officers, directors, agents, employees, attorneys, accountants, subsidiaries, affiliated and parent companies, harmless of, from and with respect to any claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages any of them may incur (including, but not limited to, reasonable attorney's fees) arising from or relating to the sale of securities of Franchisee, including, but not limited to, claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages arising from or related to any alleged violation of any federal or state securities law in connection with a sale of securities of Franchisee. Brickhouse shall notify Franchisee of any claims, and Franchisee shall be given the opportunity to assume the defense of the matter. If Franchisee fails to assume the defense, Brickhouse may defend the action in the manner it deems appropriate, and Franchisee shall pay to Brickhouse all costs, including attorney's fees, incurred by Brickhouse in effecting such defense, in addition to any sum Brickhouse may pay by reason of any settlement or judgment against Brickhouse. Brickhouse' right to indemnity under this Agreement shall arise and be valid notwithstanding that joint or concurrent liability may be imposed on Brickhouse by statute, ordinance, regulation or other law. Brickhouse and the other indemnittees shall, in all instances, have the right to be represented by counsel of its/their own choosing, at Franchisee's expense, and to participate in the defense of any such claim.

C. **Defense of Claims.** Brickhouse shall notify Franchisee of any claims subject to indemnification by Franchisee, and Franchisee shall be responsible for the costs of defense of the matter. Brickhouse shall have the right to choose the attorney to defend any such claim or action at Franchisee's cost and expense. If Franchisee fails to pay the costs of the defense of any claim covered by the indemnification provisions of Section 14B, Brickhouse may defend the action in the manner it deems appropriate, and Franchisee shall pay to Brickhouse all costs, including attorney's fees, incurred by Brickhouse in effecting such defense, in addition to any sum which Brickhouse may pay by reason of any settlement or judgment against Brickhouse. No settlement of any claim against Brickhouse shall be made by Franchisee which is in excess of the amount of insurance referred to in Section 14A or which would subject Brickhouse to liability in any amount not covered by such insurance without the prior written consent of Brickhouse.

## 15. TAXES

Franchisee shall pay, when due, all taxes levied or assessed in connection with the possession, ownership or operation of Franchisee's Facility or any equipment or in connection with amounts paid or received under this Agreement, including without limitation any sales, use or other ad valorem taxes (other than any tax that is measured by or

related to the net income of Brickhouse or to its corporate status in a state). If any such tax shall be paid by Brickhouse, Franchisee shall promptly reimburse Brickhouse the amount paid. In the event of any bona fide dispute as to the liability for a tax assessed against Franchisee, Franchisee may contest the validity or the amount of the tax in accordance with procedures of the taxing authority. Franchisee shall not permit a tax sale or seizure against Franchisee's Facility.

Without derogating from the above, and for avoidance of doubt, all payments to Brickhouse under and/or in connection with this Agreement shall be made net of any deductions and/or withholding of any amount (including without limitation of taxes) and in the event that the Franchisee will have to withhold any amounts from payments payable to Brickhouse under and/or in connection with this Agreement, including without limitation, any withholding of income taxes or any other taxes, the Franchisee shall gross up such payment such that Brickhouse will received, as its net payment, the amount payable under and/or in connection with this Agreement after all withholdings and deductions. Any duties imposed under, if imposed, in relation to this Agreement or the Franchise, will be borne and paid solely by Franchisee.

#### 16. ASSIGNMENT: CONDITIONS AND LIMITATIONS

A. **Full Compliance.** Any purported assignment or transfer of Franchisee's rights and obligations under this Agreement that is not in full compliance with this Section 16 shall be of no force or effect and null and void and give Brickhouse the right to immediately terminate without opportunity to cure pursuant to Section 18A of this Agreement.

B. **Transfer.** As used in Section 16 of this Agreement, the term "transfer" shall mean and include the voluntary, involuntary, conditional, direct or indirect assignment, sale, gift or other transfer by Franchisee or any of its owners of any interest in or grant of any security interest in: (a) this Agreement; (b) Franchisee's Facility; (c) Franchisee; or (d) some or all of the assets of Franchisee's Facility (other than inventory items in the ordinary course of business). As used above, an assignment, sale or other transfer shall include the following events: (1) the transfer of ownership of shares or a partnership or membership interest; (2) merger or consolidation or issuance of additional securities representing an ownership interest; (3) any sale of voting shares of Franchisee or any security convertible to voting shares of Franchisee or any agreement granting the right to exercise or control the exercise of the Voting rights of any holder of an ownership interest; or (4) transfer in a divorce, insolvency, corporate, business or partnership dissolution proceeding or, in the event of the death of Franchisee or an owner of Franchisee, by will, declaration of or transfer in trust, or under the laws of intestate succession or otherwise by operation of law.

C. **Transfer and/or Assignment by Franchisee.** Franchisee shall not have the right to transfer or assign this Agreement without the express written approval of Brickhouse. Franchisee shall not have the right to transfer or assign this Agreement prior to opening Franchisee's Facility. Franchisee acknowledges that Brickhouse is entering into

this Agreement in reliance upon and in consideration of Franchisee's business skill, financial capacity, aptitude and other qualifications. Accordingly, the rights and duties created by this Agreement are personal to Franchisee and neither Franchisee's interest in this Agreement nor any of its rights or privileges hereunder nor Franchisee's Facility or any interest therein may be assigned, transferred, shared or divided, voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner, without the prior written consent of Brickhouse. Any actual or intended assignment, transfer or sale made or accomplished in violation of the terms of this Section shall be null and void and shall constitute a material breach of this Agreement which gives Brickhouse the right to immediately terminate without opportunity to cure pursuant to Section 18A of this Agreement. Brickhouse' consent to a proposed transfer of any type will not be unreasonably withheld conditioned upon the strict compliance of the following requirements by Franchisee and proposed assignee, and Franchisee agrees that the following requirements are reasonable:

1. The payment by Franchisee to Brickhouse of a transfer fee in the amount of Three Thousand Dollars (\$3,000.00), which payment shall be by automatic withdrawal from Franchisee's Bank Account or in any other method of payment that Brickhouse in its sole discretion and right requires. Franchisee agrees that such transfer fee is reasonably required to cover Brickhouse' expenses relating to said transfer; and
2. The payment by the proposed assignee to Brickhouse of a Training Fee in the amount of One Thousand Dollars (\$1,000.00), unless proposed assignee is an existing franchisee of Brickhouse who previously has satisfactorily completed Brickhouse' Initial Training Program, and Brickhouse, in its sole discretion and right, determines that no additional training is necessary; and
3. The remittance by Franchisee to Brickhouse of an amount of One Thousand Eight Hundred Dollars (\$1,800.00) ("Escrow Amount") that will be held by Brickhouse and from which Brickhouse can withdraw any and all amounts that become due by Franchisee under this Agreement, including but not limited to any Monthly Royalty Fees and Monthly Advertising Fees, during the process of completing the requested transfer. Brickhouse will return any unused amount from the Escrow Amount to Franchisee upon completion and execution of all legal documents effecting such requested transfer; and
4. That Franchisee is not in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Franchisee and Brickhouse or its affiliates; and
5. Brickhouse' receipt of required notification by Franchisee as required herein, all forms required by Brickhouse that Brickhouse is then using in evaluating prospective purchasers of new franchises and any other Information Brickhouse may request concerning the proposed assignee or the proposed transaction between Franchisee and the prospective assignee; and

6. The proposed assignee, in Brickhouse' sole judgment, satisfies all of Brickhouse' business and financial standards and requirements; has the aptitude and ability to operate Franchisee's Facility; and that the proposed assignee complete and be approved through Brickhouse' standard franchise application and selection process including satisfactorily demonstrating to Brickhouse that the proposed assignee meets the financial, character, managerial, ownership and such other criteria and conditions as Brickhouse shall then be applying in considering applications for new franchises; and

7. That the proposed assignee shall have delivered to Brickhouse a letter from an independent certified public accountant unaffiliated with Franchisee acknowledging, among other things, that such accountant has reviewed the terms of the proposed assignment, transfer or sale with the prospective assignee; and

8. That all of Franchisee's accrued monetary obligations and all other outstanding obligations to Brickhouse and its affiliates, whether arising under this Agreement or otherwise, have been satisfied; and

9. Payment of all taxes, debts and obligations owed to third parties which were incurred by Franchisee in connection with Franchisee's Facility or assumption of such liabilities by the proposed assignee; and

10. That Franchisee and each transferor execute a general release, in a form satisfactory to Brickhouse, of any and all claims against Brickhouse, its affiliates, and their respective officers, directors, agents, and employees, in their corporate and individual capacities. Any general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law; and

11. The proposed assignee's execution of the then-current franchise agreement; and

12. Proof of receipt by the proposed assignee of any information required by the rules and regulations of any franchise disclosure legislation to be delivered to the proposed assignee by Brickhouse at least ten (10) days prior to any assignment; and

13. The satisfactory completion, in Brickhouse' sole opinion, of the Initial Training Program then required of all new franchisees of Brickhouse, unless such training is waived by Brickhouse in writing by reason of the assignee's prior experience or training; and

14. The delivery by Franchisee or assignee to Brickhouse, prior to assignment of the franchise, an executed



copy of the contract setting out an intent to sell by Franchisee and an intent to buy by the proposed assignee of Franchisee's Facility, and Brickhouse shall, in its reasonable judgment, not have objected to such contract within twenty (20) days after receipt of such contract. Approval of such contract by Brickhouse does not constitute approval of the transfer by Brickhouse.

D. **Notice of Proposed Transfer by Franchisee.** Franchisee and its owners may not transfer Franchisee's Facility or any interest therein without the express written consent of Brickhouse. Franchisee shall notify Brickhouse of such intention to transfer by written notice by certified mail setting forth the proposed assignee's name, address, statement of financial qualification and business experience during the previous five (5) years. If Brickhouse does not exercise its right of first refusal under Section 17 herein, Brickhouse shall notify Franchisee as to whether or not Brickhouse approves the proposed assignee in accordance with this Section. If Brickhouse does not exercise its right of first refusal under Section 17 herein, Brickhouse shall have sixty (60) days from the completion of the conditions set out in Section 16C above and receipt of such notice as required in this paragraph to remit to Franchisee and the proposed assignee the necessary documentation to effect the transfer of Franchisee's Facility.

E. **Franchisee Information.** Brickhouse shall have the right, but not the obligation, to furnish any prospective assignee with copies of all financial statements and Monthly Gross Sales Reports which have been furnished by Franchisee to Brickhouse in accordance with this Agreement during the three (3) year period prior to the date of the approval of the proposed assignment, transfer or sale is sought. Brickhouse shall also have the right, but not the obligation, to advise any prospective assignee of any uncured breaches or defaults by Franchisee under this Agreement, or any other agreement relating to Franchisee's Facility proposed to be assigned, transferred or sold. Brickhouse' approval of such proposed transaction shall not, however, be deemed a representation or guarantee by Brickhouse that the terms and conditions of the proposed transaction are economically sound or that, if the transaction is consummated, the proposed assignee will be capable of successfully conducting Franchisee's Facility and no inference to such effect shall be made from such approval.

F. **Transfer of Equity Securities.** Equity securities of Franchisee may not be transferred by Franchisee or by any owner unless, in addition to obtaining the prior written consent of an authorized officer of Brickhouse as required above, such transferor complies with all policies or guidelines Brickhouse may then have in effect for approval of a proposed distribution of securities of franchisees. Prior to such approval, Franchisee also must provide the applicable prospectus to Brickhouse. Franchisee and any other participants in any offering of securities of Franchisee shall fully indemnify Brickhouse in connection with such offering, as provided in Section 14B.

G. **Prohibition Against Encumbrance.** Without Brickhouse' prior written consent, Franchisee shall not grant any security interest in this Agreement, in Franchisee's Facility, or in any membership agreements or membership check drafts used in the operation of Franchisee's Facility, nor shall any ownership interest in any corporate, limited liability or partnership Franchisee be pledged or encumbered. If Brickhouse consents to the grant of a security

interest, the secured party must agree that in the event of Franchisee's default under the security interest, Brickhouse or its designee shall be notified of the default and shall have the right but not the obligation to be substituted as an obligor to the secured party and/or to cure the default. In no event shall this requirement be construed to make Brickhouse liable to Franchisee or to the secured party.

H. **Continuing Liability.** In the event of a transfer to a third party of Franchisee's interest in this Agreement or Franchisee's Facility or, if Franchisee is an entity, the transfer of interests of Franchisee, Franchisee, or owner of Franchisee, shall remain personally liable for all Monthly Royalty Fees, Monthly Advertising Fees, and other payments which come due under the franchise agreement signed by the proposed assignee for twelve (12) consecutive months beginning on the execution date of proposed assignee's franchise agreement with Brickhouse.

I. **Transfer Due to Death or Incapacity.** The transfer of Franchisee's interest in this Agreement in the event of the death or legal incapacity or permanent disability of Franchisee or the operating principal, if a transfer or assignment is necessary as a result of such an event, shall not require payment of a transfer fee, as set forth herein, so long as the person designated by Franchisee's heirs, legatees, personal representative, conservator or guardian, as applicable shall timely do the following:

1. Apply in writing to Brickhouse within ninety (90) days after death or legal incapacity or permanent disability of Franchisee requesting Brickhouse' approval to transfer Franchisee's Facility, or the interest of the deceased or disabled shareholder if Franchisee's Facility is held by a corporation to the applicant; and
2. Meet and agree to the terms and conditions of Section 1 6C herein.
3. In the event of death or legal incapacity or permanent disability of Franchisee or the operating principal requiring a transfer or assignment of Franchisee's interests in this Agreement or in Franchisee's Facility, Brickhouse may, at its sole discretion, assume the operation of Franchisee's Facility pending the transfer or assignment. Brickhouse may, in its sole discretion, require the applicant to sign a then current franchise agreement.

J. **No Waiver.** Brickhouse' consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Brickhouse' right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

K. **Assignment by Brickhouse.** Brickhouse may assign this Agreement and all of its rights and privileges hereunder to any other person, firm or corporation.

L. **Organization of Franchisee.** If an individual Franchisee desires to assign this Agreement to a corporation or limited liability company formed or controlled by Franchisee, in addition to Franchisee's compliance with the conditions set out in Section 4, 8, and 9 above, Brickhouse may grant its consent, provided:

1. Franchisee is, and covenants to remain, the owner of one hundred percent (100%) of the voting stock of the corporation or, if Franchisee is more than one individual, each individual shall have the same proportionate ownership interest in the corporation as that individual had in Franchisee's Facility prior to the transfer; and

2. The payment by Franchisee to Brickhouse of an assignment fee in the amount of One Thousand Dollars (\$1,000.00), which payment shall be by automatic withdrawal from Franchisee's Bank Account or in any other method of payment that Brickhouse in its sole discretion requires. Franchisee agrees that such assignment fee is reasonably required to cover Brickhouse' expenses relating to said transfer; and

3. All documents of the transferee entity reasonably required by Brickhouse are provided to Brickhouse prior to the transfer; and

4. Franchisee or another qualified individual is designated "operating principal" in accordance with Section 6L hereof; and

5. Franchisee and all the shareholders, officers and directors of the assignee corporation or entity personally guarantee the obligations to be performed under this Agreement by the Franchisee corporation or entity and each must sign a franchise agreement; and

6. Franchisee may not assign to a trust, limited partnership, or other entity not acceptable to Brickhouse; and

7. Transferee entity shall assume the obligations to be performed under this Agreement and must sign a then, current franchise agreement.

M. **Reasonableness.** Franchisee shall have the sole burden of proving that Brickhouse acted unreasonably in any respect.

17. RIGHT OF FIRST REFUSAL

A. In the event Franchisee wishes to accept an offer from a third party to purchase all or substantially all of the assets constituting Franchisee’s Facility or a controlling interest in the voting equity of Franchisee, Franchisee shall give Brickhouse written notice setting forth the name and address of the prospective purchaser, the price and terms of the offer, together with a franchisee application completed by the prospective purchaser, a copy of the Purchase and Sale Agreement, which must include a non-compete provision against Franchisee, executed by both Franchisee and purchaser, and all exhibits, copies of any real estate purchase agreement or agreements, proposed security agreements and related promissory notes, assignment documents, title insurance commitment and any other information that Brickhouse may request in order to evaluate the offer. Brickhouse, its subsidiaries and affiliated companies, shall then have the prior option to purchase the interests covered by the offer at the price and upon the same terms of the offer. If the consideration is not money, Brickhouse shall have the right to substitute the equivalent cash as solely determined by Brickhouse for all non-cash consideration. Brickhouse shall have twenty (20) days after receipt of the notice of offer and the furnishing of all reasonably requested information within which to notify Franchisee of Brickhouse’ intent to exercise its right hereunder. Should Brickhouse not exercise this option and the terms of the unaccepted offer be altered, Brickhouse must be notified of the altered terms and shall have twenty (20) additional days from the date of notification to purchase on the altered terms. Silence on the part of Brickhouse shall constitute rejection. If the proposed sale includes assets of Franchisee not related to the operation of Franchisee’s Facility, Brickhouse may, at its option, elect to purchase only the assets related to the operation of franchised Brickhouse’ facilities and an equitable purchase price shall be allocated to each asset included in the proposed sale. An offer from a third party includes any transfer, conveyance, assignment, consolidation, merger or any other transaction in which legal or beneficial ownership of Franchisee’s Facility granted by this Agreement is vested in someone or some entity other than Franchisee.

B. The election of Brickhouse not to exercise its right of first refusal as to any offer shall not affect its right of first refusal as to any subsequent offer or the right to refuse a pending sale by Franchisee.

C. Any sale, attempted sale, assignment or other transfer of the interests described in Sections 16 or 17 herein, without first giving Brickhouse the right of first refusal described herein, shall be void and of no force and effect. Any waiver by Brickhouse of the right of first refusal described herein shall not relieve Franchisee from complying with Section 17 herein.

18. TERMINATION BY BRICKHOUSE

A. **Default and Termination Without Right to Cure.** Franchisee shall be deemed to be in default of this Agreement, and Brickhouse may, at its sole option and right, terminate the Agreement and all rights

hereunder, without affording Franchisee an opportunity to cure the default, effective immediately upon delivery of notice by Brickhouse to Franchisee's address listed herein or the last home address of which Franchisee has notified Brickhouse in writing, if:

1. Franchisee becomes insolvent or makes a general assignment for the benefit of creditors; or proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee or a petition in bankruptcy is filed by Franchisee or such a petition if filed against and not opposed by Franchisee or Franchisee is adjudicated as bankrupt or insolvent or a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee or a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction. Franchisee expressly and knowingly waives any rights that it may have under the provisions of the Bankruptcy Code and consents to the termination of this Agreement or any other relief which may be sought in a complaint filed by Brickhouse to lift the provisions of the automatic stay of the Bankruptcy Code. Additionally, Franchisee agrees not to seek an injunctive order from any court in any jurisdiction relating to insolvency, reorganization or arrangement proceedings which would have the effect of staying or enjoining this provision; or
2. A final judgment related to Franchisee remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); or the assets of Franchisee's Facility are liquidated; or execution is levied against Franchisee; or suit to foreclose any lien or mortgage against Franchisee's Facility or its equipment is instituted against Franchisee and not dismissed within thirty (30) days; or the real or personal property of Franchisee's Facility must be sold after levy thereupon by any sheriff, marshal or constable; or
3. Franchisee has made any material misrepresentations or misstatements, or omits any material facts to Brickhouse on the application to be a franchisee, or with respect to the ownership of Franchisee's Facility; or
4. Franchisee abandons the franchise relationship and/or Franchisee's Facility without the prior consent of Brickhouse at any time during the Term of this Agreement. The cessation of operation of Franchisee's Facility on the premises other than with the consent of Brickhouse, or the failure of Franchisee to commence operating Franchisee's Facility within one hundred and eighty (180) days from the execution of this Agreement by Brickhouse in accordance with Section 5 herein, whether the premises remain vacant or are converted to any use, shall be considered abandonment of the franchise relationship provided, however, that Franchisee's Facility shall not be deemed abandoned if the cessation is due to circumstances beyond Franchisee's reasonable control (such as lack of electrical power not due to any action or inaction by Franchisee, weather conditions, earthquakes, strikes and the like) and Franchisee diligently undertakes to resume operations after the reason for such cessation has been abated; or
5. Franchisee ceases to occupy the premises. If the loss of possession is the result of governmental

exercise of eminent domain, Franchisee may, with Brickhouse' consent and subject to availability, relocate to other premises in the same market area for the balance of the Term of this Agreement; or

6. Engages in a similar business to that licensed and established under and pursuant to this Agreement without obtaining Brickhouse' prior consent and paying Monthly Royalty Fees, or violates the covenant against competition, or markets any service or product under a name or mark which, in Brickhouse' sole opinion, is confusingly similar to the Brickhouse Marks; or

7. Franchisee is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Brickhouse believes is reasonably likely to have an adverse effect upon Franchisee's Facility, the Brickhouse Marks, the goodwill associated therewith, or Brickhouse' interest therein; or

8. Franchisee discloses or divulges the contents of the Confidential Operations Manual or other confidential information provided to Franchisee by Brickhouse, whether intentional or not, contrary to the terms of this Agreement, or Franchisee or any owner uses or duplicates the Brickhouse System or engages in unfair competition in violation of Section 20 or discloses any trade secrets of Brickhouse in violation of Section 20; or

9. Any sale, assignment, merger or transfer in violation of Sections 16 or 17 of this Agreement occurs; or

10. Franchisee knowingly maintains false books or records, or knowingly submits any false or fraudulent reports, statements or documents to Brickhouse; or

11. Franchisee misuses or makes any unauthorized use of the Brickhouse Marks or any other identifying characteristics of the Brickhouse System, or otherwise materially impairs the goodwill associated therewith or Brickhouse' rights therein; or

12. Franchisee fails to maintain insurance at all times in accordance with this Agreement; or

13. Franchisee is repeatedly in default for failing to comply with any part of this Agreement, whether or not cured after notice.

14. Franchisee contests Brickhouse' ownership of the Brickhouse Marks or any other trademarks owned or used by Brickhouse.

B. **Default With Opportunity to Cure.** Except as set forth in Section 19A herein, Franchisee will have ten (10) days after receipt of a written Notice of Default from Brickhouse within which to remedy any default under this Agreement and provide evidence thereof to Brickhouse; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default and curing it to Brickhouse' satisfaction within the ten (10) day period (or within such longer period as Brickhouse may, at its sole option, grant), and by promptly providing proof thereof to Brickhouse. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the ten (10) day period or such longer period as applicable law may require. Franchisee shall be in default under this Agreement for failure to comply with any of the requirements imposed by this Agreement or the Confidential Operations Manual as it may from time to time be reasonably supplemented or fails to carry out the terms of this Agreement in good faith.

C. **No Waiver.** The failure of Brickhouse to terminate this Agreement upon the occurrence of one or more events of default will not constitute a waiver or otherwise affect the right of Brickhouse to terminate this Agreement because of a continuing or subsequent failure to cure one or more of the aforesaid events of default or any other default.

D. **Notice of Default As Required by Law.** Notwithstanding anything to the contrary contained in this Section, if applicable law or regulation limits Brickhouse' rights to terminate or requires longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the minimum notice periods or restrictions upon termination required by such laws and regulations. Brickhouse shall not, however, be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, arbitration, hearing or dispute relating to this Agreement or the termination thereof.

E. **Cross-Default.** Any default by Franchisee under the terms and conditions of this Agreement or any other agreement between Brickhouse and Franchisee, which permits Brickhouse to terminate this Agreement or any other agreements, shall be deemed to be a default of each and every other franchise agreement and any other agreements. Furthermore, in the event of termination, for any cause, of this Agreement or any other agreement between the parties hereto, Brickhouse may, at its option, terminate any or all said agreements and all other franchise agreements.

F. **Franchisee Right to Terminate.** Franchisee may terminate this Franchise Agreement only due to a Breach of Contract by the Franchisor. It is the franchisee's responsibility to prove the Franchisor's Breach of Contract.

## 19. EFFECT OF TERMINATION

A. **Effect of Termination.** Upon termination, expiration or non-renewal of this Agreement for any reason,

Franchisee shall do the following:

1. Cease to use the Brickhouse Marks or any confusingly similar name, device, mark, service mark, trademark, trade name, slogan or symbol used in connection with Franchisee's Facility, including any reproduction, counterfeit copy, variation, emulation or colorable imitation thereof which is likely to cause confusion or mistake or deceive the public; and take any steps necessary to change the name of any corporation or entity which Franchisee may have formed, or under this Franchisee trades or does business, so that the name will not likely be confused with Brickhouse Marks; and
2. Immediately return to Brickhouse the Confidential Operations Manual, or any other operations manual loaned to it, together with all materials containing Brickhouse' trade secrets or Brickhouse Marks or otherwise marked by Brickhouse as confidential; and
3. Cease to use Brickhouse' System and methods of operation and comply with the post-term covenants contained in Section 20B herein; and
4. Grant to Brickhouse the option to purchase all equipment used in the operation of Franchisee's Facility and other usable items bearing the Brickhouse Marks at fair market value not to exceed \$1,000 and, regardless of Brickhouse exercising that option, shall not use for any business purposes or sell or give to any third parties for any business purposes any equipment used in the operation of Franchisee's Facility or other usable items bearing the Brickhouse Marks; and
5. Promptly assign to Brickhouse, upon Brickhouse' demand, any interest and right that Franchisee may have in the premises where Franchisee's Facility granted herein is located and operates, unless Franchisee owns said premises; where landlord's consent is required to any such assignment Franchisee shall use its best efforts to procure such consent; or, if Brickhouse does not so demand such assignment, immediately make such removals or changes in signs and the building as Brickhouse shall request, so as to effectively distinguish the building and premises from its former appearance and from any other Brickhouse facility. In the event Franchisee fails to make the changes, Franchisee consents to Brickhouse entering the building and premises to make non-structural changes at Franchisee's expense; and
6. Promptly assign to Brickhouse any interest that Franchisee may have in the telephone number and telephone listing used by Franchisee in connection with the operation of Franchisee's Facility. Franchisee shall promptly transfer all telephone calls by call-forwarding to Brickhouse, or to such other party or entity as Brickhouse shall direct and execute any such instruments and take such actions as Brickhouse may deem necessary to affect such transfer and call-forwarding of telephone calls. Franchisee acknowledges that this Agreement shall be conclusive evidence of



Brickhouse' rights to such telephone number and directory listings and its authority to direct this transfer; and

7. Promptly assign and deliver to Brickhouse, at Franchisee's expense, any and all check drafts for any and all memberships, any and all membership lists, past and present, and any and all leads for potential members for Franchisee's Facility. Franchisee shall not duplicate any membership lists or leads, past or present, used in any manner with Franchisee's Facility, and after deliverance of said materials to Brickhouse, Franchisee shall destroy any and all copies of membership lists, leads and check drafts used in any manner with Franchisee's Facility; and

8. Promptly pay all sums and debts owing to all third-party creditors of Franchisee's Facility, as well as to Brickhouse and its affiliates, whether such sums and debts owing to Brickhouse and its affiliates are evidenced by promissory note, invoice, bill or other writing and notwithstanding the fact that such sums and debts owing to Brickhouse and its affiliates may not at that time be fully due and payable, such debts being accelerated automatically without further notice to Franchisee. If termination is for any default of Franchisee, sums owing to Brickhouse shall include all damages, costs and expenses (including reasonable attorney's fees) incurred by Brickhouse as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of Brickhouse against any and all of the vehicles, personal property, furnishings, equipment, signs, inventory, fixtures or other assets owned by Franchisee and used in Franchisee's Facility at the time of default, and Franchisee authorizes Brickhouse to file any documents Brickhouse deems necessary to perfect this lien; and

9. Upon termination, expiration or non-renewal of this Agreement for any reason, Franchisee shall satisfactorily resolve all customer disputes or reimburse Brickhouse or any franchisee who does so for the reasonable cost of such services.

10. Upon termination, franchisee shall pay remaining Promissory Note (including interest remaining), if applicable; Royalty Fees payments at the maximum rates for the remainder of the franchise agreement (\$799/month); and Advertising Fee payments at the maximum rates for the remainder of the franchise agreement (\$399/month).

11. Upon termination, franchisee shall pay all Brickhouse legal fees associated with the termination of the Agreement.

B. **Execution of Documents.** Brickhouse may, if Franchisee fails or refuses to do so, execute in Franchisee's name and on its behalf, any and all documents necessary to effect the obligations of Franchisee under Section 19A, and Franchisee hereby irrevocably appoints Brickhouse as Brickhouse' attorney-in-fact to do so.

C. **Brickhouse' Rights Not Prejudiced.** The expiration, termination or non-renewal of this Agreement for any

reason shall be without prejudice to Brickhouse' rights against Franchisee and such expiration, termination or non-renewal shall not relieve Franchisee of any of its obligations to Brickhouse existing at the time of expiration, termination or non-renewal, including claims for damages arising directly or indirectly out of any breach or default, nor will it terminate those obligations of Franchisee which by their nature survive the expiration, termination or non-renewals of this Agreement.

## 20. RESTRICTIVE COVENANTS

- A. **Manuals and Confidential Information.** During the Term of this Agreement or any time thereafter, Franchisee shall not (except as otherwise contemplated by this Agreement) communicate, divulge or use for itself or for the benefit of any other person, persons, partnership, association, corporation or entity any information, knowledge or know-how concerning the Confidential Operations Manual and Brickhouse System. Franchisee acknowledges that the Confidential Operations Manual and Brickhouse System are confidential, proprietary and trade secrets and will not, at any time, contest the confidentiality of the information in them or Brickhouse' sole ownership of them.
- B. **Covenant Not to Compete.** Franchisee acknowledges that any type of ownership as prohibited below of a competing business of a Brickhouse Franchise in any way would be inherently unfair to Brickhouse and all of Brickhouse' franchises. Therefore Franchisee shall not own an interest in, conduct or operate, directly or indirectly any aerobics, fitness and/or weight loss business, men's, women's or co-ed, including the sale of other weight loss products, other than that of Brickhouse during the Term of this Agreement. Franchisee acknowledges that the Brickhouse Marks and the business reputation and goodwill associated thereto, the methods and techniques employed by Brickhouse, the training and instruction to be provided under and pursuant to this Agreement, the knowledge of the services and methods of Brickhouse, and the opportunities, associations and experience established and acquired by Franchisee under and pursuant to this Agreement and as a member of the license system, are of considerable value. In consideration thereof, Franchisee therefore covenants and agrees that, except for any interest which Franchisee has in a competitive business on the effective date of this Agreement, by its signature herein below, specifically consents that Franchisee shall not, directly or indirectly, as a proprietor, partner, investor, shareholder, member, director, officer, employer, employee, principal, agent, adviser, franchisor, franchisee, consultant or in any other individual or representative capacity or otherwise for a period of one (1) year immediately following the later of the expiration, termination or non-renewal of this Agreement for any reason or the date on which Franchisee actually ceases operation:
1. Engage in or participate in or derive any benefit from any similar business to that licensed and established under and pursuant to this Agreement within ten (10) miles of the location of Franchisee's Facility and within ten (10) miles of the location of any other Brickhouse Franchise; or

2. Employ or seek to employ any person who is employed by Brickhouse or any other Franchisee, or otherwise induce or seek to induce such person to leave his or her employment; or
  3. Interfere or attempt to interfere with any of the business relationships and/or advantages of Brickhouse or any other Franchisee; or
  4. Divert or attempt to divert any customer or business from Brickhouse or any other Franchisee or solicit or endeavor to obtain the business of any person who shall have been a customer of Franchisee's Facility.
- C. **Brickhouse Manuals, Brickhouse System and Brickhouse Marks.** Upon the expiration, termination or non-renewal of this Agreement for any reason or the date on which Franchisee actually ceases operation, Franchisee shall never use any confidential information from Brickhouse' manuals or Brickhouse System in any manner in any similar business to that licensed and established under and pursuant to this Agreement, and Franchisee shall never use the Brickhouse Marks, or any form of the Brickhouse Marks, any other mark owned by Brickhouse at the time of expiration, termination or non-renewal of this Agreement, or any confidential information from Brickhouse' manuals or Brickhouse System in any manner to engage in or participate in or derive any benefit from any similar business.
- D. **Injunctive Relief.** Franchisee acknowledges and agrees that the damage caused to Brickhouse by Franchisee's violation of any portion of this Section 20 shall constitute irreparable injury for which there is no adequate remedy at law and, accordingly, acknowledges and agrees that Brickhouse may seek enforcement of this Section 20 by temporary restraining order, temporary and/or permanent injunction, and such other legal or equitable relief as maybe appropriate.
- E. **Ancillary to Agreement.** Franchisee acknowledges that the restrictive covenants set forth in this Section 20 are ancillary to this Agreement and are reasonable and necessary for the protection of Brickhouse' legitimate interests in the goodwill of the business operated by Brickhouse, but, if it is determined that the covenants set forth in this Section 20 are not enforceable for any reason (including but not limited to being unenforceable for the full stated period of time or the stated geographic region), such covenants shall not be stricken, but shall be reformed to the extent required to be enforceable under and comply with applicable law and as reformed shall be fully enforceable.

## 21. RESOLUTION OF DISPUTES

- A. **Non-Binding Mediation.** Franchisee agrees to attempt to resolve any dispute between Franchisee and Brickhouse that arises out of this Agreement, save and except any dispute relating to Section 20 herein. The mediation procedure to be followed by the parties shall be set forth in Brickhouse then current procedures for

resolving disputes (the "Procedures") which shall be made available to Franchisee upon written request to Brickhouse. All non-binding mediation shall occur at the Brickhouse' offices in Charleston, West Virginia. All parties shall pay their respective costs and expenses of mediation.

B. **Institution of Legal Proceedings.** Franchisee shall not institute any legal or administrative proceeding for claims arising out of a dispute pursuant to this Agreement without first attempting to resolve the dispute through negotiation and non-binding mediation. If the dispute has not been resolved through negotiation or mediation pursuant to the Procedures, either party may initiate litigation in Kanawha County, West Virginia.

The limitation on the period of time arbitration and/or litigation claims must be brought shall not act to reduce the 3 year statute of limitations afforded a franchisee for bringing a claim arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

Any acknowledgments or representations of the franchisee that disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Franchise Law are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

## 22. MISCELLANEOUS: GENERAL CONDITIONS

A. **Fiduciary Duty.** Brickhouse and Franchisee specifically agree and acknowledge that Brickhouse shall not be deemed a fiduciary for or with respect to Franchisee or the operation of Franchisee's Facility.

B. **Construction and Interpretation.** The Introduction and Recitals shall be considered a part of this Agreement. Section captions are used only for convenience and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular Sections to which they refer. Words of any gender used in this Agreement shall include any other gender, and words in the singular shall include the plural, where the context requires. If any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. The Section headings used herein are descriptive only and shall have no legal force or effect whatsoever. The term "affiliate" as used in this Agreement is applicable to any company directly or indirectly owned or controlled by Brickhouse. The word "corporation(s)" as used in this Agreement shall include limited liability companies and such other similar organizations as are duly formed and existing pursuant to state law. The word "partnership(s)" as used in this Agreement shall include limited liability partnerships and such other similar organizations as are duly formed and existing pursuant to state law. All words in this Agreement shall be deemed to include all genders and the singular as well as the plural, as the context of this Agreement requires.

C. **Governing Law, Forum Selection and Compliance.**

1. This Agreement shall become valid when executed and accepted by Brickhouse. The parties agree that it shall be deemed made and entered into in the State of West Virginia and shall be governed and construed under and in accordance with the laws of the State of West Virginia.
  2. Franchisee and Brickhouse acknowledge and agree that the U.S. District Court for the Southern District of West Virginia or the judicial district courts (or successor) in and for Kanawha County, West Virginia, shall be the venue and exclusive proper forum in which to adjudicate any case or controversy arising either, directly or indirectly, under or in connection with this Agreement or the relationship between Brickhouse and Franchisee except to the extent otherwise provided in this Agreement and the parties further agree that, in the event of litigation arising out of or in connection with this Agreement or the relationship between Brickhouse and Franchisee in these courts, they will not contest or challenge the jurisdiction or venue of these courts. A franchisee may bring a lawsuit under the Maryland Franchise Registration and Disclosure Law.
  3. Anything in this Agreement to the contrary notwithstanding, Franchisee shall conduct its business in a lawful manner and faithfully comply with applicable laws or regulations of the United States and the state, city or other political subdivision in which Franchisee's Facility is located.
  4. Performance of this Agreement shall be in Kanawha County, West Virginia. Both parties agree that this Agreement is executed in and is performable in Kanawha County, West Virginia.
  5. Any limitation on the period of time mediation/arbitration and/or litigation claims must be brought shall not act to reduce the 3 year statute of limitations afforded a franchisee for bringing a claim arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise. Pursuant to COMAR 02.02.08.16L, the general release required as a condition of the renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. Any acknowledgements or representations of the franchisee which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of Franchise Law are not intended nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.
- D. **Reasonable Business Judgment.** Reasonable Business Judgment (as defined herein) shall be applied in all circumstances involving or requiring Brickhouse' approval or consent, unless provided otherwise in the Agreement. Reasonable Business Judgment means that Brickhouse' determinations or choices shall prevail, even if other alternatives are also reasonable or arguably preferable, if Brickhouse intends to benefit or is acting in a way that could benefit the Brickhouse System by, for example, enhancing the value of the Marks, increasing customer satisfaction, minimizing possible customer confusion as to the Marks or location, or increasing the financial strength of Brickhouse. Except where otherwise indicated in this Agreement, Brickhouse agrees to use Reasonable Business Judgment when

discharging its obligations and exercising its rights and discretion. Franchisee has agreed to this concept of Reasonable Business Judgment in recognition of the fact that Brickhouse should have at least as much discretion in administering the Brickhouse System as a corporate board of directors has in directing a corporation, and because the long-term interests of the Brickhouse System, all franchisees and owners of Brickhouse' facilities in the Brickhouse System, and Brickhouse and its shareholders, taken together, require that Brickhouse have the latitude to exercise Reasonable Business Judgment. Brickhouse shall not be required to consider Franchisee's particular economic or other circumstances or to slight its own economic or other business interests when exercising its Reasonable Business Judgment. Franchisee acknowledges that Brickhouse has a legitimate interest in seeking to maximize the return to its shareholders and the fact that Brickhouse benefits economically from an action will not be relevant to showing that Brickhouse did not exercise Reasonable Business Judgment. Neither Franchisee nor any third party (including but not limited to any third party acting as a trier of fact) shall substitute its judgment for Brickhouse' Reasonable Business Judgment. Franchisee shall have the sole burden of proving that Brickhouse failed to exercise this Reasonable Business Judgment in any respect.

E. **Severability.** Each provision contained in this Agreement shall for all purposes be construed to be separate and independent. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this Agreement; and the remainder of the Agreement, and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, it being hereby agreed that such provisions are severable and that this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. Each provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

F. **Notices.**

1. All notices to Brickhouse shall be in writing and shall be delivered or sent by registered or certified mail, postage fully prepaid, addressed to it at its offices at PO Box 8635, S. Charleston, West Virginia 25303, Attention: General Counsel, or at such other address as Brickhouse shall from time to time designate in writing.

2. All notices to Franchisee shall be in writing and shall be hand delivered, which includes but is not limited to delivery by any courier service, or sent by registered or certified mail or telegraph or facsimile, addressed to Franchisee at Franchisee's Facility or Franchisee's address as provided in this Agreement. Franchisee is solely responsible for notifying Brickhouse by certified mail addressed to the Legal Department at PO Box 8635, S. Charleston, West Virginia 25303, Attention: General Counsel of any change of address where, upon such notification, Brickhouse shall deliver any notices as required or permitted under this Agreement.

3. Notices shall be deemed delivered on the earlier of actual receipt or the third (3<sup>rd</sup>) day after being deposited in the U.S. Mail or with any courier service as provided herein.

- G. **Performance**. This Agreement shall be performed in Kanawha County, West Virginia.
- H. **Waiver and Delay**. The acceptance by Brickhouse of any payment specified to be paid by Franchisee hereunder with knowledge of a breach of any covenant or agreement hereof shall not be, nor be construed to be, a waiver of any breach of any term, covenant or condition of this Agreement. The failure or delay to enforce any of the provisions of this Agreement shall not constitute a waiver of rights or a waiver of any subsequent enforcement of the provisions of this Agreement. The waiver or remedy of any default or breach hereunder shall not waive or affect the default remedied or any prior or subsequent default. However, either party may, by written notice, unilaterally waive or reduce any obligation or restriction of the other party. The waiver or reduction may be revoked at any time for any reason on ten (10) days' written notice. All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law, and said rights and remedies may be exercised and enforced concurrently and whenever and as often as the occasion therefore arises. If one (1) year has elapsed since an action that Franchisee has against Brickhouse for any default or breach of this Agreement or the relationship between Franchisee and Brickhouse first originated, then, if Brickhouse has not received written notification of such action from Franchisee, Franchisee agrees that such action is waived and Franchisee is restricted from seeking recovery for such action.
- I. **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original; and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.
- J. **Savings Clause**. If any term hereof may be construed to obligate Franchisee to pay interest in excess of the highest legal amount, it is agreed that such term is a mistake in calculation or wording and, notwithstanding same, it is agreed that neither Franchisee nor any other person or entity obligated for the payment of any sums hereunder shall ever be obligated to pay interest in excess of the highest lawful amount.
- K. **Modification of Agreement**. Any modification of this Agreement or additional obligation assumed by either party in connection therewith shall be binding only if placed in writing and signed by all parties hereto.
- L. **Legal Fees**. In the unlikely event that a dispute occurs or an action in law or equity arises between Brickhouse and Franchisee concerning the operation, enforcement, construction or interpretation of this Agreement, Brickhouse, if it prevails on most issues, shall be entitled to recover reasonable attorney's fees, court costs and expenses incurred in the action.
- M. **Acknowledgements**. Franchisee acknowledges that Brickhouse and its subsidiaries and affiliates have certain rights reserved to them to grant licenses and rights to others, which may or may not be similar to the license and rights conveyed hereunder; to market Brickhouse-approved products; and to otherwise use Brickhouse Marks and

Brickhouse System as set forth in this Agreement. Franchisee acknowledges that, prior to the execution of this Agreement, Franchisee has had the opportunity to contact existing franchisees of Brickhouse. Franchisee acknowledges that Franchisee had the opportunity to independently investigate, analyze and construe both the business opportunity being offered hereunder and the terms and provisions of this Agreement itself, utilizing the services of such independent attorneys, accountants, or other advisers as Franchisee so elects. Franchisee acknowledges that no representation or statement has been made by Brickhouse or any employee, agent or salesman thereof and relied upon by Franchisee regarding the future growth of Brickhouse' franchise system, the anticipated income, earnings and growth of Franchisee, the actual sales or income of existing Brickhouse businesses or the viability of the business opportunity conveyed hereunder.

FRANCHISEE ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT AND ACKNOWLEDGES THAT IT HAS READ ALL OF THE FOREGOING AGREEMENT AND THAT IT HEREBY ACCEPTS AND AGREES TO EACH AND ALL OF THE PROVISIONS, COVENANTS AND CONDITIONS THEREOF.

N. **No Implied Covenant**. Brickhouse and Franchisee have negotiated the terms of this Agreement and agree that neither party shall claim the existence of an implied covenant of good faith and fair dealing to contravene or limit any term, condition or covenant of this Agreement.

O. **Submission of Agreement**. Submission of this Agreement does not constitute an offer, and this Agreement shall become effective only upon the execution hereof by both Brickhouse and Franchisee and delivery of an executed copy to Franchisee. THIS AGREEMENT SHALL NOT BE BINDING ON BRICKHOUSE UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY BRICKHOUSE AND FRANCHISEE HAS RECEIVED AN EXECUTED COPY OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL AND UNLESS FRANCHISEE SHALL HAVE BEEN FURNISHED BY BRICKHOUSE WITH ALL DISCLOSURE DOCUMENTS, IN WRITTEN FORM, AS MAY BE REQUIRED UNDER OR PURSUANT TO APPLICABLE LAW, FOR REQUISITE TIME PERIODS.

P. **Entire Agreement: Amendments**. This Agreement constitutes the entire agreement between the parties and may not be altered, amended or added to unless such amendment or addition is in writing and signed by both an authorized officer of Brickhouse and by Franchisee. This Agreement shall be deemed to cancel and supersede the terms of all prior written or oral agreements and understandings, if any, between Brickhouse and Franchisee pertaining to such license. Nothing in the agreement or any related documents is intended to disclaim the representations made in the franchise disclosure document.

Q. **Effective Date**. This Agreement is effective as of the date first above written.

IN WITNESS THEREOF, the parties have duly executed this Agreement in multiple originals, each of which may stand alone as an original, and acknowledge that they signed this in their stated capacities, on the date set forth



hereinabove.

**BRICKHOUSE CARDIO CLUB®**

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

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

Vic Sprouse, President

**ATTEST:**

\_\_\_\_\_

(Signature)

**PERSONAL GUARANTY**

WHEREAS, the undersigned, (hereinafter referred to as "Guarantor"), constitute both all person(s) that have any ownership interests in Assignee and all director(s)/officer(s) of Assignee; and

WHEREAS, Guarantor promises and agrees to unconditionally and absolutely guarantee to Brickhouse that Guarantor shall pay to Brickhouse all monies owed under this Agreement, assume all liabilities as the Franchisee under this Agreement and fulfill and perform all obligations, covenants, warranties, non-competition covenants and all other terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration as cited herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

(1) Guarantor hereby unconditionally and absolutely guarantees to Brickhouse the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, any and all indebtedness, liabilities and obligations of this Agreement, together with interest and collection costs as are provided for in this Agreement; and

(2) Guarantor hereby unconditionally and absolutely guarantees to Brickhouse the performance of and compliance with all obligations, covenants, warranties, non-competition covenants and all other terms and conditions as set forth

in this Agreement; and

(3) Brickhouse shall not be required to pursue any other remedies before invoking the benefits of Guarantor's guaranty herein; especially, without limitation, Brickhouse shall not be required to commence, pursue or exhaust any remedy against Franchisee and/or any of Franchisee's partners, shareholders or members; and

(4) In the event Franchisee ceases to exist through any means, whether by sale, dissolution, bankruptcy, etc., Guarantor covenants to immediately thereafter promptly honor, perform and timely pay any and all of the liabilities and obligations to Brickhouse under this Agreement; and

(5) In the event any payment by Franchisee to Brickhouse is held to constitute a preference under the bankruptcy laws, or, if for any other reason Brickhouse is required to refund such payment or pay the amount thereof to any other party, such payment by Franchisee to Brickhouse shall not constitute a release of Guarantor from any liability hereunder, and Guarantor agrees to pay such amount to Brickhouse on demand.

(6) Guarantor agrees that Brickhouse, at its sole discretion, and Franchisee may from time to time amend this Agreement and the exercise of, or failure to exercise, such right to amend the Agreement shall in no way impair or diminish the obligations of Guarantor hereunder.

(7) This Guaranty shall inure to the benefit of any transferee, assignee, heir and successor in interest. Brickhouse, as used herein, shall mean and include any successor to Brickhouse or any such heir, transferee, assignee or subsequent owner.

(8) Guarantor agrees that this Guaranty is performable in Charleston, Kanawha County, West Virginia, waives the right to be sued elsewhere, and agrees that this Guaranty is to be construed and enforced in accordance with the laws of the State of West Virginia.

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Name, Individually

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Name, Individually

For Brickhouse Cardio Club®;

For Franchisee;

\_\_\_\_\_

\_\_\_\_\_ (signature)

Vic Sprouse

President, Brickhouse Cardio Club®

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Title)

**Appendix A – FRANCHISE TERRITORY**

XXXXXXXXXXXXXX

TERRITORY BORDERS:

A territory within the borough limits of XXXXXXXX.

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Victor A. Sprouse, Owner, Brickhouse Cardio Club® Date

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Brickhouse Cardio Club® franchisee Date

**Appendix B – Franchisee Non-Compete Agreement**

This Agreement (“Agreement”) is made between Sprouse Fitness (Sprouse) and all companies associated with Sprouse Fitness, including but not limited to, Brickhouse Cardio Club and XXXXXXXX (Franchisee), for mutual consideration, the receipt and adequacy of which is acknowledged by the parties, who agree:

1. Non-compete Agreement: Franchisee agrees not to directly or indirectly compete with the business of Sprouse and its successors and assigns during the period of the franchise agreement and for a period of 1 year following termination of franchise agreement and notwithstanding the cause or reason for termination.

The term "not compete" as used herein shall mean that Franchisee shall not own, manage, operate, or consult for a business substantially similar to, or competitive with, the present business of Sprouse.

Franchisee acknowledges that Sprouse shall or may in reliance of this agreement provide Franchisee access to trade secrets, customers and other confidential data and good will. Franchisee agrees to retain said information as confidential and not to use said information on his or her own behalf or disclose same to any third party. This non-compete agreement shall extend only for a radius of 10 miles from any Sprouse location and shall be in full force and effect for 2 years, commencing with the date of agreement termination.

This agreement shall be binding upon the parties, their successors, assigns, and personal representatives.

2. Franchisee Schedule. Initial Franchise schedule and any change to your schedule must be approved by Brickhouse Cardio Club as a basis to maintain your franchise and failure to obtain approval will result in a forfeiture of your franchise under the terms of the Franchise Agreement.

3. ZenPlanner Software. The use of the Brickhouse Cardio Club-approved ZenPlanner membership software is required.

4. Membership Specials & Discounts. Membership specials not provided by Brickhouse Cardio Club must be approved. Groupons, Living Social, and other discount offers must be approved. The sale of punch cards is strictly prohibited.

5. Additional Franchisee Training. Franchisee is required, between months 12 and 24 of studio operation to attend either the Brickhouse Cardio Club Convention/Conference or a new franchisee training weekend.

6. Governing law. This Agreement is governed by the laws of West Virginia.

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Victor A. Sprouse, President, Brickhouse Cardio Club®

Date

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XXXXXXX, XXXXXXXX Brickhouse Cardio Club® franchisee

Date

**Exhibit B: Financial Statements**

**Exhibit C: Sample Promissory Note for Initial Franchise Fee**

**Installment Promissory Note**

<b>Amount: \$11,400</b>	<b>Date: XXXX, 2014</b>
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FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_, maintaining an address at \_\_\_\_\_ (Borrower's Address) promises to pay to the order of **Brickhouse Cardio Club, Inc.** (Lender), whose address is **PO Box 8635, South Charleston, WV 25303** (Lender's Address), the principal sum of **\$11,400** (Principal), together with interest of **8.5%** (Interest Rate) per year thereon from the date herein for a total amount of interest paid over the term of **\$2,633.31**.

The principal sum includes \$14,900 from the Initial Franchise Fee of the Brickhouse Cardio Club Inc. for the XXXXXXXXX territory with \$11,400 financed after a \$3,500 down payment.

The unpaid Principal and accrued interest shall be paid in monthly installments of **\$233.89**, with the first payment beginning on **June 1, 2014** and continuing until on the 1<sup>st</sup> of each month thereafter until the full amount of this note and all accrued interest is paid in full (60 payments) via electronic funds transfer from the same account where regular Brickhouse Cardio Club franchise payments are withdrawn, or another account agreed to by both lender and borrower.

All or any part of the Principal may be prepaid at any time and from time to time without penalty. Payments shall be applied first to accrued interest and the balance to the Principal.

In the event of any default by the Borrower in the payment of Principal or interest after demand is made, the unpaid balance of the Principal of this promissory note shall, at the option of the holder, become immediately due and payable. Any amount due at the time of default, shall accrue interest until payment at the rate of twenty-one percent (21%) per year or the highest rate permitted by law, whichever is less.

Upon default in making payment within 7 days of demand, Borrower agrees to pay all reasonable legal fees and costs of collection to the extent permitted by law.

Borrower and all other persons who may become liable for the payment hereof severally waive demand, presentment, protest, notice of dishonor or nonpayment, notice of protest, and any and all lack of diligence or delays in collection, which may occur.

Borrower and all other parties to this note, whether as endorsers, guarantors or sureties, agree to remain fully bound until this note shall be paid in full and waive demand, presentment and protest and all notices hereto. Borrower further agrees to remain bound by this note notwithstanding any extension, modification, waiver, or other indulgence, failure, discharge or release of any obligation hereunder.

The holder's failure to exercise any right or option hereunder does not constitute a waiver of any future right or option. No modification to this document or indulgence by any holder hereof shall be binding unless in writing.

If any provision of this Note is deemed unenforceable, in whole or in part, for any reason, the remaining provisions shall still remain in full force and effect.

This note shall take effect as a sealed instrument and is made and executed under, and is in all respects governed by, the laws of: West Virginia.

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Vic Sprouse, President, Brickhouse Cardio Club Inc.

**Exhibit D – Agents for Service of Process**

The following are authorized to receive service of process and effective date (where applicable) in the indicated state. The following States require that the Franchise Disclosure Document be registered or filed with the State, or be exempt from registration: California, Connecticut, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

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

**CALIFORNIA**

Commissioner of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814  
EFFECTIVE DATE: April 22, 2012

**CONNECTICUT**

Connecticut Department of Banking, 260 Constitution Plaza Hartford, CT 06103-1800  
EFFECTIVE DATE: April 24, 2012

**HAWAII**

Commissioner of Securities of the State of Hawaii, Dept. of Commerce and Consumer Affairs Business Registration Div.,  
Securities Compliance Branch, 335 Merchant Street, Room 203, Honolulu, HI 96813  
EFFECTIVE DATE: PENDING

**ILLINOIS**

Attorney General, 500 South Second Street, Springfield, IL 62706  
EFFECTIVE DATE: PENDING

**INDIANA**

C T Corporation System, 36 S. Pennsylvania Street, Suite 700, Indianapolis, IN 46204  
EFFECTIVE DATE: May 2, 2012

**MARYLAND**

Maryland Securities Commissioner, 200 St. Paul Place, Baltimore, MD 21202-2020  
EFFECTIVE DATE: October 3, 2013

**MICHIGAN**

Michigan Attorney General – Consumer Protection Division, Attn: Franchise, 670 Law Building, Lansing, MI 48913  
EFFECTIVE DATE: April 16, 2012

**MINNESOTA**

C T Corporation System Inc., 405 Second Avenue, South Minneapolis, MN 55401  
EFFECTIVE DATE: June 19, 2012



**NEBRASKA**

Department of Banking and Finance, 12300 Street, Suite 400 P.O. Box 95006 Lincoln, NE 68508  
EFFECTIVE DATE: MAY 8, 2012

**NEW YORK**

C T Corporation System, 111 Eighth Street, New York, NY 10011  
EFFECTIVE DATE: December 21, 2012

**RHODE ISLAND**

C T Corporation System, 10 Weybosset Street, Providence, RI 02903  
EFFECTIVE DATE: MAY 8, 2012

**VIRGINIA**

C T Corporation System, 4701 Cox Road, Suite 301, Glen Allen, VA 23060  
EFFECTIVE DATE: December 27, 2012

**WASHINGTON**

Washington Securities Division, State of Washington, 150 Israel Rd. SW, Tumwater, WA 98501  
EFFECTIVE DATE: May 29, 2012

**WISCONSIN**

Wisconsin Securities Commission, Securities & Franchise Registration, 111 West Wilson Street, Madison, WI 53701  
EFFECTIVE DATE: Pending

THE NAMES AND ADDRESSES OF AGENTS FOR ADDITIONAL STATES ARE AVAILABLE UPON REQUEST.

This Disclosure Document is not registered in North Dakota or South Dakota.

In all other States, the issuance date of this Franchise Disclosure Document is March 1, 2011 as amended June 1, 2013.

**Exhibit E – State Regulatory Agencies**

Any violation should be reported to the applicable state at the address below:

**CALIFORNIA**

California Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814 Or: Any office of the Dept. of Corporations

**HAWAII**

Commissioner of Securities of the State of Hawaii, Dept. of Commerce and Consumer Affairs Business Registration Div., Securities Compliance Branch, 335 Merchant Street, Room 203, Honolulu, HI 96813

**ILLINOIS**

Office of the Attorney General, Franchise Division, 100 W. Randolph Street, Springfield, IL 60601

**INDIANA**

Secretary of State, Franchise Section, Indiana Securities Division, 302 W. Washington Street, Rm. E-111, Indianapolis, IN 46204

**MARYLAND**

Office of the Attorney General, Division of Securities, 200 St. Paul Place, Baltimore, Maryland 21202-2020.

**MICHIGAN**

The Michigan Attorney General, 670 Law Building, Lansing, MI 48913

**MINNESOTA**

Commissioner of Securities for the State of Minnesota, 85 7<sup>th</sup> Place East, Suite 500, St. Paul, MN 55101

**NEW YORK**

New York State, Dept. of Law Bureau of Investor Protection & Securities, 120 Broadway, 23rd Floor, New York, NY 10271

**NORTH DAKOTA**

Securities Commissioner, 600 East Boulevard, 5th Floor, Bismarck, ND 58505-2017

**RHODE ISLAND**

Division of Securities, 223 Richmond Street, Suite 232, Providence, RI 02903

**SOUTH DAKOTA**

Department of Commerce & Regulation, Division of Securities, 118 West Capitol Avenue, Pierre, SD 57501-2017

**VIRGINIA**

State of Virginia, Division of Securities and Retail Franchising, 1300 East Main Street, Richmond, VA 23219

**WASHINGTON**

Washington Securities Division, State of Washington, 150 Israel Rd. SW, Tumwater, WA 98501.

**WISCONSIN**

Wisconsin Securities Commission, Securities & Franchise Registration, 111 West Wilson Street, Madison, WI 53701

The names and addresses of administrators for additional states are available upon request.

**Exhibit F – Brickhouse Cardio Club® Operations Manual Table of Contents**

**BRICKHOUSE CARDIO CLUB® OPERATIONS MANUAL TABLE OF CONTENTS**

Brickhouse Cardio Club® (BCC) Introduction	2 pages
BCC 5-4-3-2-1-OPEN Checklist	2 pages
BCC Membership Agreement	2 pages
BCC Credit Card Authorization	1 page
BCC Bank Draft Authorization	1 page
BCC Health History	2 pages
BCC Instructor Pay and Exclusive Benefits	2 pages
BCC Instructor Expectations	2 pages
BCC Phone Call Script	2 pages
BCC Waiver Contact Procedure	2 pages
BCC Walk-in Phone Script	2 pages
BCC Website Email Response Template	2 pages
BCC Instructor and Franchisee Commission Guidelines for Signing New Franchisees	2 pages
BCC Membership Pricing Guidelines	2 pages
BCC School Fundraiser Guidelines	2 pages
BCC Waiver	1 page
BCC Waiver (with Children)	1 page
BCC Mother-Daughter Policy	2 pages
BCC Studio Member Transfer Policy	2 pages
Total	34 pages

**Exhibit G - Certification**

**Certification**

**I certify and swear under penalty of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of June 1, 2013 attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.**

**Signed at Charleston, WV, \_\_\_\_\_, 2013**

**Franchisor: Brickhouse Cardio Club Inc.**

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

**Name: Vic Sprouse**

**Title: President and CEO**

**Exhibit H – General Release**

## CURRENT FORM OF RELEASING LANGUAGE

(SUBJECT TO CHANGE)

In consideration of the agreement of Brickhouse Cardio Club ("Franchisor") to allow \_\_\_\_\_ ("Franchisee") to [RENEW OR TRANSFER] its Franchise Agreement dated between Franchisee and Franchisor ("Agreement"), Franchisee hereby releases and forever discharges Franchisor, and its affiliates, as well as their members, directors, officers, employees and agents, in their corporate and individual capacities, and their respective heirs, personal representatives, successors and assigns, from any and all claims Franchisee may have against such parties, from the beginning of time to the date hereof, whether in law or in equity, including, but not limited to, any claims arising out of the offer or sale of any franchise to Franchisee, and any matters arising under the Agreement or under any other agreement between Franchisee and Franchisor or its affiliates including the Franchise Agreement, Personal Guaranty and Promissory Note and this general release shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. **[FOR TRANSFERS:** Further, Franchisee acknowledges that transfer of the Agreement shall terminate Franchisee's interest in the Agreement, but Franchisee will continue to be bound by all post- termination provisions of the Agreement, including but not limited to the obligations of confidentiality, and the covenant not to compete contained in the Agreement.]

THIS GENERAL RELEASE SHALL NOT APPLY TO ANY LIABILITY UNDER THE MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW.

NOTWITHSTANDING THE FOREGOING, THIS RELEASE DOES NOT RELEASE ANY CLAIMS THE UNDERSIGNED MAY HAVE THAT MAY NOT BE RELEASED PURSUANT TO THE FRANCHISE LAWS WHERE THE UNDERSIGNED IS A RESIDENT OR WHERE THE FRANCHISE IS LOCATED, TO THE EXTENT REQUIRED BY APPLICABLE LAW.

CALIFORNIA FRANCHISEE(S) ACKNOWLEDGE THAT THEY ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

FRANCHISEE(S), BEING AWARE OF THIS CODE SECTION, HEREBY EXPRESSLY WAIVE ALL OF THEIR RIGHTS THEREUNDER AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT OF ANY APPLICABLE JURISDICTION, INCLUDING, WITHOUT LIMITATION, CALIFORNIA.

Franchisee(s) expressly assume the risk of any fact or mistake of fact of which they may be unaware or that the true facts may be other than any facts now known or believed to exist by Franchisee(s), and it is Franchisee(s) intention to forever settle, adjust and compromise any and all present and/or future disputes with respect to all matters from the beginning of time to the date of this document finally and forever and without regard to who may or may not have been correct in their understanding of the facts, law or otherwise. All releases given by Franchisee(s) are intended to constitute a full, complete, unconditional and immediate substitution for any and all rights, claims, demands and causes of action whatsoever which exist, or might have existed, on the date of this document. Franchisee(s) represent and warrant that they have made such independent investigation of the facts, law and otherwise pertaining to all matters discussed, referred to or released in or by this document as Franchisee(s), in Franchisee(s) independent judgment, believe necessary or appropriate. Franchisee(s) have not relied on any statement, promise, representation or otherwise, whether of fact, law or otherwise, or lack of disclosure of any fact, law or otherwise, by us or any of the Brickhouse Cardio Club®'s Affiliates or anyone else, not expressly set forth herein, in executing this document and/or the related releases.

**ATTORNEYS' FEES.** If Franchisee(s), or anyone acting for, or on behalf of, Franchisee(s) or claiming to have received, by assignment or otherwise, any interest in any of the Claims, commence, join in, or in any manner seek relief through any suit

(or otherwise) arising out of, based upon or relating to any of the Claims released hereunder or in any manner asserts against us or all or any of the Brickhouse Cardio Club®'s Affiliates any of the Claims released hereunder, Franchisee(s) agree to pay all attorneys' fees and other costs incurred by us or any of the Brickhouse Cardio Club®'s Affiliates in defending or otherwise responding to said suit or assertion directly to us or the Brickhouse Cardio Club®'s Affiliates incurring such costs.

"BRICKHOUSE CARDIO CLUB®'S AFFILIATES." Each and all of the following, whether past, present and/or future: each and all company(ies) and/or person(s) acting by, through, under, in concert, affiliated and/or associated in any way with us; each and all of the partners, shareholders, officers, directors, agents, attorneys, accountants, and/or employees of us; and/or any of the foregoing, as well as each and all of the successors and/or assigns of us and/or any of the foregoing.

**DATE OF RELEASES, JOINT AND SEVERAL LIABILITY.** The releases granted hereunder shall be deemed effective as of both the date hereof and the date of any transaction in which they are to be issued. The liabilities and obligations of each of Franchisee(s) (and any other person/entity providing releases to us or the Brickhouse Cardio Club®'s Affiliates) shall be joint and several and this general release shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

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

Date: \_\_\_\_\_

Franchise No.: \_\_\_\_\_

**Exhibit I – List of Franchisees**

California	
Jessica Pfister 4570 Oceanside Boulevard, Oceanside, CA 92056 (760) 845-3501	Jaimee Dunning San Bruno, CA (916) 764-3024
Colorado	
Marvinna Simpson 5202 Cathay Street, Denver, CO 80249 (303) 562-7992 (not yet opened)	
Delaware	
Natasha Howard 173 Brenda Lane, Ste A, Camden, DE 19934 302-242-6496	
Florida	
Carrie Turley-Smith 311 Del Prado Blvd., Cape Coral, FL 33990 (239) 424-6111	Kristal Mize 5482 Club Circle, Haverhill, FL 33425 954-882-2065 (not yet opened)
Virginia Montes-Fonseca Kendall, FL (305) 753-1332 (not yet opened)	Vivian Williams Kissimmee, FL (407) 394-8484 (not yet opened)
Michelle Robertson 440 N. State Road 19, Suite 440, Palatka, FL 21666 (386) 329-9111	Carmen Haas 4920 Newkirk Drive, Tampa, FL 33624 (813) 966-2482

Georgia	
<p>Makina Turner          7322 Council Lane, Buford GA 30519          (404) 845-6855 (not yet opened)</p>	
Kansas	
<p>Kendra Pena-Collazo          2016 Spruce Street, Leavenworth, KS 66048          (816) 416-0169</p>	
Maryland	
<p>Karen Taitano          2998 Hearthstone Road, Ellicott City, MD 21042          (301) 873-5170</p>	<p>Shirley McNatt          222A Shopping Center Road, Stevensville, MD 21666          (443) 249-3282</p>
Massachusetts	
<p>Sara Hawkins          Salem, MA          (401) 835-4697</p>	
Missouri	
<p>Holly Hammett          36 Professional Parkway, Troy, MO 63379          (636) 528-5883</p>	<p>Jennifer Rector          8652 Orf Road, Lake Saint Louis, MO 63367          (636) 639-1240</p>
Mississippi	
<p>Laurie Smith          1006 Top Street, Suite H, Flowood, MS 39232          (601) 939-1040</p>	



New Jersey	
Linda Peterson 219 West Landis Avenue, Vineland, NJ 08360 (856) 213-6181	Becky Mahney 123 West Clements Bridge Road, Runnemede, NJ 08078 (856) 419-3800 (not yet opened)
New York	
Kimberly Lazzara 3261 Horseblock Road, Medford, NY 11763 (631) 775-6009	Annette Boras-Matos Staten Island, New York (917) 667-5694 (not yet open)
North Carolina	
Juanita Collins Durham, North Carolina (919) 519-5625 (not yet opened)	Pamela Stocks Holly Springs, NC (919) 607-2506 (not yet open)
Ohio	
Christi Williams 1166 West 5 <sup>th</sup> Avenue, Columbus, OH 43212 (303) 562-7992	Angie George 9267 County Road 107, Proctorville, OH 45669 (304) 633-1970
Tara Hayes Chesapeake Plaza, No. 8, Chesapeake, OH 45619 (304) 972-7688	
Oklahoma	
Melissa Pollastro 201 SW C Ave., Suite B, Lawton, OK 73505 678-743-4699	
Pennsylvania	
Jessica Knapik	Prudence Smith

101 West High Street, Ebensburg, PA 15931 (814) 932-1713	Enola, PA (410) 967-2034
Carla Blackie 505 East 25 <sup>th</sup> Street, Altoona, PA 16601 (814) 207-0181	
Rhode Island	
Megan Correia 12 High Street, Riverwalk Unit 1, Westerly, RI 02891 (401) 348-7005	
South Carolina	
Linda Calvanico 510-C Highway 17, Surfside Beach, SC 29588 (843) 655-0839 (not yet opened)	Deanne Lewis 5190 Highway 17 Bypass, Murrells Inlet, SC 29576 (803) 565-5236
Texas	
Cassy Feuling 3245 Main St. Suite 239, Frisco, TX 75034 (817) 966-2321	Del Flores Bryan/College Station, TX (979) 777-9040 (not yet open)
Lindsey Darnell Cypress, TX (281) 923-6101 (not yet open)	Lina Street-Rojas 2221 Cross Timbers Road, Flower Mound, TX 75028 (214) 564-4723
Lisa Stone 2267 NW Military Highway, San Antonio, TX 78213 (210) 779-0394	Sylvia Torres 3730 FM 2920 Suite 105, Spring, TX 77388 (281) 728-6570
Wendy Tipper 1050 S. Preston Road, Suite 112, Celina, TX 75009 (214) 538-0247	

Virginia	
Lisa Householder 103 Spring Street, Bluefield, VA 24605 (276) 979-6140	Shameka Simpkins 1504 Ocean Garden Street, Virginia Beach, VA 23454 (757) 575-5849 (not yet open)
Traci Burton 930 Roanoke Street, Christiansburg, VA 24073 (276) 722-0082	Lisa Householder 724 East Riverside Drive, North Tazewell, VA 24630 (276) 979-6140
Vanessa Head 2826 Falifax Drive, Falls Church, VA 22043 (703) 942-8500	Kenni and A. C. Powell 9654 Center Point Lane, Ste 9402, Manassas, VA 20110 (703) 408-7772
Tyeasha & Joe VanBuren Fredericksburg, VA (540) 455-5253 (not yet open)	April Smiles Smith 7471 Midlothian Turnpike, Richmond, VA 23225 (616) 304-0522
Rosa Seward 1075 Garrisonville Road, Suite 112, Stafford, VA 22554 (540) 207-1005	
Washington	
Kristen Llewelyn Seattle, WA (702) 338-8361 (not yet open)	
West Virginia	
Kelli Ashworth 5225 Elk River Road, North, Elkview, WV 25071 304-767-0037	Misse Medley 73 Old Main Plaza, St. Albans, WV 25177 304-741-1222
Toni Holbrook 2311 Ohio Avenue, Unit B, Parkersburg, WV 26101 (304) 482-6914	Jodie Treadway 200 City Avenue, Beckley, WV, Cross Lanes, WV 25313 (304) 776-3300

<p>Abby Honaker 704 Thorn Street, Princeton, WV 24740 (304) 952-6037</p>	<p>April Smith 4640 US Route 60, East, Suite 1, Huntington, WV 25705 (304) 617-0443</p>
<p>Amber Hamrick 790 Ritter Drive, Beaver, WV 25813 (304) 237-4055</p>	<p>Jessica Pecht 261 Sheerer Drive, Martinsburg, WV 25404 (304) 582-1625 (not yet open)</p>
<p>Misti Janey 3719 MacCorkle Ave., SE, Charleston, WV 25304 (304) 993-4937</p>	<p>Zena Harris 300 MacCorkle Ave. SW, S. Charleston, WV 25303 (304) 546-3501</p>
<p>Beth Kidd King 4000 Teays Valley Road, Scott Depot, WV 25560 (304) 419-2960</p>	

**Exhibit J – Confidentiality Agreement**

This Agreement (“Agreement”) is made between Sprouse Fitness (Sprouse) and all companies associated with Sprouse Fitness, including but not limited to, Brickhouse Cardio Club® and XXXXXXXX (Franchisee), for mutual consideration, the receipt and adequacy of which is acknowledged by the parties, who agree:

1. Non-compete Agreement: Franchisee agrees not to directly or indirectly compete with the business of Sprouse and its successors and assigns during the period of the franchise agreement and for a period of 1 year following termination of franchise agreement and notwithstanding the cause or reason for termination.

The term "not compete" as used herein shall mean that Franchisee shall not own, manage, operate, or consult for a business substantially similar to, or competitive with, the present business of Sprouse.

Franchisee acknowledges that Sprouse shall or may in reliance of this agreement provide Franchisee access to trade secrets, customers and other confidential data and good will. Franchisee agrees to retain said information as confidential and not to use said information on his or her own behalf or disclose same to any third party. This non-compete agreement shall extend only for a radius of 10 miles from any Sprouse location and shall be in full force and effect for 2 years, commencing with the date of agreement termination.

This agreement shall be binding upon the parties, their successors, assigns, and personal representatives.

2. Franchisee Schedule. Initial Franchise schedule and any change to your schedule must be approved by Brickhouse Cardio Club as a basis to maintain your franchise and failure to obtain approval will result in a forfeiture of your franchise under the terms of the Franchise Agreement.

3. ZenPlanner Software. The use of the Brickhouse Cardio Club-approved ZenPlanner membership software is required.

4. Membership Specials & Discounts. Membership specials not provided by Brickhouse Cardio Club must be approved. Groupons, Living Social, and other discount offers must be approved. The sale of punch cards is strictly prohibited.

5. Governing law. This Agreement is governed by the laws of West Virginia.

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Victor A. Sprouse, President, Brickhouse Cardio Club®

Date

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XXXXXXX, XXXXXXXX Brickhouse Cardio Club® franchisee

Date

**Item 23: Receipts**

**Receipt**

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Brickhouse Cardio Club Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, **or sooner if required by applicable state law.** New York law requires a franchisor to provide the franchise disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If Brickhouse Cardio Club Inc. does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the applicable state agency listed in Exhibit E of the disclosure document.

Franchise Seller: Marie McDavid, Brickhouse Cardio Club, Inc., PO Box 8635, South Charleston, WV 25303 (877) 729-1023.

**ISSUANCE DATE OF F.D.D.: June 1, 2013**

We authorize the respective state agents identified on Exhibit D to receive service of process for us in the particular states.

I received a disclosure document dated June 1, 2013 that included the following Exhibits: Exhibit A-Franchise Agreement, Exhibit B-Financial Statements, Exhibit C-Sample Promissory Note for Initial Franchise Fee, Exhibit D-Agents for Service of Process, Exhibit E-State Regulatory Agencies, and Exhibit F-Brickhouse Cardio Club® Operations Manual Table of Contents, Exhibit G – Certification, Exhibit H – General Release, Exhibit I – List of Franchisees, Exhibit J – Confidentiality Agreement. This disclosure document also included a General Release.

*Please COMPLETELY fill out the sections below:*

**DATE F.D.D. RECEIVED:** \_\_\_\_\_, 201\_\_ (enter date here) \_\_\_\_\_

**Signed:** \_\_\_\_\_ **individually** \_\_\_\_\_

**Name (Please print)** \_\_\_\_\_

**Last 4 digits of Social Security Number:** \_\_\_\_\_

\_\_\_\_\_ **Street Address (domicile)**

\_\_\_\_\_ **City or Town/State/Zip Code**