

**BEAT II, Inc.**  
**dba BEAT Personal Training**

**Franchise Agreement**

THIS AGREEMENT IS MADE AND ENTERED INTO at Cincinnati, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between BEAT II, Inc., an Ohio corporation (hereafter "BEAT Personal Training or BEAT" or "Franchisor") with its principal place of business located at 4783 Red Bank Road, Cincinnati, Ohio, 45227, and

\_\_\_\_\_  
(hereafter "Franchisee"), with its principal place of business located at \_\_\_\_\_.

WITNESSETH:

WHEREAS, BEAT or its affiliate, BetterbodiesbyBaker, LLC, an Ohio Limited Liability Company, has either filed applications for or registered certain trade names, service marks and trademarks, which have been used in the organization, equipping and operation of a unique system of personal training featuring the "BEAT Personal Training" System and the sale of related clothing, promotional and nutritional items, and has established substantial goodwill and public acceptance; and

WHEREAS, Franchisee hereby acknowledges that (a) he has read this Agreement and the Franchise Offering Circular and that he has no knowledge of any representations about BEAT's franchise or about BEAT. or its franchising programs, whether received from BEAT, its officers, directors, shareholders, employees or agents, which are contrary to the statements in the Franchise Offering Circular or to the terms of this Agreement, and (b) that he understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain BEAT's high standards of quality and service and the uniformity of those standards at all BEAT locations and to protect and preserve the goodwill of the Trademarks (as defined in Article 1.1.2); and

WHEREAS, BEAT and Franchisee are entering into this Franchise Agreement for the purpose of BEAT granting Franchisee the right to use BEAT Trademarks (as defined in Article 1.1.2) in the operation of one BEAT location, upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein, the parties agree as follows:

1. **Grant of Franchise.**

1.1 BEAT hereby gives and grants Franchisee a franchise and license to:

1.1.1 Operate one (1) personal training facility under the name BEAT (the "**Franchised Business**") only at the location known as

\_\_\_\_\_ and more fully described on the attached Exhibit A (the "**Business Premises**").

1.1.2 Use in the Franchised Business the trademarks, service marks and trade names listed in the attached Exhibit C or presently or subsequently registered or claimed by BEAT and designated for company and franchise use by BEAT (collectively, the "**Trade-marks**"), as such Trademarks may be deleted or superseded by BEAT. Franchisee shall use all Trademarks in the manner and subject to the restrictions prescribed by BEAT.

1.1.3 Use the Trademarks in the Franchised Business only on or in connection with the sale of those services and products designated by BEAT from time to time by being included in BEAT Operating Standards Manual (collectively, the "**Licensed Products**"); BEAT may modify or revise the Manual (as described below) and Licensed Products from time to time in its sole discretion, and Franchisee shall conform to all such changes. Franchisee must offer for sale all of the Licensed Products, but shall not sell any products or services not specifically permitted by BEAT. Franchisee shall sell the Licensed Products on no other than a retail basis and therefore shall not sell the Licensed Products to any individual, corporation, partnership or venture for resale to others, in either whole or component form. Further, Franchisee shall not sell or offer to sell the Licensed Products by internet, catalog or direct mail outside of its Unit Market Area.

1.1.4 Use in the Franchised Business the confidential and unique system of planning and executing personal training programs known as "Baker Enhanced Athletic Training", the methods of marketing, operating and doing business, and certain other trade secrets, all conceived, designated and adopted by BEAT (hereinafter called the "**Licensed Know-How**").

1.2 BEAT shall at all times retain exclusive ownership of the Trademarks, Licensed Products, Licensed Know-How and any Operating Standards Manual developed by BEAT (the "**Manual**"). Franchisee acknowledges the proprietary nature of these items and shall not disclose them or any part of them to any third party to gain any benefit from

them except the limited disclosure and benefit to paying retail customers of the Franchised Business. Franchisee shall not make any copies of the Manual or any part of it without BEAT's prior written consent. Upon termination of this Agreement for any reason, Franchisee shall immediately return to BEAT the Manual, all copies of the Manual and any unused Licensed Products which BEAT considers to be proprietary.

1.3 During the term of this Franchise Agreement, neither BEAT nor its affiliate will operate, license or franchise any other personal fitness training business which either uses the Trademarks or offers personal training to consumers within the areas bounded and described in the attached Exhibit B (the "**Unit Market Area**"). Franchisee has, prior to the execution of this Agreement, been provided with a specific description of the Unit Market Area to be assigned to this franchise, and is in agreement with the geographical restrictions of that area. Franchisee has requested a Unit Market Area for the reason that such an area allows Franchisee and other franchisees to compete effectively in the personal training market.

1.4 BEAT shall at all times during the term of this Agreement maintain the highest standards in quality, service and reputation with respect to the Operation of its Business, the BEAT Personal Training system, the Trademarks, Licensed Products, Licensed Know-How and Operating Standards Manual.

2. **Franchise Fee.** In consideration of the issuance of this Franchise Agreement, Franchisee shall pay to BEAT, upon the execution of this Franchise Agreement the sum of fifty thousand dollars (\$50,000.00), which Franchisee acknowledges has been fully earned by BEAT upon the execution of this Franchise Agreement. Such amount is in addition to other fees as provided in this Agreement as well as the fee for the Pre-Commitment Agreement.

3. **Royalty**

3.1 Franchisee shall pay BEAT a royalty fee equal to \$2,000.00 per month for the operation of the Franchised Business. Upon request by BEAT, Franchisee shall execute the form attached as Exhibit D to this Agreement or any other form which may be required to permit BEAT to draw the royalty fee directly from Franchisee's operating account. Such royalty fee shall be in addition to other fees provided in this Agreement.

All overdue royalty fee payments shall bear interest from the date due at the lesser of (i) the highest rate permitted by law of the state in which the Franchised Business is located or (ii)

eighteen percent (18%) per annum. Overdue payments will be applied to Franchisee's oldest obligation regardless of any designation by Franchisee to the contrary. This interest shall accrue whether or not BEAT exercises its right to terminate this Agreement pursuant to Article 13.2.4 for Franchisee's failure to pay royalty fees or other sums. Acceptance of any overdue or partial payment shall not constitute an accord and satisfaction as to the total amount of overdue payments which may be owing regardless of any statement made on any draft or any writing accompanying a draft or other form of payment. Furthermore, acceptance of any overdue payment shall not constitute a waiver of BEAT right to claim a default because of any future overdue payments.

**3.2 Business Records and Audits.** During the term of this Agreement, Franchisee shall in a manner satisfactory to BEAT prepare and maintain on a current basis complete and accurate records concerning and documenting gross sales and advertising and marketing expenditures, and shall keep complete and accurate books and records of all business conducted in, on or from the Business Premises, utilizing the “QuickBooks” program. Such records shall be retained for at least three years and shall be submitted to and made available for inspection, examination and audit by BEAT or its designee upon its request. Such records shall include books or account, ledgers, register tapes, daily reports, tax returns, governmental reports and all other information relating to the financial condition of the Franchised Business.

**3.3 Reports.** Franchisee shall supply the following reports to BEAT on an ongoing basis during the term of this Agreement: (1) an unaudited profit and loss statement for the last preceding calendar quarter within twenty (20) days after the end of each quarter; (2) an unaudited (or audited, if otherwise available) profit and loss statement and a balance sheet for the previous fiscal year within ninety days of the end of each fiscal year. Such statements shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis and in a format prescribed by BEAT. Franchisee shall submit to BEAT such other periodic reports, form and records as may be reasonably requested, in the manner and at the time as specified in the Manual or otherwise in writing.

#### 4. **Operating Standards and Conditions**

4.1 During the term of this Franchise Agreement, Franchisee shall:

4.1.1 Operate the Franchised Business strictly in conformance with

BEAT directives and the Operating Standards Manual developed by BEAT, which BEAT may modify or replace from time to time upon ninety (90) days prior written Notice to Franchisee. Franchisee acknowledges receipt of and an opportunity to examine BEAT's current Operating Standards Manual prior to the execution of this Agreement. In any dispute concerning the contents of the Manual at any certain time, the master copy maintained at BEAT headquarters shall be controlling, provided BEAT has updated and maintained that Master Copy.

- 4.1.2 Commence operation of the Franchised Business within one hundred eighty (180) days after the execution of this Franchise Agreement or such extended period as may be granted in writing by BEAT in its discretion and upon the written request of Franchisee in the event of unavoidable and documented delays in the construction and equipping of the Business Premises beyond the reasonable control of Franchisee and which could not have reasonably been foreseen at the time of execution of this Franchise Agreement.
- 4.1.3 At all times maintain the highest professional standards applicable to personal fitness training facilities.
- 4.1.4 At all times comply with all federal, state, county, township and city laws and ordinances, including, without limitation, worker's compensation laws, and all rules and regulations of any duly constituted authority affecting the Franchised Business or the Business Premises.
- 4.1.5 Maintain high standards of cleanliness and sanitation in the operation of the Franchised Business and provide prompt, efficient, and courteous services to the public.

4.2 Franchisee understands and hereby acknowledges that other franchisees of BEAT may be granted Franchise Agreements at different times and in different situations and acknowledges that the provisions of such Franchise Agreements may vary substantially from those contained in this Franchise Agreement. Accordingly, Franchisee's obligations hereunder may differ substantially from those of other franchisees.

5. **Building and Equipment.** Franchisee shall at its expense construct, equip, decorate and remodel the Business Premises according to this Article 5.

5.1 **Construction.** Before commencing construction of the Business premises, Franchisee at its expense shall comply to BEAT's

satisfaction with all of the following requirements:

- 5.1.1 Franchisee shall employ a qualified architect or engineer to prepare a site layout and plan for construction of the Franchised Business, and Franchisee shall submit to BEAT a written statement identifying the architect or engineer and describing the architect's or engineer's qualifications.
- 5.1.2 Franchisee shall submit to BEAT, for BEAT's approval, a site layout and plan. If approved by BEAT, which approval shall not be unreasonably withheld, such approval shall be denoted by BEAT's signature on each page of the plans and specifications preceded by the word of "Approved", and such layout and plan shall not thereafter be changed or modified without the prior written consent of BEAT.
- 5.1.3 Franchisee shall employ a qualified general contractor to supervise construction of the Franchised Business and completion of all improvements; and the Franchisee shall submit to BEAT a written statement identifying the general contractor and describing the general contractor's qualifications and financial responsibilities.
- 5.1.4 Franchisee shall obtain all permits and certifications required for lawful construction and operation of the Franchised Business including, without limitation, a vendor's license and all permits and certifications relating to building, zoning, environmental, sewer, access, sign and fire requirements. Franchisee shall provide BEAT with copies of all such permits and certifications.
- 5.2 **Décor.** All decorating shall comply with standards and specifications, including general layout of furnishings and fixtures, as established by BEAT, and made available to Franchisee prior to the execution of this Agreement. No modifications or variations shall be permitted without BEAT's written consent. A current fixture/furnishings list is at Exhibit I.
- 5.3 **Sign Standards.** Franchisee shall use only exterior and interior signs, including any and all replacements thereof, in accordance with BEAT requirements, as may be amended from time to time upon ninety (90) days prior written Notice to Franchisee.
- 5.4 **Repair and Maintenance.** Franchisee shall maintain the Business Premises in good condition and repair in accordance with company policy as amended from time to time upon ninety (90) days prior written Notice to Franchisee.
- 5.5 **Remodeling and Replacement.** Whenever and as frequently as

necessary to maintain an attractive appearance and a good public image, and in any event within ninety days after receipt of written notice from BEAT that the building, equipment or signage are not in excellent condition or functioning properly, Franchisee at its expense shall promptly repair or remodel such items that can be repaired or remodeled. Franchisee shall submit to BEAT complete plans and specifications for the repair, remodeling or replacement prior to the commencement of the work.

5.6 **Equipment Specifications.** All equipment shall conform to BEAT's current equipment specifications. If any changes in or additions to equipment are required by BEAT in connection with upgrading the franchise operation and system, Franchisee shall modify, replace or add to the existing equipment at its sole expense, within 90 days after written notice from BEAT, provided this requirement is fairly or uniformly applied to all franchised and company-owned BEAT's of similar size and classification.

5.7 **Expansion.** Franchisee shall not on its own initiative, expand, refurbish, remodel or redecorate the premises without first obtaining BEAT's written approval (which shall not be unreasonably withheld) and adhering to the provisions of Article 5.1.

5.8 **Modifications.** Within 90 days after written notice from BEAT, Franchisee shall at its sole expense modify the fixtures, décor and signage to comply with BEAT's then current standards, provided such standards apply fairly or uniformly to other franchised and company-owned BEATs of similar size and classification.

## 6. **Personnel, Management and Training**

6.1 **Personnel Standards.** During the term of this Franchise Agreement, Franchisee shall hire, train, maintain and properly supervise sufficient, qualified and courteous personnel for the efficient operation of the Franchised Business. Any person which Franchisee hires to evaluate, plan or offer personal training services to Consumers must be evaluated and approved by BEAT in its sole discretion prior to such person offering or providing any consumer services; any such person must have, at a minimum, accreditation by ACE, the American College of Sports Medicine, Parrillo Performance certified or be a Certified Strength and Conditioning Specialist, and have prior personal training experience.

6.2 **Training Program.** Prior to opening the Franchised Business, franchisee

shall attend and satisfactorily complete (in BEAT's sole discretion) BEAT's training course and shall pay all expenses incurred for meals, lodging and other items. BEAT shall not charge a fee for the initial training of owners, but BEAT or the agent which conducts the training may charge a reasonable fee for all subsequent training in accordance with the fee schedules then in effect (other than the bi-yearly seminars as described below).

- 6.3 **Continuing Education.** During the duration of the franchise agreement, BEAT will continue to engage in ongoing evaluation, development and modifications of its training programs. BEAT will offer bi-yearly seminars, to be scheduled at a time and location of BEAT's discretion, to provide Franchise and up to three (3) trainers of its choosing with the most recent developments in personal training and nutrition which can be incorporated into the training programs of the franchisee's clientele. There is no charge for the bi-yearly training, and no requirement for attendance, but any who do attend pay all expenses incurred for meals, lodging and other incidental expenses.

## 7. **Product Standards**

- 7.1 **Acknowledgement of Standards.** Franchisee understands and hereby acknowledges that uniform and high standards of quality, service and appearance among all BEAT's are necessary in order to maintain BEAT's public image and widespread consumer acceptance. Therefore, Franchise shall stock and sell only the Licensed Products, and use therewith only packaging, supplies or items specified by BEAT and shall operate the Franchised Business only in strict conformity with company standards and the provisions of the Operating Standards Manual, as modified or revised from time to time by BEAT

7.1.1 **Approval of New Specifications.** If Franchisee, during the term of this Franchise Agreement, desires to sell any products other than the Licensed Products, Franchisee may request, in writing, permission from BEAT to do so. BEAT may approve or deny any such request in its sole discretion. Franchisee shall not sell or provide such products unless the same have first been approved in writing by BEAT and then not until after BEAT has adopted or published standard specifications and names therefore.

7.1.2 **Variance in Uniformity.** BEAT reserves the right in its sole discretion to vary its specifications, standards and operating practices and requirements among Franchisees, including without limitation, those relating to equipment, signage and Licensed Products.

**7.2 Purchase of Items.** Because of the unique properties of the Licensed Products and their contribution to the overall personal training experience which makes BEAT distinctive, Franchisee must purchase certain of those items from BEAT inventory at the cost of such items plus a reasonable profit to BEAT, and others through an approved independent manufacturer /distributor of such items, in which case BEAT receives a reasonable profit in the form of a commission from such manufacturer/distributor. Franchisee acknowledges that (a) the combination of such items are unique, (b) there are no substitutes equal to their make up, and © that taken as a whole they make up the personal fitness training experience which is distinctive and uniquely marketable to BEAT.

**7.2.1 Required Purchases of Clothing/Promotional Items.**

Franchisee is required to purchase from BEAT and to have on hand and available for retail sale at all times an inventory of certain clothing items and promotional wear; a current list of such items is attached as Exhibit E. These items are proprietary to BEAT, and in order to promote the trademarks and the associated goodwill of Franchisor, and to maintain a uniform, attractive and high-quality appearance with respect to such items, BEAT requires that the items meet BEAT's standards for material, color and appearance, and also contain BEAT's (pending) proprietary trademark. BEAT pays the costs associated with finding appropriate vendors for these items, the design, set-up and appearance of the trademark and its variations on these items, and the ordering and keeping of sufficient inventory on hand to meet demand. These products are made available to Franchisee at cost plus a reasonable mark-up to compensate BEAT for its administrative and inventory costs.

**7.2.2 Required Purchases of Nutritional Supplements**

Franchisee is required to purchase from BEAT and have on hand and available for retail sale at all times an inventory of nutritional supplements; a complete list of the currently required supplements is attached as Exhibit F. While these items are non-proprietary to BEAT, they are specific brands and types of supplements that are considered essential to the success of BEAT's personal training programs. BEAT pays the costs associated with the selection of the supplements that will best meet the requirements of its training programs and assist in the success of its clientele, finding appropriate vendors for these items, and of ordering and keeping sufficient inventory on hand to meet demand. These products are made available to you at cost plus a reasonable mark-up to compensate BEAT for its administrative and inventory costs.

**7.2.3. Required Purchases of Equipment**

Franchisee is required to purchase and utilize certain brand names and specific items of training equipment to own and operate a BEAT franchise; a comprehensive list of and pricing for that equipment is set

forth in Exhibit G, attached hereto. While these items are non-proprietary to B.E.A.T and are manufactured and sold by non-affiliated vendors, BEAT requires you to purchase these designated brand names and items from BEAT as they have been specifically selected to meet and fulfill the criteria of BEAT's training programs and to ensure the uniformity and high quality of the training offered to its clientele.

BEAT derives revenues when you purchase these equipment items. The items for which revenues are derived, and the amount of such revenues, are subject to change. BEAT negotiates purchase arrangements with these manufacturers on behalf of itself and its Franchisees and believes that, despite the revenues earned by BEAT, the price to franchisees is lower than what otherwise may be available.

**7.2.4 Required Purchase of Décor, Signage and Promotional Materials.** Franchisee is required to purchase and utilize, through an identified vendor, certain décor, signage and promotional materials to own and operate a BEAT franchise; a comprehensive list of and pricing for that equipment, and the identity of the vendor. are set forth in Exhibit H, attached hereto. While these items are non-proprietary to B.E.A.T and are manufactured and sold by a non-affiliated vendor, BEAT requires you to purchase these designated items as they have been specifically selected to meet and fulfill the criteria of BEAT's training programs and to ensure the uniformity and high quality of the training offered to its clientele and the appearance of its locations.

BEAT does not derive revenues or commissions when you purchase these from the named vendor. BEAT does negotiate purchase arrangements with the vendor on behalf of itself and its Franchisees and believes that the price to franchisees is lower than what otherwise may be available.

**7.2.5 Required Purchase of Computer Equipment / Software** Franchisee is required to purchase and utilize a computer system in the operation of the franchise for the tracking of income and expenses. There are no requirements on the type or nature of such system, and no requirements as to vendors or manufacturers, as long as the system is adequate to run the required book-keeping program. Franchisee may also utilize the system as chosen for any other legitimate business purpose such as client databases.

Franchisee is also required to purchase and utilize "QuickBooks Point of Sale" by Intuit as the bookkeeping program for the franchise. Franchisee is required to purchase and utilize "Appointment-Plus" as the client appointment software. There are no restrictions on the vendor Franchisee obtain the program from, and BEAT derives neither revenue nor

commission from the sale or purchase of the program. BEAT believes that using a uniform program for both corporate-owned and franchised locations permits quick and accurate audits with minimal interference in a franchisee's business operations, eases the tracking of income and expenses, and assists in tax preparation and marketing/special offer planning.

#### **7.2.6 Regarding all Required Purchases**

BEAT reserves the right to require changes in, additions to, and/or replacement of equipment, inventory, software, fixtures, décor and signage at your expense, provided that such changes, additions or replacements are uniformly and fairly applied to all franchised, company-owned, and company-affiliated locations. Any changes made will be to ensure the continued availability of a high-quality, attractive, up-to-date and marketable personal training operation.

Regarding manufacturers and vendors generally, BEAT may grant or modify the approval of certain manufacturers based on the quality of their goods, their level of customer service, and their cost competitiveness. There is no established procedure that manufacturers must follow to gain approval, and BEAT does not receive a fee for approval. If a manufacturer is approved or disapproved, Franchise will receive notice of such within thirty (30) days.

Neither BEAT nor its affiliate is a manufacturer of any of the items identified herein, but BEAT does reserve the right to produce and distribute proprietary items from a central distribution point and require Franchisee to purchase such items from BEAT or its affiliate at cost plus a reasonable mark-up.

**7.3.1 Approval of Manufacturer.** If Franchisee, during the term of this Franchise Agreement, desires to purchase any of the items specified in Article 7.2 above, or components or ingredients thereof, or any equipment or signs for use in the Franchised Business from a manufacturer who has not been approved by BEAT, Franchisee may request in writing approval by BEAT of such manufacturer. BEAT shall approve such proposed manufacturer if in its sole judgment and discretion if it is satisfied that the manufacturer can meet and maintain BEAT's specifications, standards and requirements. Franchisee, in making such request, shall furnish BEAT, 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 and pictures of such items. Franchisee shall not sell, dispense or provide any such items to consumers until such approval has been granted and notice thereof in writing given to Franchisee.

Nothing herein contained shall be construed to require BEAT

to approve a manufacturer or vendor for any particular item or service.

**7.3.2 Charge for Approval.** BEAT reserves the right, as a condition precedent to approving or disapproving any request for a new or additional manufacturer of any item or service, to charge such proposed manufacturer the reasonable costs and expenses incurred by BEAT in evaluating, investigating and determining such request.

## **8. Right of Inspection**

**8.1 In General.** BEAT or its authorized representatives, at all reasonable times, shall have the right to inspect the Business Premises, the equipment and operations therein and to inspect and inventory all Licensed Products offered for sale and supplies used by Franchisee, for the purpose of determining the number, quality and standards of such products and supplies, and shall have access to the Business Premises for this purpose.

## **9. Advertising and Marketing.**

**9.1 Acknowledgment of Standards.** Franchisee acknowledges that marketing, advertising and promotional activities are essential to the furtherance of the goodwill and public image of BEAT and the success of this Franchised Business and other BEATs. Accordingly, Franchisee agrees to the provisions of this Article 9 including the fees provided in it, which fees are in addition to other fees provided in this Agreement.

**9.2 Advertising and marketing Servicing Fee.** Franchisee shall pay to BEAT an advertising and marketing services fee \$500.00 per month. BEAT shall expend these funds to develop and prepare advertising materials for general use by BEAT, its affiliate and franchisees, to undertake marketing research, and to provide other marketing services and programs such as the retention of outside advertising agencies to assist in the development of advertising materials. The Advertising and Marketing Service Fee will be collected in the same manner as royalty fees as provided in Article 3.1, and Franchisee shall pay interest to BEAT on overdue fees at the interest rate specified in Article 3.1. BEAT shall provide the Franchisee with an annual accounting of the use of all such fees.

**9.3 Advertising by Franchisee.** During the duration of this Franchise Agreement, Franchisee is also required to expend a minimum of \$1,500.00 per calendar quarter on the direct advertising of the franchise. This expenditure must be made directly by the Franchisee, subject to advance approval by BEAT or BEAT's designated advertising agency if such advance approval is requested by BEAT in writing to you. Within twenty (20) days of the end of each calendar

quarter you must provide to BEAT, in a manner approved by BEAT, an accurate accounting of the previous quarter's expenditures on direct advertising and promotion.

**9.4 Advertising Cooperatives.** BEAT may require Franchisee to participate in an advertising cooperative, either currently or in the future, along with BEAT, its affiliate and other franchisees in a market area. If Franchisee is required to participate in such a cooperative, the expenditures made to that cooperative will reduce, on a dollar-for-dollar basis, the Franchisees obligation to make direct advertising expenditures. The geographic area of any cooperative will depend on the demographics for the area, with a view to most effective market penetration. It is anticipated that (a) Franchisee's contribution to the cooperative will be identical to that of BEAT, its affiliate, and all other franchisees in the market area; (b) the administration of the cooperative will be by BEAT (subject to BEAT retained powers to require dissolution, change, or merger of any cooperative); (c) any such cooperative will operate from written governing documents which will be available for review by any participants; and (d) the cooperative will prepare annual or periodic financial statements for review by the participants. As of the date of this Offering Circular, there is no cooperative in place in the State of Ohio or any other state.

**9.5 Grand Opening.** In addition to the ongoing advertising and marketing service fees provided for herein, Franchisee shall expend the sum of \$5,000.00 for advertising and marketing to be used in connection with the grand opening of the Franchised Business (the "grand opening expenditure") for the promotion of the Franchised Business during its inception. The contents of all advertisements or promotions, the media or other devices employed, and all other details of the grand opening are subject to advance approval by BEAT or BEAT's designated advertising agency if such advance approval is requested by BEAT in writing to Franchisee. BEAT shall enjoy a right of entry on the Business Premises before and during the grand opening period. The grand opening must be within two months after the date Franchisee opens for business and will continue for a period designated by Franchisee with BEAT's approval. Within one month after the termination of the grand opening period, Franchisee shall provide BEAT with an accounting for the grand opening expenditure.

**9.6 Use of Photographs.** BEAT shall have the right to take and use photographs of Franchisee's facilities in any of BEAT's publicity or advertising, without charge therefore, and Franchisee shall cooperate in obtaining such photographs and the consent of any persons being photographed.

## 10 Trademark Standards

**10.1 Ownership.** Franchisee hereby acknowledges that BEAT is the sole

owner of the Trademarks, as pending or may hereafter be granted, and of all the goodwill relating thereto, and that the same shall, at all times hereunder, be and remain the sole and exclusive property of BEAT; and the Franchisee, by reason of this Franchise Agreement or otherwise, has not acquired any right, title, Interest or claim of ownership therein. The use by Franchisee of the Trademarks, and any and all goodwill arising from such use, shall inure solely to the benefit of BEAT, and shall be deemed to be the sole property of BEAT in the event of the termination of the Franchise Agreement for any reason, any and all rights in and to any of the Trademarks granted to Franchisee hereunder shall automatically terminate. Franchisee will at no time contest ownership of the licensed rights or the goodwill associated with them. Nothing contained in this Franchise Agreement shall be construed to prevent BEAT from licensing any other person, firm or corporation to use the Trademarks, subject to the provisions of Article 1.3 above.

- 10.2 **Use of Trademarks.** Franchise shall not use any other mark or name alone or in connection with the Trademarks in the operation of the Franchised Business; or permit the name of BEAT or any of the Trademarks to be used by others, or display any sign, use any advertising materials or media, or engage in any advertising or promotional programs using the Trademarks that may adversely affect BEAT or be detrimental to its good name and reputation, or adversely affect any other business franchised by BEAT, or do anything in any way, directly or indirectly, at any time during the term of this Franchise Agreement or thereafter, to infringe upon, impair, harm or contest BEAT's rights, titles and interests in or to the Trademarks.

10.2.1 **Advertising.** If BEAT determines in its sole judgment that any advertising or promotional programs or materials used or planned by Franchisee are directly or indirectly injurious or prejudicial to BEAT or any of its franchisees or violate Article 10.2 above, Franchisee shall cease such advertising or promotion immediately upon oral or written notification from BEAT

- 10.3 **Use of Trademarks in Business Name.** Franchisee shall not use the Trademarks (nor any other trademarks, service marks or trade names Confusingly similar to the Trademark(s) in its corporate, partnership, Limited liability company, or other business name.

- 10.4 **Trademark Infringement.** Franchisee shall give immediate notice to BEAT of any infringement of the trademarks or misappropriation of any rights of BEAT which shall come to Franchisee's knowledge at any time, and when requested, shall cooperate with BEAT in stopping such infringements. BEAT shall decide the need for instituting legal action with respect to any infringement which may occur, and the cost of

any such litigation or the policing of rights granted by BEAT hereunder shall be paid by BEAT. No legal action or infringement or unfair competition relative to any proprietary rights of BEAT may be taken or defended by Franchisee without the consent of BEAT, and BEAT alone shall have the right to control and direct any such action or defense.

## 11. Franchisee's Business

11.1 **Franchisee an Independent Contractor.** Franchisee shall at all times be deemed to be a separate and independent contractor. Neither party is the legal representative or agent of, or has the power to obligate (or has the right to direct or supervise the daily affairs of) the other for any purpose whatsoever, and no partnership, joint venture, agency, fiduciary or employment relationship is intended or created by reason of this Agreement. Franchisee shall have the sole obligation and responsibility For the operation of the Franchised Business and the success thereof. Franchisee will take such steps as are necessary and such steps as BEAT may from time to time reasonably request to minimize the chance of a claim being made against BEAT relating to acts, omissions or duties of Franchisee or anyone associated or affiliated with Franchisee or the Franchised Business.

11.2 **Payment and Obligations.** Franchise shall pay promptly when due all taxes, assessments, penalties and interest which may be assessed against the Franchised Business or any of the assets thereof, the obligations relating to all liens and encumbrances of every kind placed against the Franchised Business and any of the assets thereof, and all accounts and Debts of every kind which may be incurred in the operation of the Franchised Business.

11.3 **Insurance.** Franchisee shall obtain or cause to be obtained upon commencement of the term of this Franchise Agreement, and thereafter keep in full force and effect, at Franchisee's expense (a) public liability insurance, on an occurrence contract basis, covering the Franchised Business, the Business Premises, and the use of Franchisee-owned, employee-owned vehicles or other vehicles used in the Franchised Business for deliveries or otherwise, naming BEAT as an additional Insured, as its interest may appear; (b) hazard insurance on an "all risk" basis covering the full replacement cost of all fixtures, equipment and the building used in connection with the Franchised Business at full replacement cost without reduction for depreciation and on an 80% co-insurance basis; and (c) business interruption insurance naming Franchisee and BEAT as their interests may appear. Such insurance shall be placed with a responsible insurance company licensed to do

business in the state in which the Business Premises are located and having a Best's insurance rating of at Least A+AA. The public liability insurance shall provide coverage for personal injury, property damage, product liability, liquor liability and automobile liability (relating to Franchisee-owned vehicles, employee owned vehicles or other vehicles used in the Franchised Business for deliveries or otherwise), in an amount no less than One Million Dollars (\$1,000,000.00) combined single limit. BEAT shall have the right, at any time during the term of this Franchise Agreement, to increase the minimum amount of insurance required to be carried by Franchisee hereunder. Each required insurance Policy shall provide that such policy will not be canceled or materially Altered without the insurance company first giving BEAT notice thereof at least thirty days before such cancellation or alteration shall take effect.

Proof of insurance, in the form of a certificate of insurance, a copy of the policy and evidence of payment of initial premium, must be sent to BEAT before Franchisee may open its franchise. Proof of renewal of the insurance, (in the form of a certificate of insurance, a copy of any changes in the policy and evidence of payment of premium), must be sent to BEAT thirty days before the policy's expiration date. If Franchisee shall fail to comply with any of the requirements of this Article 11.3, and after notice thereof has been given by BEAT to Franchisee, BEAT may obtain such insurance and Franchisee shall pay BEAT, upon demand the cost thereof plus interest as stated in Article 3.1.

- 11.4 **Indemnifying BEAT.** Franchisee shall defend, indemnify and save and hold BEAT harmless from any and all fines, claims, demands, damages, actions and other liabilities of every kind and nature arising or resulting directly or indirectly from the operation of the Franchised Business, the construction and occupancy of the Business Premises and the existence of this Franchise Agreement, except to the extent that such fines, claims, demands, damages, actions or other liabilities arise from the negligence of willful misconduct of BEAT, its employees and agents. Franchisee shall notify BEAT of any and all such matters as soon as Franchisee becomes aware of them. BEAT shall have the exclusive right to control and direct the legal activities associated with any such action through counsel retained and compensated by it if that action is deemed by BEAT in its sole discretion to be potentially damaging to other franchisees or their franchised businesses, or to BEAT or its business, public image or goodwill.
- 11.5 **BEAT Not Guarantor.** Franchisee assumes sole responsibility for the operation of the Franchised Business, and acknowledges that while BEAT may furnish advice and assistance to Franchisee from time to time during the term of this Franchise Agreement, BEAT has no

obligation, legal or otherwise, to do so except as otherwise specifically provided by this Agreement, and that BEAT does not guarantee the success or profitability of the Franchised Business in any manner whatsoever, and shall not be liable therefore.

## 12. Franchise Covenants

- 12.1 **Covenant Not To Compete.** Franchisee covenants that, during the term of this Franchise Agreement, and also for a period of twenty-four months after termination of this Franchise Agreement for any reason other than BEAT's default under this Agreement, and in addition to and not as limitation on any other restriction upon Franchisee contained herein, neither Franchisee nor any partner, share-Holder, member of other interest holder owning at least a twenty five percent (25%) interest in either the capital or profits of Franchisee (if Franchisee is a partnership, corporation, limited liability company, or other entity) shall, without prior written permission of BEAT, for himself, or on behalf of or in conjunction with any other person, partnership, corporation, limited liability company, or entity, either directly or indirectly, engage in, manage or have a twenty five percent (25%) or greater interest in the capital or profits of, any business offering personal fitness training within the Unit Market Area as described herein. Franchisee acknowledges that the provisions of this Article 12.1 are necessary to protect the legitimate interest of BEAT and its other Franchisees and do not impose an undue hardship on Franchisee. Franchisee further acknowledges the benefit to him of BEAT's enforcement of these restrictions against other franchisees.
- 12.2 **Covenant Against Disclosure.** At all times both during the term of this Franchise Agreement and after termination of this Franchise Agreement for any reason, and in addition to and not as a limitation of any other restriction upon Franchisee contained herein, Franchisee (and if a corporation partnership, limited liability company, or other entity, then its shareholders, directors, officers, partners, members of other interest holders as individuals) shall not divulge, disclose or otherwise communicate, either directly or indirectly, to any other person, firm or corporation any confidential information or knowledge concerning the Franchised Know-How, and shall take reasonable measures to protect the confidentiality thereof.
- 12.3 **Covenant Against Inducement.** For a period of two years after the termination of this Franchise Agreement for any reason, Franchisee (or if a corporation, partnership, limited liability company, or other entity, any officer, director, shareholder, partner, member or other interest holder) shall not (a) solicit or attempt to solicit any business or customer from BEAT or any BEAT franchisee or (b) induce or attempt to induce any employee of BEAT or any BEAT franchisee to leave his or her

employment. Franchisee acknowledges that (1) the personal fitness training business is highly competitive and loss of customers poses a significant economic burden on BEAT and its franchisees, and (ii) loss of employees of BEAT and its franchisees has a disruptive and otherwise severely injurious effect on BEAT and its franchisees.

- 12.4 **BEAT Remedies.** Franchisee agrees that remedies at law are inadequate as to the enforcement of this Article 12 and that immediate and irreparable harm would result to BEAT upon violation of this Article 12. Accordingly, BEAT shall be entitled to any available equitable remedy in enforcing this Article 12, including permanent injunction, preliminary injunction, and temporary restraining order. Franchisee hereby waives any requirement that Franchisor post a bond in connection with any such equitable proceedings. Franchisee agrees that should any part of this Article be found unreasonable in time or distance, each month of time or mile of distance may be deemed separate and severable to that the time or distance maybe reduced or modified by appropriate order of a court of competent jurisdiction.

### 13. **Duration, New Franchise Agreement, Default, and Termination**

- 13.1 **Term of Franchise Agreement.** Unless otherwise earlier terminated pursuant to the provisions of this Agreement, the term of this Franchise Agreement shall be 15 years beginning on the effective date of this Franchise Agreement. Franchisee enjoys no option or right to renew the Franchise Agreement. BEAT and Franchisee may or may not, in the Discretion of each, negotiate with each other as to a new franchise Agreement. If BEAT and Franchisee execute a new franchise Agreement at least six months prior to the expiration of this Agreement, however, Franchisee will not be charged an initial franchise fee (as described in Article 2 hereof) of more than twenty-five percent of the then current initial franchise fee.

- 13.2 **Termination.** At any time during the term of this Franchise Agreement, this Franchise Agreement shall terminate:

13.2.1 *Ipsa facto*, without any notice of action required by BEAT,  
(a) upon the insolvency of either BEAT or Franchisee or, unless otherwise prohibited by law, upon the filing by BEAT or Franchisee of any proceedings under the Federal Bankruptcy Act, or any similar state insolvency act, or (b) upon the filing of an involuntary petition against either BEAT or Franchisee under any such laws which is not dismissed within thirty days after filing, or (c) upon the appointment of a receiver by any court for BEAT or Franchisee.

- 13.2.2 Upon BEAT giving notice thereof to Franchisee, (a) if

Franchisee shall discontinue or abandon operation of the Franchised Business; (b) if Franchisee shall fail to open or actively Operate the Franchised Business for more than seven business days during any two month period; (c) if BEAT or Franchisee shall make a General assignment for the benefit of creditors; (d) if within thirty days after any execution, attachment or other creditor's process shall issue against either BEAT or Franchisee, or any of either's, the same shall not be released and discharged; (e) if the Franchisee's right of possession of the Business Premises shall be terminated at any time for any cause whatsoever, except as provided in Article 16 below; (f) if Franchisee violates or is convicted of violating any state or federal law or any administrative regulation applicable to the operation of the Franchised Business; (g) if Franchisee denies BEAT the right to inspect the Franchised Business or examine any of Franchisee's business records; or (h) if Franchisee makes any unauthorized use, disclosure or duplication of any portion of the manual, the Licensed Products, Licensed Know-How or Trademarks.

13.2.3 Upon Franchisee's failure to commence to cure within ten days after notice by BEAT and to complete such cure to BEAT's reasonable satisfaction within thirty days after such notice: (a) if Franchisee fails at any time to fully comply with any clause of this Franchise Agreement or fails to operate the Franchised Business strictly in accordance with written company standards or the then current Operating Standards Manual; (b) if Franchisee fails to submit any information when requested to do so or submits false or misleading information (this applies, without limitation, to the franchise application); (c) if Franchisee acts in any way that damages or reflects unfavorably upon Franchisee's business, the business of other BEAT franchises, or the business of BEAT generally; or (d) if Franchisee assigns or transfers or attempts to assign or transfer any interest in the Franchised Business without prior approval from BEAT or if the requirements of Article 14 are otherwise violated.

13.2.4 Upon BEAT giving notice thereof to Franchisee, in the event Franchisee shall default in prompt and full payment of the royalty fee, the advertising and marketing service fee or any other sums or charges payable hereunder more than (10) ten days after BEAT giving written notice to Franchisee of such delinquency.

13.2.5 Upon BEAT giving notice thereof to Franchisee, in the event the Business Premises shall be rendered inoperable by any

casualty

and Franchisee does not restore the Business Premises to full

operation as prescribed in Article 16.

13.2.6 Upon BEAT's material breach of this Agreement, should such breach continue thirty (30) days beyond Franchisee's written notice to BEAT of such material breach.

13.3 **Non-Waiver.** The waiver by BEAT of any particular default by Franchisee hereunder shall not be deemed to be a waiver of, nor affect or impair, BEAT's rights with respect to any subsequent default of the same or of a different nature. Furthermore, any delay, forbearance or omission by BEAT to act or give notice of default or to exercise any power or right arising by reason of such default shall not be deemed to be a waiver by BEAT of any right or of the right subsequently to give notice of such default.

The waiver by Franchisee of any particular default by BEAT hereunder shall not be deemed to be a waiver of, nor affect or impair, Franchisee's rights with respect to any subsequent default of the same or of a different nature. Furthermore, any delay, forbearance or omission by Franchisee to act or give notice of default or to exercise any power or right arising by reason of such default shall not be deemed to be a waiver by Franchisee of any right or of the right subsequently to give notice of such default.

13.4 **Termination of Rights.** Upon termination of this Franchise Agreement for any reason, all of Franchisee's rights and privileges hereunder shall cease immediately. Thereupon Franchisee shall forthwith cease operating, using or selling as the case may be anywhere and in any manner, and whether directly or indirectly: (a) the Licensed Products; (b) the Trademarks; (c) all advertising and promotional materials and programs, menus, signs, interior decorations and all other items bearing the Trademarks; (d) the Licensed Know-How; and (e) the Manual. Upon such termination of this Franchise Agreement for any reason Franchisee shall forthwith (i) return to BEAT the Operating Standards Manual and all other confidential information provided by BEAT in writing at any time (without first copying any such items); (ii) remove all signs and distinctive BEAT designs so that the premises do not resemble a BEAT (If such signs and other items are not removed within ten days after termination, BEAT may enter and remove such items as it deems necessary, at Franchisee's expense, without incurring any liability); and (3) provide to BEAT a complete computer record of all customer information maintained by the Franchisee, including but not limited to names, addresses and telephone numbers.

13.5 **Injunctive Relief and Damages.** In addition to the right to terminate this Franchise Agreement as set forth herein, both parties shall have all other rights and remedies at law and in equity for a substantive breach by

the either of the terms and conditions of this Franchise Agreement, including, but not limited to, the right to injunctive relief for any violation, or attempted or threatened violation hereof, or to a decree of specifically compelling performance of any such terms and conditions. The non-prevailing party shall forthwith reimburse the prevailing party for its costs and expenses, including reasonable attorneys' fees, incurred by it in the exercise of its rights and remedies under this Franchise Agreement.

13.6 **BEAT Option to Cure Default.** BEAT shall have the right, at its election, but not the obligation, and in addition to all other remedies, to cure at Franchisee's expense any default by Franchisee under any lease or sublease for the Business Premises or under any agreement pertaining to the lease or rental of, or payment of indebtedness on, any fixtures, equipment, or personal property used by Franchisee on the Franchised Business; and in such event, Franchisee, upon demand, shall pay BEAT any such payments made by it, together with interest thereon at the rate provided in Article 3.1 above.

13.7 **Option to Purchase.** Upon termination of this Franchise Agreement for any reason, BEAT shall have (a) the option to purchase, collectively or severally, Franchisee's inventory, equipment, signs, menu boards, marketing materials, delivery vehicles and other fixtures and personal property used in connection with the Franchised Business at fair market value, and (b) the option to assume Franchisee's rights under any lease of the real estate at the location of the Business Premises; or both. BEAT may exercise such options and rights by written notice to Franchisee within thirty days after termination, but in no event earlier than sixty days prior to termination. BEAT shall make full payment for all purchased items within fifteen days after either the giving of such notice or the date of termination, whichever is later. Fair market value of any item shall be the value determined by an independent appraiser selected by BEAT.

#### 14. **Sale of Business or Transfer of Franchise Agreement**

14.1 **Sale or Transfer Restricted.** Except as otherwise provided in this Article or except as BEAT may approve in advance in writing (such approval not being unreasonably withheld), Franchisee shall not (a) sell, assign, transfer, pledge or hypothecate this Franchise Agreement, or any interest therein, or the Franchised Business or a substantial portion of the assets thereof, in any manner, nor permit the Franchised Business to be operated, managed, directed or controlled, directly or indirectly, by any person or entity other than Franchisee, without the prior written approval of BEAT (if Franchisee is a corporation, partnership or limited liability company, Franchisee hereby warrants to BEAT that the statement of its legal composition attached hereto is true and complete as of the date hereof), (b) cause or permit any change to be made in its legal

composition; (c) cause or permit the sale, assignment, transfer, pledge or hypothecation of any of its shares, partnership interests, membership interests, or other ownership interests; (d) admit any additional partner, member, or holders of an equity interest; or (e) issue any additional shares of its stock.

14.2 **Approval of Transfer.** BEAT will not unreasonably withhold its approval under this Article 14 if all of the following conditions are met; (a) any prospective new partner, shareholder, member, other holder of an equity interest, director, officer or transferee shall be of good character and reputation and shall have a good credit rating and competent business experience, education or other qualifications reasonably acceptable to BEAT; (b) all prospective new partners, shareholders, members, other equity owners, directors or officers shall execute covenants identical to those binding current partners, shareholders, members other equity owners, officers and directors, pursuant to Article 12 or as then required on the standard forms then being used by BEAT; (c) Franchisee and the prospective transferee shall execute an assignment of this Franchise Agreement, but if the requested transfer involves fifty percent (50%) or more of the assets of the Franchised Business or fifty percent (50%) or more of the interest in the capital or profits of Franchisee (including step or related transfers occurring within any period of 24 months), Franchisee shall execute in substitution for this Franchise Agreement BEAT's then current standard form franchise Agreement, as revised to provide for a royalty rate as specified in Article 3.1 of this Franchise Agreement, (and other then-current ancillary agreements of BEAT may require) for a term expiring on the date of expiration of this Franchise Agreement which franchise agreement may contain terms and conditions substantially different from this Franchise Agreement; and (d) Franchisee shall have fully paid or satisfied all of Franchisee's obligations to BEAT at that time. In the event of an assignment or transfer of this Franchise Agreement or any interest therein which has been approved by BEAT, Franchisee (and if a corporation, partnership, limited liability company, or other entity, then the individual shareholders, directors, and officers, partners, members or equity owners and each of them) shall nevertheless continue and remain obligated under and subject to the restrictions contained in Article 12 above. If an assignment or transfer is approved by BEAT pursuant to this Article, the assignment or transfer must take place within six months after the approval.

14.3 **Right of First Refusal.** Notwithstanding Article 14.2, if Franchisee receives an offer (the "Offer") acceptable to Franchisee for the purchase of fifty percent (50%) or more of the assets of the Franchised Business or fifty percent (50%) or more of the interest in the capital or profits of Franchisee (including step or related transfers occurring within any period

of twenty-four months), then BEAT shall have the right to effect such purchase for its own account according to the terms of the Offer. BEAT shall have the right to elect such purchase by giving written notice (the "Election Notice") to Franchisee within thirty days after receiving a copy of the Offer from Franchisee. If BEAT elects to purchase, then BEAT and Franchisee shall conform to the terms of the Offer, except that BEAT shall not be required to close on the purchase until the latter of (a) 90 days after BEAT gives the Election Notice to Franchisee or (b) the closing date as stated in the Offer. If BEAT elects not to exercise its right to purchase or does not give the Election Notice within the stated 30 day period, then Franchisee may accept the Offer as presented by the third party subject to BEAT's right to approve or disapprove the transaction pursuant to Articles 14.1 and 14.2.

**14.4 Transfers Upon Death.** The restrictions imposed by Articles 14.1, 14.2 and 14.3 above shall not be applicable to (a) the sales, assignments or transfers which are, cumulatively over any period of time, less than fifty percent (50%) of the interest in the profits or capital of Franchisee, to immediate family members (or their spouses) of Franchisee or its partners, any part of the Franchised Business, of all or any part of its assets, (or if Franchisee is a corporation, partnership, limited liability company, or other entity, all or any part of the stock, partnership interests, membership interests, or other equity interests) by devise or bequest or by operation of the laws of descent and distribution upon the death of the Franchisee (or if Franchisee is a corporation, partnership, limited liability company, or other entity upon the death of any stockholder, partner, member or other equity owner); provided in both cases (a) and (b), any new shareholder, partner, member, officer, director or holder of an equity interest executes covenants identical to those binding current shareholders, partners, members, officers, directors or holder of an equity interest pursuant to Article 12 or as then required on the standard forms then being used by BEAT

**14.5 Assignment to Lending Institutions.** BEAT will not require approval of the assignment, transfer, pledge or hypothecation of all or any part of the assets of the Franchised Business, excluding this

Franchise

Agreement, to banks or other lending institutions as collateral security for loans made directly to or for the benefit of the Franchised Business.

**15. Right to Use Modifications or Changes.** BEAT shall have a nonexclusive right to use and incorporate in its business for its own and its other franchisees' benefit, during the term of this agreement and thereafter, all or an part of any modifications, changes and improvements developed or discovered by Franchisee or Franchisee's employees or agents in the Franchised Business,

without any payment, liability or obligation to the developer or owner. Notwithstanding such right of use, Franchisee shall be the sole owner of any such modifications, changes or improvements.

16. **Condemnation or Casualty.** Franchisee will, at the earliest possible time, give BEAT notice in writing of any proposed taking of the Business Premises by eminent domain. If BEAT agrees that the Business Premises or a substantial part thereof is to be taken, BEAT will give due and prompt consideration to relocating the Business Premises to a nearby location selected by Franchisee within the Unit Market Area as promptly as possible and in any event within four months of the taking. If the location is accepted and the transfer authorized by BEAT, and if Franchisee opens a new location in accordance with BEAT specifications within one year of the closing of the old location, the new location will henceforth be deemed to be the Franchised Business licensed under this Agreement. If a condemnation takes place and a new location does not, for whatever reason, become the Franchised Business under this Agreement in strict accordance with this Article, the franchise will terminate as of the earlier of (a) the expiration of such one year period or (b) ten days after BEAT gives written notice to Franchisee requesting a complete statement of Franchisee's intentions under this Article and Franchisee fails to give such complete statement within such ten day period. (BEAT may give one or more such notices). If the Franchised Business is damaged by fire or other casualty, Franchisee will expeditiously repair the damage. If the damage or repair requires closing the Franchised Business, Franchisee will immediately notify BEAT, will repair or rebuild the Franchised Business in accordance with BEAT standards, will commence reconstruction within four months after closing, and will reopen the Franchise Business for continuous business operations as soon as practicable (but in any event within 12 months after closing), giving BEAT ample advance notice of the date of reopening. If the Franchised Business is not reopened in accordance with this Article, this Agreement will forthwith terminate as prescribed in Article 13.2.5. Nothing in this Article will extend the franchise term, but Franchisee shall not be required to make any payments pursuant to Article 3 (Royalty) and Article 9 (Advertising & Marketing) for periods during which the Franchised Business is closed by reason of condemnation or casualty.

17. **Arbitration.** Other than with respect to disputes arising under Article 12, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All arbitration proceedings shall be conducted in Cincinnati, Ohio.

18. **Miscellaneous**

18.1 **Notices.** Any and all notices, demands or communications required to be given hereunder shall be in writing and sent by certified mail, postage prepaid, to BEAT and to Franchisee, at the addresses first given above or to such other addresses as either party may hereafter give notice of in writing to the other. Any notice, demand or communication shall be deemed to be given one day after deposited in the United States Mail.

18.2 **Divisibility of Provisions.** The provisions of the Franchise Agreement are divisible, and the invalidity or unenforceability of any provision shall not in any way affect the validity or the enforceability of any other provisions, or the validity of this Franchise Agreement without the invalid or unenforceable provision; provided, however, that in the event any court should determine that any provision in this Franchise Agreement is not enforceable as written, Franchisee and BEAT agree that such provision shall be amended so that it is enforceable to the fullest extent permissible under the laws and public policies of the jurisdiction whose laws govern this Agreement.

18.3 **Entire Agreement.** This Franchise Agreement contains the entire agreement and understanding between the parties and supercedes any prior or contemporaneous agreement or understanding between them, whether oral or written. This Agreement may not be modified except in a written instrument signed by both parties.

18.4 **Binding Effect.** This Franchise Agreement shall be binding upon and inure to the benefit of the parties and their respective personal representatives, heirs, successors and assigns, except that this Franchise Agreement may not be assigned by Franchisee without the prior written consent of Franchisor.

18.5 **Controlling Law.** This Franchise Agreement shall be governed in accordance with the laws of the State of Ohio.

18.6 **Effective Date.** The effective date of this Franchise Agreement for all purposes whatsoever (whether used for the purposes of reference or computation) shall be the date indicated hereafter on which the parties executed this Franchise Agreement.

18.7 **Captions.** The captions of this Franchise Agreement are inserted as a matter of convenience and for reference and in no way define, affect, limit or describe the scope or intent of this Franchise Agreement.

18.8 **Definition of Termination.** The term "termination of this Franchise Agreement for any reason" whenever used in this Franchise Agreement includes, without limitation, termination, cancellation or expiration of this Franchise Agreement without issuance of a new Franchise Agreement.

**IN WITNESS WHEREOF**, the parties have set their hands as of the dates indicated below their respective signatures.

WITNESS:

**BEAT**

\_\_\_\_\_

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

Date of execution by  
BEAT

\_\_\_\_\_

WITNESS:

**Franchisee**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date of execution by Franchisee:

\_\_\_\_\_

The following individuals, being the officers, directors, shareholders, partners, members, or holders of an equity interest in Franchisee, agree to the covenants of this Agreement relating specifically to them, including, but not limited to, the provisions of Article 12.

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

Exhibit A  
BEAT Franchise Agreement

**Business Premises**

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Exhibit B  
BEAT Franchise Agreement

**Unit Market Area**

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Exhibit C  
BEAT Franchise Agreement

**Trademark(s)**



Exhibit D  
BEAT Franchise Agreement

Withdrawal Authorization/Direction

I, \_\_\_\_\_

hereby authorize BEAT II, Inc., dba BEAT, an Ohio corporation, to withdraw  
from my/our account at \_\_\_\_\_,  
Account # \_\_\_\_\_, the sum of  
Two thousand, (\$2,500.00) per calendar month, commencing  
On \_\_\_\_\_, 200\_\_ and continuing until further written directive.

\_\_\_\_\_  
By: \_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date