

## **FRANCHISE DISCLOSURE DOCUMENT**

Key Club Development Corporation  
a New Hampshire C Corporation  
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# VANGUARD KEY CLUBS

The franchise offered is for a company offering Retail Franchised Indoor 24 hour access key club fitness centers and all necessary support and consultation, operating under the Vanguard Key Clubs name.

The total investment necessary to begin operation of a Vanguard Key Clubs location is \$207,350 to \$527,700. This includes \$40,000 that must be paid to the franchisor and/or its affiliate, as appropriate.

We offer to qualified individuals and companies a multi-unit development program that includes the right to own and operate multiple Vanguard Key Clubs franchise locations within a particular geographic area. If you enter into a Multi-Unit Development Agreement to develop at least three Vanguard Key Clubs franchises, when you sign the Multi-Unit Development Agreement you will pay a development fee equal to 100% of the initial franchise fee for the first Vanguard Key Clubs location to be developed, plus 50% of the reduced initial franchise fee for each additional Vanguard Key Clubs location to be developed under the Multi-Unit Development Agreement. The total investment under a Multi-Unit Development Agreement will vary depending on the number of Vanguard Key Clubs locations to be developed. Assuming three locations, the total investment necessary to begin operation of a Vanguard Key Clubs location is \$274,350 to \$595,200. This includes \$65,000 that must be paid to the franchisor and/or its affiliate, as appropriate.

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 the 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 government 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 Craig J. Annis.

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

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "*A Consumer's Guide to Buying a Franchise*," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 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: April 28, 2025

## **STATE COVER PAGE**

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

Call the state franchise administrator listed in Exhibit A 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 AND MULTI-UNIT DEVELOPMENT AGREEMENT REQUIRE YOU TO RESOLVE DISPUTES WITH US BY ARBITRATION ONLY IN NEW HAMPSHIRE. OUT OF STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE TO ARBITRATE WITH US IN NEW HAMPSHIRE THAN IN YOUR OWN STATE.
2. THE FRANCHISOR'S FINANCIAL CONDITION, AS REFLECTED IN ITS FINANCIAL STATEMENTS (SEE ITEM 21), CALLS INTO QUESTION THE FRANCHISOR'S FINANCIAL ABILITY TO PROVIDE SERVICES AND SUPPORT TO YOU.

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

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

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## **EXHIBITS**

- A – List of State Agencies/Agents for Service of Process
- B – Franchise Agreement
- C – Multi-Unit Development Agreement
- D – List of Franchisees and Multi-Unit Developers
- E – List of Franchisees and Multi-Unit Developers Who Have Left The System
- F – Financial Statements
- G – Brand Standards Manual Table of Contents
- H – Multi-State Addendum
- I – Form of General Release
- J – Franchisee Disclosure Acknowledgment Statement & Compliance Questionnaire

Note: Capitalized terms not defined herein shall have the meaning given to them in the Franchise Agreement and/or Multi-Unit Development Agreement.

## **Item 1**

### **THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

#### **THE FRANCHISOR**

Key Club Development Corporation (referred to in this Disclosure Document as “we”, “us”, or “our” and where the context requires also includes our affiliates) was formed as a New Hampshire C Corporation. Our principal place of business is 200 Kensington Rd. Hampton Falls, NH 03844 and we do business under the name “Vanguard Key Clubs” as described below. In this Disclosure Document, we refer to the person or entity that will be signing the Franchise Agreement (defined below) as “you” or “your,” and includes all franchise owners and partners, if you are a corporation, partnership or other entity.

We do not own or operate any businesses of the type being franchised and we have not offered franchises in any other line of business. We do not engage in any business other than franchising Vanguard Key Clubs businesses. We have offered Vanguard Key Clubs franchises since the date of this Disclosure Document.

**Our agents for service of process are listed in Exhibit A.**

#### **OUR PARENT, PREDECESSORS AND AFFILIATES**

We have no parent or predecessor. Our affiliate is CJA Corporation located at 200 Kensington Rd. Hampton Falls, NH 03844 (“Affiliate”). Our Affiliate owns and operates six (6) businesses of the type being franchised, which has been in operation since 1992. Our Affiliate is the sole approved supplier for the proprietary apparel and other related retail products you must use, offer and sell at your Vanguard Key Clubs location(s) (“Proprietary Products”). Our Affiliate has never offered franchises in this or any other line of business.

#### **THE FRANCHISE**

Vanguard Key Clubs prides itself on its customer commitment. Our goal is to provide a safe and clean environment conducive for all fitness levels. The ease-of-use of our members’ only 24-hour key card system enables patrons to exercise when they want and how they want at any time day or night. Professional cleaning and maintenance crews work diligently at keeping facilities maintained at high levels on a consistent basis. Our unique brand, fully automated with no front desk personnel required fitness center offers large spaces with a wide variety of equipment for all types of fitness enthusiasts of nearly all ages. We are fully automated with no front desk personnel required.

## **OUR FRANCHISE PROGRAM**

We offer franchises for the right to establish and operate a Vanguard Key Clubs (“Vanguard Key Clubs” or “Franchised Business”). Vanguard Key Clubs operates under the trade name and mark “Vanguard Key Clubs.” These principal marks and all other marks which may be designated by us in the future in writing for use with the System (defined below) are referred to in this Disclosure Document as the “Marks” or “Proprietary Marks”. The Proprietary Marks are owned by our affiliate, CJA Corporation, which has licensed them to us so that we may sublicense them to our franchisees.

You must operate the Vanguard Key Clubs company in accordance with our System, which includes a proprietary trade dress that incorporates materials and supplies; methods, uniform standards, specifications and procedures for operations; procedures for management control; training and assistance; and merchandising, advertising and promotional programs, interior design, layout, décor, color scheme, fixtures and furnishings; all of which may be changed, improved and further developed by us (the “System”).

## **THE FRANCHISE AGREEMENT**

We offer the right to establish and operate a Vanguard Key Clubs location under the terms of a franchise agreement (the “Franchise Agreement”). Our current form of Franchise Agreement is attached as Exhibit B to this Disclosure Document. You may be an individual, corporation, partnership or other form of legal entity. Under the Franchise Agreement, certain parties are characterized as Franchisee’s Principals. You or a Principal must act as the Operating Owner who will be the main individual responsible for your Franchised Business and shall act as the primary contact with Key Club Development Corporation.

## **THE MULTI-UNIT DEVELOPMENT AGREEMENT**

In certain circumstances, we will offer the right to enter into a multi-unit development agreement (“Multi-Unit Development Agreement”), attached to this Disclosure Document as Exhibit C, to develop multiple Vanguard Key Clubs to be located within a specifically described geographic territory (the “Development Area”). We and you will determine the Development Area before you sign the Multi-Unit Development Agreement and a description of it will be included in the Multi-Unit Development Agreement. You must establish a minimum of three Franchised Businesses within the Development Area according to a minimum development schedule, and you must sign a separate Franchise Agreement for each Vanguard Key Clubs location established under the Multi-Unit Development Agreement.

The Franchise Agreement for the first Franchised Business developed under the Multi-Unit Development Agreement will be in the form attached as Exhibit C to this Disclosure Document, and we expect that you will sign the first Franchise Agreement at the same time you sign the Multi-Unit Development Agreement. For each additional Franchised Business developed under the Multi-Unit Development Agreement, you must sign the form of Franchise Agreement that we are then offering to

new franchisees. The size of the Development Area will vary depending upon local market conditions and the number of Vanguard Key Clubs businesses to be developed.

## **MARKET AND COMPETITION**

The general market for group and individual fitness training is established and growing. Group and private fitness training has been well known for over 20 years, but dedicated related service providers are a relatively recent phenomenon with most growth occurring within the past five to ten years. Group and private fitness training franchises provide unique features not typical in independently owned and operated fitness businesses where fitness services have historically been available. Competition to Vanguard Key Clubs is primarily from the general fitness services industry including big box health clubs, independent gyms, boutique fitness studios, and independent certified personal fitness trainers. There is some competition from existing independent owner operators and from a few national chains, such as Snap Fitness, Gold's Gym, Planet Fitness, 24 Hour Fitness, Equinox Fitness, Crunch Fitness, Anytime Fitness, The YMCA. There is some competition, to a lesser degree from related franchises such as Curves, Orange Theory, F45, Iron and Tribe Fitness. The market for our services is year-round, but it will fluctuate to some degree depending on the time of year. The success of your operation will depend in large measure on the demographics of the residents of your Designated Territory, the competition surrounding your operation, local labor conditions and wage rates, the local costs of advertising, the availability of suitable facilities in convenient locations and at affordable rents, and your management, marketing and selling skills and work ethic.

## **INDUSTRY SPECIFIC REGULATIONS**

State, Local, or Federal laws require you to obtain various licenses and/or permits for the operation of your Vanguard Key Clubs franchise. Each state may differ in licensing and permit requirements for the services you will offer, and may have regulations relating to individual license requirements for your employees based on the services they provide. You must research the requirements that apply to your specific territory, and to operate your Vanguard Key Clubs franchise in full compliance with all State, Local and/or Federal laws that apply to your Franchised Business.

You must also comply with employment, workers' compensation, insurance, corporate, taxing and other laws and regulations. Among the licenses and permits you may need are zoning or land use approvals, sales and use tax permits, special tax stamps, fire department permits, health permits, alarm permits, county occupational permits, retail sales licenses and wastewater discharge permits. There may be other laws, rules or regulations that affect your Vanguard Key Clubs location(s), including minimum wage and labor laws along with ADA, OSHA and EPA considerations and regulations regarding health club bonds. You must comply with all laws and licensing requirements related to the operation of your Franchised Business. We recommend that you consult with your attorney for an understanding of them.

**Item 2**

**BUSINESS EXPERIENCE**

**Craig J. Annis, Chief Executive Officer**

Craig J. Annis has been our President Chief Executive Officer since our inception in October 2017, and he has also been the President, Chief Executive Officer, and Founder for our Affiliate since 1992. Craig J. Annis has been involved in the Fitness Club industry as a manager beginning in 1990 and as an owner/operator since 1992.

Craig began his employment in the fitness industry as a club manager after his graduation from the University of New Hampshire's Whittemore School of Business and Economics in 1990. After a short stint managing a small club in Portsmouth, New Hampshire, Craig took on the role of General Manager for a 19,000 square foot Gold's Gym in Dover, New Hampshire in 1991. Craig was in this position during the ownership transition from Gold's Gym into what would eventually become the first Planet Fitness location in the country.

Having a fundamentally different outlook on the fitness industry as his employers, Craig opened his own brand of clubs in Portsmouth, New Hampshire on November 23, 1992. Since then, the brand has grown to six (6) successful regional locations including taking over the original Planet Fitness location he once managed.

Craig has spent the past thirty (30) years in the fitness industry honing and perfecting the Vanguard Key Clubs brand. He is now ready to grow our brand further by offering franchising opportunities.

**Item 3**

**LITIGATION**

No litigation is required to be disclosed in this Item.

**Item 4**

**BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**Item 5**  
**INITIAL FEES**

**FRANCHISE AGREEMENT**

*Initial Franchise Fee:* You must pay us an initial non-refundable franchise fee of \$40,000 for the right to establish a single Vanguard Key Club location under a Franchise Agreement. If you have committed to and signed a Multi-Unit Development Agreement, we offer a reduced initial franchise fee for those locations in excess of the first location, as described below.

You must pay this initial franchise fee in a lump sum when you sign the Franchise Agreement. The initial franchise fee is imposed uniformly on all franchisees and it is not refundable.

*Proprietary Product Inventory:* We do not currently sell retail items in our clubs. If we opt to permit the sale of retail products in the future, you must purchase all such items from our Affiliate

**MULTI-UNIT DEVELOPMENT AGREEMENT**

If you qualify to develop and operate multiple Vanguard Key Clubs businesses, you must commit to develop at least three Vanguard Key Clubs locations. You will pay to us a development fee equal to 100% of the initial franchise fee for the first Vanguard Key Clubs location to be developed, plus 50% of the reduced initial franchise fee for each additional Vanguard Key Clubs location to be developed under the Multi-Unit Development Agreement. The initial franchise fee for the first Vanguard Key Clubs location remains \$40,000. For the second through fourth units committed to within the Multi-Unit Development Agreement, the initial franchise fee is reduced to \$25,000. For any units committed to within the Multi-Unit Development Agreement in excess of four units, the initial franchise fee is further reduced to \$20,000. For example, if you commit to develop three Vanguard Key Clubs businesses, the development fee is calculated as  $\$40,000 + (2 \times \$12,500 = \$25,000) = \$65,000$ . The development fee is imposed uniformly on all multi-unit developers, is fully earned by us when received and is not refundable.

You must sign the Franchise Agreement for the first Vanguard Key Clubs at the same time you sign the Multi-Unit Development Agreement. We will apply a portion of the development fee toward the full payment of the initial franchise fee for the first Vanguard Key Clubs location you will develop. For each additional Vanguard Key Clubs you commit to develop under the Multi-Unit Development Agreement, we will apply a pro rata portion of the development fee to the initial franchise fee and the balance of the initial franchise fee is payable in a lump sum when you sign the Franchise Agreement for that Vanguard Key Clubs location.

Currently, there are no other purchases from or payments to us or any affiliate of ours that you must make before your Vanguard Key Clubs opens for business, though we reserve the right to require the purchase of an initial inventory through us or an affiliate in the future.

**Item 6**  
**OTHER FEES**

(1) Type of Fee	(2) Amount	(3) Due Date	(4) Remarks
Royalty Fee <sup>(1, 2)</sup>	5 % of Gross Sales; 4.5% of Gross Sales for Multi-Unit Operators if you satisfy certain condition	Payable on the 15th day of each month (or the next business day if the 15th day of the month is not a business day).	Amounts due will be withdrawn by EFT from your billing processing account.
Brand Development Fee	2% of Gross Sales	Payable at the same time and in the same manner as the Royalty Fee	The Brand Development Fund is described in Item 11.
Local Marketing	2% of Gross Sales	Must be spent monthly	Payable to your local marketing suppliers. Any marketing you wish to use must first be approved by us.
Cooperative Marketing <sup>(3)</sup>	As determined by the members	As determined by the members	We may form (and approve the formation of) advertising cooperatives where there are multiple franchises in a geographical area. Any amounts you contribute to an advertising cooperative will count toward your local marketing requirement
Initial Franchise Training Program – New Or Additional Employees	Included as part of Initial Franchise Fee	Upon payment of Initial Franchise Fee	We will train up to four people, including you and your Operating Owner, at no additional charge. If you request that we train additional or replacement employees (including any replacement Operating Owner or General Manager you may hire), you must pay our Additional Training Fee. You must pay any expenses these trainees incur while attending training, including travel, lodging, meals and applicable wages

Additional On-Site Training	Our then-current per diem rate per trainer, plus expenses  Current per diem rate = \$500	15 days after billing	If you request that we provide additional training at your Franchised Business to you and/or your employees, or if we determine that additional training is needed. You must also reimburse our trainers' expenses while providing on-site training, including travel, lodging and meals.
Transfer Fee (Franchise Agreement)	25% of the then-current initial franchise fee	Prior to consummation of transfer	Payable at the time of Transfer request.  Not refundable.  No fee is imposed for a one-time transfer to a corporate entity formed by you for the convenience of ownership.
Transferee Training Fee	\$5,000 (Note 3)	Prior to consummation of transfer	Payable at time of Transfer. Not refundable.
Transfer Fee (Multi-Unit Development Agreement)	\$25,000	With request for approval of transfer	No fee is imposed for a one-time transfer to a corporate entity formed by you for the convenience of ownership.
Renewal Fee	25% of the then-current initial franchise fee	When you send your renewal notice	Paid if and when you renew and we confirm that you are eligible to renew and sign a successor franchise agreement
Interest	18% per annum or the highest interest rate allowed by applicable law, whichever is lower	Upon demand	Interest may be charged on all overdue amounts and other amounts due to us that are not received within five days of their due date. Interest accrues from the original due date until payment is received in full.
Audit	All costs and expenses associated with audit	Upon demand	Payable only if the audit is required due to your failure to provide required reports, or if the audit shows you understated any amount you owe to us on Gross Sales by 2% or more. You must also pay the understated amount plus 18% interest.

Product or Supplier Evaluation Fee	All reasonable costs of evaluation (not more than \$500)	Time of evaluation	Applies to new suppliers you wish to purchase from or products you wish to purchase that we have not previously approved. We are not required to approve any additional products or suppliers.
Proprietary Products	If we provide retail product, price will vary as inventory is used, but currently there is no minimum	Upon billing	Payable to our Affiliate. You must purchase your continuing inventory of Proprietary Products from our Affiliate.
Insurance	Reimbursement of premiums plus 10% administrative fee	Upon demand	We may, but are not required to, obtain insurance coverage for your Franchised Business if you fail to do so.
Software Fee	\$400	Monthly	Payable to approved supplier. This fee is subject to change by the approved supplier.
Computer System Maintenance	Up to \$1,200	Annually	You may choose to have a maintenance contract for your computer system, but we do not require it
Repair, Maintenance, and Remodeling/Redecorating	Will vary under the circumstances	As incurred	You must regularly clean and maintain your franchise and its equipment. We may require you to remodel or redecorate your franchise to meet our then-current image for all Vanguard Key Clubs Franchises. We will not require you to remodel or redecorate your franchise more frequently than every five years.
Costs and Attorneys' Fees	Will vary under circumstances	On demand	If you default under your agreement, you must reimburse us for the expenses we incur (such as attorneys' fees) in enforcing or terminating the agreement.
Indemnification	Will vary under circumstances	On demand	You must reimburse us if we are held liable for claims arising from your franchise's operations.
Liquidated Damages	Present Value of combined Royalty		

	Fee and Brand Development Fee for the 36 months, based on your average monthly Royalty Fee and Brand Development Fee payable during the one year preceding termination; discount rate is the Applicable Federal Rate published by the IRS for the period ending closest to the end of the term, plus 200 basis points; using monthly compounding		
Gift Cards and Loyalty Cards	N/A	N/A	You must participate in any gift card or loyalty card program we may develop.

**NOTES:**

1. All fees described in this Item 6 are non-refundable. Except as otherwise indicated in the above table, we impose all fees and expenses listed and you must pay them to us. Except as specifically stated above, the amounts given may be due to changes in market conditions, our cost of providing services and future policy changes. We cannot predict whether or when an approved supplier will change its fees for any products or services you must purchase from an approved supplier.
2. For the purposes of determining the fees to be paid under the Franchise Agreement, “Gross Sales” means the total selling price of all services and products and all income of every other kind and nature related to the Franchised Business, whether for cash or credit and regardless of collection in the case of credit. If a cash shortage occurs, the amount of Gross Sales will be determined based on the records of the point of sale system and any cash shortage will not be considered in the determination. Gross Sales expressly excludes taxes collected from your customers and paid to the appropriate taxing authority, customer refunds or adjustments, and tips paid by clients to your employees.

We may authorize certain other items to be excluded from Gross Sales. Any exclusion may be revoked or withdrawn at any time by us. The Royalty Fee and Brand Development Fees will be withdrawn from your designated bank account by electronic funds transfer (“EFT”) on or about the 15th of each month based on Gross Sales for the preceding week ending Sunday. You must sign any documents required by us, our bank and/or your bank to permit us to make EFT transactions from your bank account. If you do not report Gross Sales, we may debit your account for 120% of the last Royalty Fee and Brand Development Fee that we debited. If the Royalty Fee and Brand Development Fee we debit are less than the Royalty Fee and Brand Development Fee you actually owe us, once we have been able to determine the true and correct Gross Sales for your Franchised Business, we will debit your account for the balance on a day we specify. If the Royalty Fee and Brand Development Fee we debit are greater than the Royalty Fee and Brand Development Fee you actually owe us, we will credit the excess against the amount we otherwise would debit from your account for the next payment due.

If any state imposes a sales or other tax on the royalty fees, then we have the right to collect this tax from you.

3. *Credit for Multi-Unit Operators.* To accelerate the opening of Vanguard Key Clubs businesses under the Multi-Unit Development Agreement, we offer a Royalty Credit equal to 0.5% of Gross Sales. When the Multi-Unit Operator opens its fourth Vanguard Key Clubs location, if the Operator and all related franchisees are in good standing (no events of default have occurred) under the Multi-Unit Development Agreement and the related Franchise Agreements, then the Royalty Credit will be applied to reduce the Royalty Fee to 4.50% of Gross Sales for all current and future locations owned and operated under that Multi-Unit Development Agreement. The Royalty Credit will be suspended by us if the Multi-Unit Operator defaults under the Multi-Unit Development Agreement or any related Franchise Agreement and fails to cure the default within the time permitted, if any. We may, in our discretion, reinstate the Royalty Credit if and when the default is cured to our satisfaction. During the suspension and if the Royalty Credit is not reinstated, the Royalty Fee would revert back to the standard rate of 5.00% of Gross Sales.

4. Members of a Cooperative will include all Vanguard Key Clubs within the Cooperative’s area, including any owned and operated by us and/or our affiliates; however, the Franchisor outlets shall not have a controlling voting power. All Vanguard Key Clubs locations in the Cooperative, including those owned by us and/or our affiliates, will have the same voting rights as franchisees, but no one Vanguard Key Clubs (or commonly controlled group of Vanguard Key Clubs) will have more than 25% of the total vote.

**Item 7**  
**YOUR ESTIMATED INITIAL INVESTMENT**

(1) Type of Expenditure	(2) Amount	(3) Method of Payment	(4) When Due	(5) To Whom Payment is to be Made
Initial Franchise Fee <sup>(1)</sup>	\$40,000	Lump sum	On signing Franchise Agreement	Us
Rent – 3 Months <sup>(2)</sup>	\$6,000 to \$20,000	As arranged	Monthly	Landlord
Security Deposits <sup>(3)</sup>	\$6,000 to \$65,000	As arranged	As arranged	Utility Companies, Landlord
Blueprints	\$3,000 to \$7,000	As arranged	As arranged	Architect, Engineer
Leasehold Improvements <sup>(4)</sup>	\$10,000 to \$150,000	As arranged	As arranged	Contractor, Suppliers
Furniture, Fixtures and Equipment <sup>(5)</sup>	\$100,000 to \$150,000	As arranged	As arranged	Suppliers
Computer System <sup>(6)</sup>	\$4,000 to \$6,000	As arranged	As arranged	Suppliers
Insurance – 3 Months <sup>(8)</sup>	\$1,500 to \$6,000	As arranged	As arranged	Insurance Companies
Initial Inventory <sup>(9)</sup>	\$0 to \$3,000	As arranged	As arranged	Affiliate, Approved Suppliers
Travel, Lodging and Meals for Initial Training <sup>(10)</sup>	\$250 to \$5,000	As arranged	As arranged	Airline, Hotel, Restaurants, etc.
Signage <sup>(11)</sup>	\$1,000 to \$3,000	As arranged	As arranged	Suppliers

Grand Opening Advertising Campaign <sup>(12)</sup>	\$2,500 to \$5,000	As arranged	As arranged	Suppliers or Us
Licenses and Permits <sup>(13)</sup>	\$100 to \$700	As arranged	As incurred	Government Agencies
Professional Fees <sup>(14)</sup>	\$3,000 to \$7,000	As arranged	As arranged	Attorney, Accountant
Additional Funds – 3 Months <sup>(15)</sup>	\$30,000 to \$60,000	As arranged	As arranged	Various
<b>Total <sup>(16)</sup></b>	<b>\$207,350 to \$527,700</b>			

In general, none of the expenses listed in the above chart are refundable, except any security deposits you must make may be refundable. We do not finance any portion of your initial investment. All of our estimates assume that you will purchase the required items. Your costs may be lower if you choose to lease some items.

**NOTES:**

1. *Initial Franchise Fee.* The Initial Franchise Fee is discussed in Item 5.
2. *Rent.* You must lease or otherwise provide a suitable facility for the operation of the Franchised Business. Typically, a Vanguard Key Clubs location will be located either within a free-standing retail location or within a Shopping Center and should have approximately 9,000 to 12,000 square feet of space. Lease costs will vary based upon the square footage leased, the cost per square foot and the required maintenance costs. Our estimates are based on a three-month time period.

If you choose to purchase real estate for your Franchised Business this will increase your initial investment and we cannot estimate how much this would increase your initial investment. Our estimates assume that you will lease an existing building and build it out to our specifications.

3. *Security Deposits.* Our estimate assumes you will have to pay your landlord a security deposit equal to two months' rent. In addition, if you are a new customer of your local utilities, you will generally have to pay deposits in connection with services such as electric, telephone, gas and water. The amount of deposit will vary depending upon the policies of the local utilities.

4. *Leasehold Improvements.* The location that you select for your Vanguard Key Clubs (subject to our approval) must be build-out according to our specifications for the trade dress,

interior appearance, exterior appearance and presentation of the Proprietary Marks (such as on signage). Your total costs may vary depending on the type of location you have for your Vanguard Key Clubs, including whether it is a “vanilla box” location, the size of the location, or whether the building has previously been used in a similar business. Leasehold improvement costs – floor coverings, lighting, ceilings, painting, electrical and audio wiring, carpentry, and similar work, and contractor’s fees – depend on the site’s condition, location, and size; the demand for the site among prospective lessees; the site’s previous use; the build-out required to conform the site for your Vanguard Key Clubs; and any construction or other allowances the landlord grants. Landlord allowances might be factored into your rent. Our estimate does not include any tenant improvement allowance you may negotiate.

5. *Furniture, Fixtures, Equipment.* All equipment for your Vanguard Key Clubs location(s) must be purchased from our list of approved vendors. You will be provided with various options for an equipment package from which you much select. These packages vary based on the square footage of your Vanguard Key Clubs location, price, and aesthetic preference. Equipment includes; Cardiovascular, Free Weight, Selectorized Circuit, and associated fitness equipment and flooring through authorized Vanguard Key Clubs Vendors. Additional equipment for training can also be purchased from the approved vendors including but not limited to treadmills, functional trainers, weight benches, weight sets, and other approved training equipment.

6. *Computer System.* Vanguard Key Clubs operates using a software program called ClubAutomation. The cost of this software is included in your monthly software fee of \$400 listed above (item 6). The estimated initial investment includes the estimated cost of one computer and one tablet needed for daily operations. More information about the computer system is included in Item 11.

7. *Website, Email, Social Media Set-Up.* To keep continuity of the brand image, we require all websites, Email domains, and Social Media accounts initially be set up and designed by our approved webmaster and maintained, updated and operated either by us or an approved vendor.

8. *Insurance.* You must purchase the type and amount of insurance we require. Additional information about our insurance requirements is included in Item 8. Depending on your insurance company’s practices, you may have to pay the entire annual premium in a lump sum; generally you pay your premiums quarterly or semi-annually.

9. *Initial Inventory.* We reserve the right to require you to purchase an initial inventory of Proprietary Products, of your choice, of a maximum of \$3,000, to use for staff uniform shirts, promotional marketing, and/or retail sales.

10. *Travel, Lodging and Meals for Initial Training.* Our initial training program is provided to up to four people, including you, the Franchisee and/or your Operating Owner and/or your General Manager if you are a Multi-Unit Owner, at no additional charge, but you must pay for all costs you and/or your trainees incur while attending the initial training program, including travel,

lodging, meals and applicable wages. Our estimates include only the out-of-pocket costs for four trainees. These amounts do not include any fees or expenses for training any other personnel. Your costs may vary depending on your selection of lodging and dining facilities and mode and distance of transportation. The low end of our estimate assumes that all trainees are in close proximity to New Hampshire and need only local travel.

11. *Signage.* You will need to install interior and exterior signage. The signage requirements and costs will vary based upon the size and location of the Vanguard Key Clubs franchise, local zoning requirements, landlord requirements and local wage rates for installation.

12. *Grand Opening Advertising Campaign.* Your grand opening advertising campaign must be conducted between at least 30 days prior to the opening of your Vanguard Key Clubs location and at least 30 days after your Vanguard Key Clubs location opens. Your grand opening advertising campaign must be approved by us, including the advertising to be used and where it will be placed, before you may begin the campaign. Your campaign must include, but is not limited to certain elements, such as pre-sale membership rates, free class passes, advertising, grand opening event, fliers, social media advertising. If we determine that Key Clubs Development Corporation should conduct your grand opening advertising campaign on your behalf you must pay us in advance for the agreed-upon promotions and advertising

13. *Licenses and Permits.* You must obtain all required licenses and permits for operating your Vanguard Key Clubs and fitness center in compliance with applicable laws. We recommend that you determine all of the licenses and/or permits that you need for the Franchised Business, and their related cost, before purchasing the franchise.

14. *Professional Fees.* We strongly recommend that you engage an attorney and/or accountant to assist you in your review of this franchise offering. You may also need to employ an attorney, an accountant and other consultants to assist you in establishing your Franchised Business. These fees may vary from location to location depending upon the prevailing rates of local attorneys, accountants and consultants.

15. *Additional Funds.* We recommend that you have a minimum amount of working capital available to cover operating expenses, including but not limited to employees' salaries if you are a Multi-Unit Owner, Royalty Fees, Brand Development Fees, for the first three months that the Franchised Business is open. Our estimate does not include any revenue that you may earn during your initial operating period, which we estimate is three months, but we cannot guarantee that our recommendation will be sufficient. Additional working capital may be required if sales are low or operating costs are high.

16. *Total.* In compiling this chart, we relied on our Affiliate's experience in operating Vanguard Key Clubss locations since 1992. The amounts shown are estimates only and may vary for many reasons including the size of the facility you lease, the capabilities of your management team, where you locate your Franchised Business and your business experience and acumen.

You should review these estimates carefully with an accountant or other business advisor before making any decision to buy a franchise. These figures are estimates only and we cannot guarantee that you will not have additional expenses in starting the Franchised Business. The costs outlined in this Item 7 are not intended to be a forecast of the actual cost to you or to any particular franchisee.

**YOUR ESTIMATED INITIAL INVESTMENT  
MULTI-UNIT DEVELOPMENT AGREEMENT  
DEVELOPMENT OF THREE VANGUARD KEY CLUBS**

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Development Fee	\$65,000 (assuming three locations)	Lump Sum	At signing of FA	Franchisor
Vehicle (2)	\$2,000 to \$2,500	As Arranged	As Incurred	Suppliers
Other Expenditures for First Vanguard Key Clubs (3)	\$207,350 to \$527,700	Per Above Chart	Per Above Chart	Per Above Chart
<b>TOTAL</b>	<b>\$274,350 to \$595,200</b>			

In general, none of the expenses listed in the above chart are refundable. We do not finance any portion of your initial investment.

**NOTES:**

1. *Development Fee*; These fees are discussed in Item 5. Our estimate assumes you will develop three Vanguard Key Clubs.
2. *Vehicle*. We anticipate that you will need a vehicle to view potential sites and to oversee the build-out of the Vanguard Key Clubs. Our estimate includes three months of expenses for gas, maintenance and vehicle payments.
3. *Other Expenditures for First Vanguard Key Clubs*. These are the estimates to build-out your first Vanguard Key Clubs location minus the Franchise Fee and, which are also listed here separately. Costs associated with building out additional Vanguard Key Clubs locations are

subject to factors that we cannot estimate or control, such as inflation, increased labor costs or increased materials costs.

### **Item 8**

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

We do not require you to lease space, but we may require you to purchase or lease and install all fixtures, furnishings, equipment (including point of sales system), décor items, signs and related items we require, all of which must conform to the standards and specifications stated in our Confidential Operations Manual (“Manual”) or otherwise in writing, unless you have first obtained our written consent to do otherwise. You may not install or permit to be installed on the Vanguard Key Clubs premises any fixtures, furnishings, equipment, décor items, signs, or other items without our written consent or that do not comply with our specifications. We estimate that the required purchases, if any, will constitute approximately 75% of your overall purchases and leases required to establish and operate the franchise.

We may periodically change our standards and specifications related to the operation of the Vanguard Key Clubs, the services and products you may offer and the suppliers for the products you purchase. Any changes to our standards and specifications will be provided to you in writing, including by e-mail, newsletters and/or updates to the Manual. You must comply with any updated standards and specifications.

A complete list of our approved products and suppliers will be included in the Manual and is subject to change over time. We will provide you notice in the Manual or otherwise in writing (including by e-mail) of any changes to the lists of approved products and approved suppliers. If we develop a proprietary line of proprietary products, our Affiliate will be the sole approved supplier of the Proprietary Products you must use, offer and sell at your Vanguard Key Clubs locations(s), and our Affiliate reserves the right to earn a profit from the sale of Proprietary Products to our franchisees. Our Affiliate may, in the future, offer additional products and/or programs. During the fiscal year ended December 31, 2024, our Affiliate did not earn any revenue from the sale of Proprietary Products to our franchisees because we had no franchisees in the System. Our Owner, Craig J. Annis has an ownership interest in our Affiliate. None of our officers has an ownership interest in any other approved supplier.

If you want to use any product in establishing or operating the Franchised Business that we have not approved or if you wish to purchase from a supplier that we have not yet approved for the System, you must first send us sufficient information, specifications or samples for us to determine whether the product or supplier meets our standards and specifications. You must reimburse us for all of our reasonable expenses in evaluating a proposed product or supplier (but not more than \$500). We will decide within a reasonable time (usually 30 days) after receiving your request and the required information whether the proposed product or supplier is approved. We are not required to provide you or any proposed supplier with our evaluation criteria, and we are not required to approve or authorize any additional products or suppliers for the System if we do not believe that it is in the best interests of the System to do so. We will notify you and/or the supplier, as applicable, in writing (which may include e-

mail) whether the proposed product or supplier has been approved by us. There may be situations where you can obtain items from any supplier who can satisfy our requirements and, therefore, would be considered an approved supplier.

We may revoke our previously granted approval of a product or supplier at any time, and you will be notified of any revocation in writing. If you are notified that we have revoked our approval of a product or supplier, you must immediately stop purchasing that product and/or stop purchasing from that supplier.

We may negotiate purchase arrangements with approved suppliers, including price terms, for the benefit of all Vanguard Key Clubs businesses in the System. Currently there are no purchasing or distribution cooperatives that you must join, but we reserve the right to establish a purchasing or distribution cooperative in the future. We may establish strategic alliances or preferred vendor programs with suppliers that are willing to supply some products, equipment, or services to some or all of the Vanguard Key Clubs businesses in our System. If we do establish those types of alliances or programs, we may limit the number of approved suppliers with whom you may deal, we may designate sources that you must use for some or all products, equipment and services, and we may refuse to approve proposals from franchisees to add new suppliers if we believe that approval would not be in the best interests of the System or the franchised network of Vanguard Key Clubs businesses.

We have the right to collect and retain any and all allowances, rebates, credits, incentives, or benefits (collectively, "Allowances") offered by manufacturers, suppliers, and distributors to you, to us, or to our affiliates, based upon your purchases of products and services from manufacturers, suppliers, and distributors. We or our affiliates will have all of your right, title, and interest in and to any and all of these Allowances. We or our affiliates may collect and retain any or all of these Allowances without restriction (unless otherwise instructed by the manufacturer, supplier, or distributor). For the fiscal year ended December 31, 2024, we did not earn any Allowances.

The location that you select for your Franchised Business must be approved by us. We will not unreasonably withhold our approval of a site that meets our criteria for a Vanguard Key Clubs. We reserve the right to review and approve any optional lease for the site we have approved. At our request, you and your landlord must sign our form of Collateral Assignment of Lease.

Any blueprints developed for the build-out of the approved site must be submitted to us for our approval before you may use them. Our review of your blueprints is only intended to verify compliance with our System, layout of the Vanguard Key Clubs location and presentation of the Proprietary Marks. You and your architect must make sure that the blueprints comply with all applicable laws, ordinances and building codes. We reserve the right to approve or designate architect you use. We also reserve the right to inspect the Vanguard Key Clubs location while it is being constructed and to approve it for opening.

Any advertising or marketing materials you wish to use that we have not approved or provided to you within the previous 12 months must be submitted to us for our approval before you may use them. You may not use any advertising or marketing materials that we have not approved.

We do not provide or withhold material benefits to you (such as renewal rights or the right to open additional Vanguard Key Clubs businesses) based on whether or not you purchase through the sources we designate or approve; however, purchases of unapproved products or from unapproved suppliers in violation of the Franchise Agreement will entitle us to terminate the Franchise Agreement.

In addition to the optional purchases or leases described above, you must obtain and maintain, at your own expense, the insurance coverages that we require. We may regulate the types, amounts, terms and conditions of insurance coverage required for your Franchised Business and standards for underwriters of policies providing required insurance coverage; our protection and rights under the policies as an additional named insured; required or impermissible insurance contract provisions; assignment of policy rights to us; periodic verification of insurance coverage that must be furnished to us; our right to obtain insurance coverage at your expense if you fail to obtain required coverage; our right to defend claims; and similar matters relating to insured and uninsured claims. Our specific insurance requirements will be contained in the Manual.

Currently you must have the following insurance coverages: (1) general commercial liability insurance with limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate; (2) business interruption insurance; (3) workers compensation, employer's liability and other insurance required by the state in which your Vanguard Key Clubs is/are located; (4) any insurance required according to the terms of the lease or purchase agreement for the Vanguard Key Clubs; and (5) any other insurance we may require in the future.

You must maintain all required policies in force during the entire term of the Franchise Agreement and any renewal terms. We may periodically increase or decrease the amounts of coverage required under these insurance policies 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. Each insurance policy must name us and our Affiliate (and, if we request, our directors, employees or shareholders) as additional insureds and must provide us with 30 days' advance written notice of any material modification, cancellation or expiration of the policy. All of your insurance carriers must be rated A or higher by A.M. Best and Company, Inc. (or such similar criteria as we periodically specify). These insurance policies must be in effect on or before the deadlines we specify. All coverage must be on an "occurrence" basis, except for the employment practices liability insurance coverage, which is on a "claims made" basis. All policies shall apply on a primary and non-contributory basis to any other insurance or self-insurance that we or our affiliates maintain. If you do not maintain the insurance that we require we may, but are not obligated to, purchase insurance on your behalf. If we do this, you must reimburse our costs related to obtaining insurance for you plus a 10% administrative fee. Upon our request or as specified in the Manuals, you must provide us with certificates of insurance evidencing the required coverage and naming Key Club Development Corporation and CJA Corporation as additional

insureds. We may require additional types of coverage or increase the required minimum amount of coverage upon 60 days' notice to you.

We do not provide any material benefits to franchisees (for example, renewal or granting additional franchises) based upon their purchase of particular products or services or use of particular suppliers.

### **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 those agreements and in other items of this disclosure document.

Obligation	Article in Agreement	Disclosure Document Item
a. Office selection and acquisition/ lease	FA – Article 5 MUDA – Article 2	Items 8 and 11
b. Pre-opening purchases/ leases	FA – Article 5	Items 8 and 11
c. Office development and other pre-opening requirements	FA – Article 5	Items 8 and 11
d. Initial and ongoing training	FA – Article 8	Items 6 and 11
e. Opening	FA – Article 5	Item 11
f. Fees	FA – Articles 3, 4, 11, 15, 18 MUDA – Article 3	Items 5, 6, and 7
g. Compliance with standards and policies/ operating manual	FA – Articles 10 and 13	Items 8 and 16
h. Trademarks and proprietary information	FA – Articles 6 and 7	Items 13 and 14
i. Restrictions on products/ services offered	FA – Article 13	Item 16
j. Warranty and customer service requirements	FA – Article 13	Item 16
k. Territorial development and sales quotas	FA – Article 13 MUDA – Article 2	Item 12

l. Ongoing product/service purchases	FA – Article 13	Item 8
m. Maintenance, appearance and remodeling requirements	FA – Article 13	Item 6
n. Insurance	FA – Article 15	Items 6, 7 and 8
o. Advertising	FA – Article 11	Items 6, 8 and 11
p. Indemnification	FA – Article 21 MUDA – Article 9	Item 6
q. Owner's participation/management/ staffing	FA – Article 13	Item 15
r. Records and reports	FA – Article 12	Item 11
s. Inspections and audits	FA – Articles 6, 12, 13	Items 6, 11 and 13
t. Transfer	FA – Article 18 MUDA – Article 6	Items 6 and 17
u. Renewal	FA – Article 4	Items 6 and 17
v. Post-termination obligations	FA – Article 17 MUDA – Article 5	Item 17
w. Non-competition covenants	FA – Articles 7 and 17 MUDA – Article 5	Item 17
x. Dispute resolution	FA – Article 23 MUDA – Article 8	Item 17
y. Liquidated damages	FA – Article 17	Item 6

## **Item 10**

### **FINANCING**

We do not offer direct or indirect financing. We do not guarantee your note, lease or obligation.

## **Item 11**

### **FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING**

Except as expressly listed below, Key Club Development Corporation is not required to provide you with any assistance and does not provide assistance with providing equipment, signs, fixtures, opening inventory, and/or supplies. Further, Key Club Development Corporation is not obligated to spend any amount on advertising within the Franchisee's Designated Territory.

## **PRE-OPENING OBLIGATIONS**

*Multi-Unit Development Agreement:* The pre-opening and continuing services we provide under the Franchise Agreement will be provided to each Multi-Unit Developer for each Franchised Business that they open, but the Multi-Unit Developer will not be trained for each unit opened after the first unit.

*Franchise Agreement:* Before you open your Franchised Business we will provide you with the following assistance and services:

1. If we have not already approved a site that you have selected before you sign the Franchise Agreement, we will provide you with our criteria for site selection and review the site you have selected for the location of the Franchised Business. If the site you select meets our criteria, we will not unreasonably withhold our approval of the site. (Franchise Agreement – Sections 2.5 and 5.1)

NEITHER WE NOR ANY OF OUR EMPLOYEES HAVE SPECIAL EXPERTISE IN SELECTING SITES; WE MAKE NO REPRESENTATIONS THAT YOUR FRANCHISED BUSINESS WILL BE PROFITABLE OR SUCCESSFUL BY BEING LOCATED AT LOCATION WE HAVE APPROVED. ANY APPROVAL IS INTENDED ONLY TO INDICATE THAT THE PROPOSED SITE MEETS OUR MINIMUM CRITERIA BASED UPON OUR GENERAL BUSINESS EXPERIENCE.

2. We will describe the boundaries of your Designated Territory. (Franchise Agreement – Section 2.5)

3. We will review your lease or purchase agreement for the site for the Approved Location. (Franchise Agreement – Section 5.2)

**OUR REVIEW OF YOUR LEASE OR PURCHASE AGREEMENT AND ANY ADVICE OR RECOMMENDATIONS WE MAY OFFER IS NOT A REPRESENTATION OR GUARANTEE BY US THAT YOU WILL SUCCEED AT THE LEASED OR PURCHASED PREMISES.**

4. We will review and, if they meet our requirements for layout and presentation of the Proprietary Marks, approve the blueprints for the build-out of your Franchised Business. (Franchise Agreement – Section 5.3) You must engage the services of **a designer or architect that we have designated or approved** to develop plans for the build-out of your Franchised Business that are specific to the location we have approved. You and your architect must make sure that the blueprints comply with all applicable laws, ordinances and building codes. We also reserve the right to inspect the Vanguard Key Clubs location while it is being constructed and to approve it for opening.

5. We will provide up to four trainees, including you and your general manager, with an initial training program to be held at our Affiliate's New Hampshire locations or at another location we designate. The program is provided to you at no charge for your first location however, you must pay for

all out-of-pocket costs you and/or your trainees incur associated with attending our initial training program, including Worker's Compensation. (Franchise Agreement – Section 8.1) We will also provide you with up to five days of on-site opening assistance for your first Vanguard Key Clubs location. For second and subsequent Vanguard Key Clubs locations, the on-site opening assistance will only be provided upon payment of the \$2,500 fee.

6. We will provide to you, on loan, one copy of our Manual, or grant you access to an electronic copy of the Manual. (Franchise Agreement – Section 9.1)

## **CONTINUING OBLIGATIONS**

*Franchise Agreement:* During the operation of your Vanguard Key Clubs we will provide you with the following assistance and services:

1. We will periodically advise you and offer you general guidance by telephone, e-mail, facsimile, newsletters and other methods concerning authorized services or products, operational methods, accounting procedures, and marketing and sales strategies. (Franchise Agreement – Section 14.1)

2. We will periodically visit the Franchised Business to inspect your operation of the Franchised Business and to advise, assist and guide you in various aspects of the operation and management of the Franchised Business. We may prepare written reports outlining any suggested changes or improvements in the operations of the Franchised Business and detail any deficiencies that become evident as a result of any visit. If we prepare a report, you may request a copy from us. (Franchise Agreement – Section 14.2)

3. We will make available to you operations assistance and ongoing training as we deem necessary. (Franchise Agreement – Sections 8.2 and 8.5)

4. We will make available to you changes and additions to the System as generally made available to all franchisees. (Franchise Agreement – Section 14.3)

5. We may, in our discretion, periodically provide formats for advertising and promotional materials including ad-slicks, brochures, flyers and other materials for you to produce and use. (Franchise Agreement – Section 14.4)

6. We will review forms of advertising materials to be used for Local Marketing and Cooperative Marketing. (Franchise Agreement – Section 11)

7. We will provide you with modifications and updates to the Manual as they are made available to franchisees. (Franchise Agreement – Section 9.2)

8. We may designate the minimum and/or maximum prices you may charge for certain services and items, as permitted by applicable law. (Franchise Agreement, Section 14.1) We do not

guarantee that you will earn any level of sales or profitability by following our recommended or required pricing.

## **BRAND DEVELOPMENT FUND**

We reserve the right to establish a System-wide Brand Development Fund for the marketing, advertising, promotional, public relations, and other similar activities intended to enhance, promote, and protect the System and all franchised and company-owned locations as we, in our sole discretion, may deem necessary or appropriate to promote the Vanguard Key Clubs brand. You must pay a Brand Development Fee equal to 2% of your Gross Sales each month to be paid into the Brand Development Fund. We will provide you with 30 days' prior written notice that the Brand Development Fund has been established. We will administer the Brand Development Fund as follows:

1. We will control the creative concepts and the materials and media to be used, and we will determine the placement and allocation of advertisements. We may use print, television, radio, Internet or other media for advertisements and promotions. We do not guarantee that any particular franchisee will benefit directly or in proportion to their contribution from the placement of advertising by the Brand Development Fund.

2. Those activities that we may use the Brand Development Fund for include (without limitation) (a) market research, (b) technology development and implementation, (c) customer service, loyalty and reward programs, (d) media purchases, (e) advertising production, (f) advertising and public relations agency fees and expenses, (g) product research and development, (h) developing and implement marketing strategies, annual location marketing plan templates and supporting the evolution of the Market Introduction Program, and (i) developing and protecting our intellectual property. We also may use the Brand Development Fund to pay or reimburse us for our administrative overhead incurred for activities supported by the Brand Development Fund. We may prepare all advertising and promotional materials in-house, or we may use a national or regional advertising agency to prepare advertising and promotional materials.

3. The Brand Development Fund will be maintained in an account separate from our general funds and we will not use them for any of our general operating expenses, except that we may reimburse ourselves for our reasonable administrative costs and overhead, including employee salaries, related to the administration of the Brand Development Fund. We will not use money from the Brand Development Fund to prepare or place advertising that is a solicitation of franchise sales.

4. We expect to use all contributions in the fiscal year they are made, but any monies remaining in the Brand Development Fund at the end of any year will carry over to the next year. We will use any interest or other earnings of the Brand Development Fund before using current contributions. We intend for the Brand Development Fund to be perpetual, but we have the right to terminate the Brand Development Fund at any time. If we terminate the Brand Development Fund, any remaining money in the Brand Development Fund will be used for advertising and promotional purposes or will be returned to

contributors on a *pro rata* basis. If we terminate the Brand Development Fund we may reinstate it at any time, and any reinstated Brand Development Fund will be administered as described above.

5. All Vanguard Key Clubs locations owned by us or our affiliates will make similar contributions to the Brand Development Fund as required of franchisees.

6. We will have an unaudited statement of the Brand Development Fund prepared each year and we will provide you with a copy if you request it. We are not required to have the Brand Development Fund audited, but if an audit is prepared it will be at the expense of the Brand Development Fund.

7. The Brand Development Fund is not a trust and we assume no fiduciary duty in administering the Brand Development Fund.

8. Brand Development Fund is not obligated to be used for advertising purposes. To the extent that it is used for advertising, such advertising will be on a regional or national basis.

Since the Brand Development Fund was not established during the fiscal year ending December 31, 2024, no monies have been spent by the Brand Development Fund.

## **LOCAL MARKETING**

You must conduct advertising, outreach, promotions, and public relations in the Designated Territory surrounding the Franchised Business each month, and you must spend at least 2% of Gross Sales each month on your local marketing. Within 30 days of our request you must provide us with proof that you have conducted the required local marketing, including verification copies of ads. (Franchise Agreement – Section 11.2). At our request, you must display the Vanguard Key Clubs and Proprietary Product brochures that we designate. If we require this, the cost of any brochures will be borne by the Brand Development Fund. We reserve the right to include language in either or both of these brochures concerning our franchise opportunity.

Any advertising that has not been furnished by us or that we have not approved within the preceding 12 months must be submitted to us for our review. We will have 15 days after our receipt of the materials to advise you whether they are approved or not. If we do not provide you with oral or written approval within this 15 days, the materials are deemed not approved. Any advertising or promotional materials you provide to us for our review will become our property, and there will be no restriction on our use or distribution of these materials. The approval process described in this paragraph also applies to proposed advertising to be used by an advertising cooperative. We may require you to include certain language in your advertising, such as “franchises available” and our website address and telephone number.

## **MARKETING COOPERATIVES**

We reserve the right to form, or to approve the formation of, regional marketing cooperatives (“Cooperative”) for a geographic area that includes multiple Vanguard Key Clubs businesses. You must participate in any Cooperative established in your region, but you will not have to participate in more than one Cooperative. The members of the Cooperative by majority vote will determine the amount and frequency of contributions each member must make to the Cooperative. All members will contribute to the Cooperative at the same rate. Any amounts you contribute to a Cooperative will count toward your local marketing requirement, but if the amount you contribute to a Cooperative is less than the amount you must spend on local marketing, you must still spend the difference locally. We will have the authority to create, change, merge or dissolve any Cooperative.

Any Vanguard Key Clubs locations owned and operated by us or our affiliates will participate in Cooperatives on the same basis as our franchisees, and will have the same voting rights as franchisees. In no event will any one Vanguard Key Clubs (or any group of commonly controlled Vanguard Key Clubs) have more than 25% of the total vote on any Cooperative matter. If the Cooperative will operate from governing documents, such as by-laws, the governing documents must first be approved by us and you will have an opportunity to review the governing documents before you join the Cooperative. A Cooperative is not required to provide its members with financial statements.

## **GRAND OPENING ADVERTISING CAMPAIGN**

We require a Market Introduction Plan which includes an advertising and promotion commitment from you during the introductory and start-up period of your business. You must spend \$2,500 to \$5,000 on advertising and promotion starting at least 30 days prior to opening and extending at least 30 days after opening.

## **ADVISORY COUNCILS**

We have the right to form one or more advisory councils to work with us to improve various aspects of the System, including advertising conducted by the Brand Development Fund, new products and services, and other matters. If we choose to form an advisory council, its members will be made up of franchisees and our representatives. The franchisee representatives may be chosen by us or elected by other franchisees. If you participate on an advisory council you must pay for any expenses related to your participation, including travel, lodging and meals expenses related to attending advisory council meetings. If formed, the advisory council will act in an advisory capacity only and will not have decision making authority. We will have the power to form, merge, change or dissolve any advisory council, at our discretion.

## **WEBSITE / INTRANET**

We alone will establish, maintain, modify or discontinue all internet, worldwide web and electronic commerce activities pertaining to the System. We have established one or more websites

accessible through one or more uniform resource locators (“URLs”) and we will design and provide for the benefit of your Vanguard Key Clubs a “click through” subpage at our website for the promotion of your Vanguard Key Clubs location(s). If we establish one or more websites or other modes of electronic commerce and if we provide a “click through” subpage at the website(s) for the promotion of your Vanguard Key Clubs location(s), you must routinely provide us with updated copy, photographs and news stories about your Vanguard Key Clubs location(s) suitable for posting on your “click through” subpage. We reserve the right to specify the content, frequency and procedure you must follow for updating your “click through” subpage.

Any websites or other modes of electronic commerce that we establish or maintain may – in addition to advertising and promoting the products, programs or services available at Vanguard Key Clubs – also be devoted in part to offering Vanguard Key Clubs franchises for sale and be used by us to exploit the electronic commerce rights which we alone reserve.

In addition to these activities, we may also establish an intranet through which downloads of operations and marketing materials, exchanges of franchisee e-mail, System discussion forums and System-wide communications (among other activities) can be done. You may not maintain your own website; otherwise maintain a presence or advertise on the internet or any other mode of electronic commerce in connection with your Vanguard Key Clubs; establish a link to any website we establish at or from any other website or page; or at any time establish any other website, electronic commerce presence or URL which in whole or in part incorporates the “Vanguard Key Clubs” name or any names confusingly similar to the Proprietary Marks.

You are not permitted to promote your Vanguard Key Clubs or use any of the Proprietary Marks in any manner on any social or networking websites, such as Facebook, LinkedIn, FourSquare, Groupon, Living Social, Pinterest, Snapchat, Instagram, or Twitter, without our prior written consent. We will control all social media initiatives. You must comply with our System standards regarding the use of social media in your Vanguard Key Clubs’s operation, including prohibitions on your and any of your Vanguard Key Clubs’s employees posting or blogging comments about Vanguard Key Clubs or our System, other than on a website established or authorized by us in the future (“social media” includes personal blogs, common social networks like Facebook, Instagram, professional networks like LinkedIn, live-blogging tools like Twitter, virtual worlds, file, audio and video-sharing sites, and other similar social networking or media sites or tools). We reserve the right to provide access to branded social media pages/handles/assets, and you must update these regularly. We reserve the right to conduct collective/national campaigns via local social media on your behalf.

We alone will be, and at all times will remain, the sole owner of the copyrights to all material which appears on any website we establish and maintain, including any and all material you may furnish to us for your “click through” subpage.

## **COMPUTER / POINT OF SALE SYSTEM**

You must purchase and use certain computer hardware and software, including point of sale systems, that meet our written specifications and that are capable of electronically interfacing with our computer system. The computer system is used to collect and monitor point of sale information, to create business reports, and may be used to collect and monitor inventory control and shrinkage, accounting information, client database, and credit card processing, without limitation.

The computer system must allow us to have immediate access to the information monitored by the system, and there is no contractual limitation on our access or use of the information we obtain. We do not provide delivery and installation of the equipment. You must install and maintain equipment and a high-speed telecommunication line (such as T-1, DSL or cable modem) in accordance with our specifications to permit us to access the computer system at your Vanguard Key Clubs premises as described above. This will permit us to electronically inspect and monitor information concerning your Vanguard Key Clubs's Gross Sales, your client database, and any other information that may be contained or stored in the computer system. You must make sure that we have access at the times and in the manner in which we specify, at your cost. The client database will at all times remain our property.

You must purchase a point of sale system with the minimum components we specify in writing, including the required booking software. Our specific requirements for the computer system will be included in our Manual, and the components you must purchase may be determined based on the size of your Vanguard Key Clubs location. You may purchase the computer system from any authorized seller, unless we designate a specific supplier. We expect that the computer system will cost between \$500 and \$2,000. You must make sure that all software on your system is kept up to date and you must have a contract with the approved supplier for this. We recommend, but do not require, that you have a maintenance contract for your computer system. If you choose to have a maintenance contract for the computer system, we estimate it will cost approximately \$500 per year.

You must obtain any upgrades and/or updates to the software used with the computer system, at your expense. All software used with the computer system must be kept up to date. In addition, we may require you to update and/or upgrade all or a portion of your computer system during the term of your Franchise Agreement, at your expense. The Franchise Agreement does not limit our ability to require you to update and/or upgrade your computer system or the cost of any update and/or upgrade. Neither we nor any affiliate of ours will provide you with any updates, upgrades or maintenance for your computer system. Your computer must be in good repair with sufficient memory to carry out ordinary business functions, as provided in the Operating Manual. We estimate that the annual cost of required computer and/or point of sale upgrades will be approximately \$500 per year.

You must obtain and maintain a high-speed internet connection at all times for your computer system. It will be a material default under the Franchise Agreement if you do not maintain the equipment, lines and communication methods in operation and accessible to us at all times throughout the term of the Franchise Agreement. We must have access at all times and in the manner that we specify.

## **SITE SELECTION AND OPENING**

If you do not have a location for the Franchised Business that we have approved when you sign the Franchise Agreement, then after you sign the Franchise Agreement you **will have 90 days to locate a site for your Franchised Business and submit to us all of the information we require to evaluate your proposed site, which shall include a proposed lease.** We will provide you with general site selection criteria to assist you in locating a prospective site for your Vanguard Key Clubs location as we do not generally own property and lease it to franchisees. The general site selection and evaluation criteria which we consider in approving your site includes the condition of the premises, demographics and population density of the surrounding area, proximity to other Vanguard Key Clubs locations, lease or purchase requirements, visibility, ease of access, available parking, and overall suitability.

Once you have provided us with all of the information we require, we will have 30 days to evaluate the proposed site and notify you whether we approve of the site. Unless we provide you with written approval that the site is approved, any site you propose will be deemed not approved. Our approval of a site you propose is only intended to indicate that the site meets our minimum requirements for a Vanguard Key Clubs. If you are unable to locate a site within 90 days after the Franchise Agreement is signed, we may grant you an extension of this timeframe or we may terminate the Franchise Agreement.

**We estimate that the typical length of time between the signing of the Franchise Agreement and the opening of a Vanguard Key Clubs location is 120 days, but you must open your Franchised Business and be operational not later than six months after signing the Franchise Agreement. IF YOUR FRANCHISED BUSINESS IS NOT OPENED WITHIN THE REQUIRED TIMEFRAME, WE MAY GRANT YOU AN EXTENSION OF TIME OR WE MAY TERMINATE YOUR FRANCHISE AGREEMENT AND THE FRANCHISEE'S INITIAL FEE SHALL BE FORFEITED.** Factors that may affect your ability to open the Vanguard Key Clubs location within the required time period include your ability to secure permits and/or financing, local ordinances, weather conditions, and delays in obtaining equipment.

## **TRAINING**

We will conduct an initial training program that you, your Operating Owner, if you have one and your General Manager if you are Multi-Unit Developer, must attend and complete to our satisfaction. Although initial training is mandatory for the above roles, it is also available for up to two additional employees (for a maximum of four trainees) for no additional training fee. If you wish to send additional trainees to our initial training program, you must pay our then-current training fee. You must also pay for all expenses you and your trainees incur related to attending our training program, including travel, lodging, meals, applicable wages and Worker's Compensation.

**Training will take place at our Affiliate's Hampton Falls, New Hampshire locations or at another location we designate. The initial training program will last for approximately three days.** We do not currently have a set schedule for holding our training program. Our training program will be

provided as needed based on the number of new franchisees entering the System, new managers and/or other personnel requiring training, and similar factors. We reserve the right to train Franchisees and personnel from multiple franchise at any training program. We also reserve the right to modify our training program as needed based on the needs and/or experience of any individual trainee.

If you, your Operating Owner, or your General Manager fail to complete our initial training program to our satisfaction, we will offer you, your Operating Owner, and/or your General Manager (or a replacement general manager, if we determine your original General Manager cannot satisfactorily complete our training program) the opportunity to retake our training program at your expense, including payment of our training fee. If you, your Operating Owner, or your General Manager cannot complete our training program on the second attempt, we may terminate your Franchise Agreement.

We will provide our initial training program to you and your management team for your first Vanguard Key Clubs location only. If you are opening your second or later Vanguard Key Clubs location (whether the Vanguard Key Clubs is being developed under a Multi-Unit Development Agreement or not), we expect that you will train any and all employees and general managers for the additional Vanguard Key Clubs businesses you develop, but if you wish to send any trainees from your second or later Vanguard Key Clubs location(s) to our initial training program, you must pay our then-current training fee as well as all expenses incurred by your trainees while attending initial training.

**For your first franchise location, we will also send one of our representatives to your Vanguard Key Clubs to provide on-site opening assistance for up to five days.** If you are opening your second or later Vanguard Key Clubs, we will only provide opening assistance if requested in writing and upon payment of the applicable fee.

During the term of your Franchise Agreement if you require additional on-site training or assistance, or if we determine that additional training or assistance is necessary, you must pay our then-current per diem fee for each trainer we send to you and you must reimburse each trainer's expenses, including travel, lodging and meals.

The instructional materials we use in our initial training program include our Manual and any other information that we believe is beneficial to our franchisees and their employees in the initial training program. Our initial training program consists of:

## TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Introduction	.5	1	Hampton Falls, NH
Welcome to Vanguard Key Clubs	.5	0	Hampton Falls, NH
History	1	0	Hampton Falls, NH
Business Structure	.5	0	Hampton Falls, NH
Finance	1	0	Hampton Falls, NH
Opening Timeline	1.5	0	Hampton Falls, NH
Owner/Manager Training & Resources	2	2	Hampton Falls, NH
Staffing	.25	0	Hampton Falls, NH
Operations	1	1	Hampton Falls, NH
Policies & Procedures	1	0	Hampton Falls, NH
Equipment & Supplies	1	1	Hampton Falls, NH
Bookkeeping & Reports	0.5	1	Hampton Falls, NH
Marketing	1.5	1	Hampton Falls, NH
Vendors	1	1	Hampton Falls, NH
	13.25 hours	8	

Our initial program is overseen by Craig J. Annis. We also reserve the right to periodically name additional trainers and/or to draw upon the experience of our Affiliate's staff members to assist in providing training. There are no limits on our right to assign a substitute to provide training. The minimum experience of the instructors in the field that is relevant to the subject taught and our operations is from 1 to 7 years. **Your Vanguard Key Clubs manager must be trained in store for a minimum of one to two weeks. This training will take at our Affiliate's Vanguard Key Clubs Corporate Offices located in New Hampshire.**

We may also choose to hold refresher training courses, and we may designate that attendance at refresher training is mandatory for you or, your Owner/Operator and your General Manager if you have one, and/or other Vanguard Key Clubs personnel. We may also conduct an annual meeting of our franchisees to discuss changes to the System, new offerings and refresher training. If we choose to hold an annual meeting, attendance will be mandatory for you, or your Owner Operator and your general manager. While we do not expect to charge a fee for any refresher training program or franchisee meeting, you must pay all of the expenses you and your attendees incur, including travel, lodging, meals, and wages.

## **BRAND STANDARDS MANUAL**

The Table of Contents of the Manual, along with number of pages devoted to each section, is included as Exhibit G to this Disclosure Document. The Manual includes approximately 55 pages total.

### **Item 12**

#### **TERRITORY**

##### **FRANCHISE AGREEMENT**

The Franchise Agreement grants you the right to operate your Vanguard Key Clubs franchise only at the location approved by us, and we will grant you a territory. We (and any affiliates that we periodically might have) will not establish, nor allow another franchise owner to establish, another Vanguard Key Clubs franchise located within the area that makes up your designated territory (“Designated Territory”). Your Designated Territory will be described as a specific geographic area where your Vanguard Key Clubs is located and will include a population density we deem appropriate to operate your Franchised Business. The boundaries of your Designated Territory will be described in terms of contiguous zip codes and may be depicted on a map attached to your Franchise Agreement.

As part of the process of renewing your Franchise Agreement, we reserve the right to re-evaluate your then-existing Designated Territory according to certain demographics, including the character and population of the geographic area where your Vanguard Key Clubs is located. Our intent is to make the target demographics and population of your renewal Designated Territory similar to the target demographics and population of your original Designated Territory. A re-evaluation of your Designated Territory may result in your renewal Designated Territory being smaller or larger than your original Designated Territory. We cannot guarantee that you will achieve any particular level of success with the renewal Designated Territory or that your results will be the same as or similar to your results from operating in the original Designated Territory.

You will not receive an exclusive territory. You may face competition from other franchisees, from locations that we own, or from other channels of distribution or competitive brands that we control.

While it is not our intent, at this time, to distribute or sell any branded retail product or exercise services through any other physical retail, online, or virtual method of commerce, we reserve the right to distribute any branded products or services through such methods.

During the term of your Franchise Agreement we retain the following rights which we may exercise in our discretion and on behalf of ourselves or through affiliates. The rights we reserve, as described below, are subject to the right of first refusal we grant to you, which is also described below.

(1) to establish and operate, and grant rights to other franchise owners to establish and operate, Vanguard Key Clubs businesses or similar businesses at any locations outside your Designated Territory and on any terms and conditions we deem appropriate;

(2) to purchase or otherwise acquire the assets or controlling ownership of one or more businesses identical or similar to your Vanguard Key Clubs (and/or franchise and/or license these businesses), some or all of which might be located anywhere, including within your Designated Territory, but if any of these businesses are located within your Designated Territory they will not operate using the Proprietary Marks;

(3) to be acquired (regardless of the form of transaction) by a business identical or similar to a Vanguard Key Clubs, even if the other business operates, franchises and/or licenses competitive businesses within your Designated Territory; and

(4) to engage in any other business activities not expressly prohibited by the Franchise Agreement, anywhere.

If a site becomes available that is in or near your Designated Territory we may, but are not required to, offer you the opportunity to open a Vanguard Key Clubs at the site. You must be in compliance with your Franchise Agreement and current in all payments owed to us and/or our affiliates. If we offer you this right of first refusal, you will have 30 days after receiving information from us concerning the new Vanguard Key Clubs opportunity to accept the right of first refusal. If you decline this right of first refusal or do not respond to us within the 30 day period, we may offer the opportunity to develop a Vanguard Key Clubs at the site to a third party or we or one of our affiliates may open a Vanguard Key Clubs at the site.

You may relocate your Vanguard Key Clubs within your Designated Territory only with our prior written approval and the new site must be located within your Designated Territory. We will use our then-current site selection criteria to review the proposed new location. We will not unreasonably withhold our approval of your relocation. We reserve the right to require you to sign our then-current Franchise Agreement with a term equal to the remaining term under your original Franchise Agreement, but you will not pay another initial franchise fee.

You may provide products (including Proprietary Products) and services to customers and prospective customers who live anywhere but who choose to use your Vanguard Key Clubs. You may not engage in any promotional activities or sell any products or services, whether directly or indirectly, through or on the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery System (collectively, the "Electronic Media"); through catalogs or other mail order devices sent or directed to customers or prospective customers located inside or outside of your Designated Territory; or by telecopy or other telephonic or electronic communications, including toll-free numbers, directed to or received from customers or prospective customers located inside or outside of your Designated Territory. While you may place advertisements in printed media and on television and radio that are targeted to customers and prospective customers located within your Designated Territory,

and will not be deemed to be in violation of the Franchise Agreement if those advertisements, because of the natural circulation of the printed media or reach of television and radio, are viewed by prospective customers outside of your Designated Territory, you may not directly solicit customers outside of your Designated Territory. You may not sell any products, including Proprietary Products, at wholesale.

We and our affiliates may sell products under the Proprietary Marks anywhere and through any method of distribution other than a Vanguard Key Clubs, including sales through channels of distribution such as the Internet, catalog sales, telemarketing or other direct marketing sales (together, “alternative distribution channels”). You may not use alternative distribution channels to make sales anywhere and you will not receive any compensation for our sales through alternative distribution channels. Any orders placed with us or our affiliates through alternative distribution channels will be fulfilled by us or our affiliates and if the order is delivered to an address within your Designated Territory, we will share the revenue from the sale with you. **We will pay 10% of the cost of the order to you; we reserve the right to deduct this amount from any Royalty Fees you owe to us rather than making direct payment to you.** If we receive an inquiry via our website concerning products and services offered by Vanguard Key Clubs, the inquiry will be forwarded to the appropriate franchisee or Vanguard Key Clubs location to be handled. If you receive an inquiry forwarded by us and you are unwilling or unable to respond to the inquiry, then we or a third party (including another franchisee) may respond to the inquiry and you will not be entitled to any portion of any revenues resulting from the inquiry.

We have not established other franchises or company-owned outlets or another distribution channel selling or leasing similar products or services under a different trademark. We describe earlier in this Item 12 what we may do within and outside of your Designated Territory.

Except for the Vanguard Key Clubs locations operated by our Affiliate, neither we nor any parent or affiliate has established, or presently intends to establish, other franchised or company-owned Vanguard Key Clubs businesses which sell our Proprietary Products or services under a different trade name or trademark, but we reserve the right to do so in the future, without first obtaining your consent.

#### **MULTI-UNIT DEVELOPMENT AGREEMENT**

If you sign a Multi-Unit Development Agreement, you are committing to develop and operate a specific number of Franchised Businesses within an exclusive specified geographic area (the “Development Area”) according to a designated Minimum Development Schedule. We and you will agree on the Development Area and it will be described in the Multi-Unit Development Agreement before signing it. The Development Area will be defined in terms of municipal or county boundaries but may be defined as a specified trade area within a municipality. The actual size of the Development Area will vary depending upon the availability of contiguous markets, our long-range development plans, your financial and operational resources, population, and market conditions. In each case, the territory guidelines developed for each single franchise location will prevail for each location developed as per your Multi-Unit Development Agreement.

We and you will negotiate the number of Franchised Businesses you must develop to keep your development rights and the dates by which you must develop them. We and you then will complete the Minimum Development Schedule in the Multi-Unit Development Agreement before signing it. The Multi-Unit Development Agreement will expire when the last Vanguard Key Clubs to be developed has opened for business. At that time, subject to territorial rights granted to you under Franchise Agreements then in effect, we may establish or allow others to establish Franchised Businesses within the area formerly designated as your Development Area.

While the Multi-Unit Development Agreement is in effect, we (and our affiliates) retain the right, in our sole discretion and without granting any rights to you: (a) to own and operate, or to grant other persons the right to own and operate, Vanguard Key Clubs businesses at locations outside the Development Area and on such terms and conditions as we deem appropriate in our sole discretion; and (b) to sell anywhere the products (including Proprietary Products) authorized for Vanguard Key Clubs businesses under the Proprietary Marks or other trademarks, service marks and commercial symbols through dissimilar channels of distribution and pursuant to such terms and conditions as we deem appropriate.

You may not develop or operate Franchised Businesses outside the Development Area. We may terminate the Multi-Unit Development Agreement if you do not satisfy your development obligations when required.

**Except for your compliance with the Minimum Development Schedule, continuation of your territorial exclusivity does not depend on your achieving a certain sales volume, market penetration, or other contingency, and we may not alter your Development Area.**

### Item 13

#### TRADEMARKS

Under the Franchise Agreement, we grant to you the right to use certain trademarks, service marks and other commercial symbols in connection with the operation of your Vanguard Key Clubs. The Multi-Unit Development Agreement does not grant you the right to use the Proprietary Marks. Our Affiliate has registered or applied for registration of the following Proprietary Marks on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

Mark	Application Date	Serial #	Registration Date	Registration #
 VANGUARD KEY CLUBS	04/03/2023	97870607	04/23/2024	7365580

Vanguard Key Clubs	10/19/2017	87652334	03/20/2018	5428543
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There are no currently effective determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of this state or any court, nor is there any pending infringement, opposition, or cancellation proceeding, nor any pending material litigation involving the Proprietary Marks which may be relevant to their use in this state or in any other state. Our Affiliate intends to file all required affidavits with the USPTO when they are due to maintain its interests in the Proprietary Marks.

There are no agreements currently in effect which limit our right to use or to license others to use the Proprietary Marks except for the trademark license agreement with our Affiliate dated October 30, 2017.

You must promptly notify us of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, our right to use and to license others to use, or your right to use, the Proprietary Marks. We will direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement. We have the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. We may defend you against any third-party claim, suit or demand arising out of your use of the Proprietary Marks. If we, in our sole discretion, determine that you have used the Proprietary Marks in accordance with your Agreement, the cost of the defense, including the cost of any judgment or settlement, will be paid by us. If we determine that you have not used the Proprietary Marks in accordance with your Agreement, the cost of the defense, including the cost of any judgment or settlement, will be yours. In the event of any litigation relating to your use of the Proprietary Marks, you must sign any and all documents and do any acts as may, in our opinion, be necessary to carry out the defense or prosecution, including becoming a nominal party to any legal action. Except if this litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of your Agreement, we will reimburse you for your out-of-pocket costs in doing these acts.

There are no infringing uses actually known to us that could materially affect your use of the Proprietary Marks in this state or elsewhere. All marks due for renewal have been renewed.

We reserve the right to substitute different proprietary marks for use in identifying the System and the businesses operating under it, at our sole discretion. You must implement any modified or substituted proprietary mark as we direct, at your own cost. We are not obligated to reimburse any of your costs related to a change or substitution of a proprietary mark.

## **Item 14**

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

#### **PATENTS AND COPYRIGHTS**

We do not have an ownership interest in any patents or registered copyrights that are material to the franchise.

You do not receive the right to use an item covered by a copyright, but you can use the proprietary and confidential information that is in our Manual. The Manual is described in Item 11 and below. Although we have not filed an application for a copyright registration for the Manual, we claim a copyright and the information in it is proprietary and confidential. You must promptly tell us when you learn about unauthorized use of this proprietary and confidential information. We do not need to take any action, but will respond to this information as we think appropriate.

#### **CONFIDENTIAL OPERATIONS MANUAL**

You must operate your Franchised Business according to the standards, methods, policies and procedures specified in the Manual. One copy of the Manual is loaned to you by us for the term of the Franchise Agreement after you complete our initial training program to our satisfaction.

You must treat the Manual, any other of our manuals which are used in the operation of your Franchised Business, and the information in them as confidential, and must use all reasonable efforts to maintain this information as secret and confidential. You must not copy, duplicate, record, or otherwise reproduce these materials, in whole or in part, or otherwise give them to any unauthorized person. The Manual will remain our sole property and must be kept in a secure place at the Franchised Business. We reserve the right to provide the Manual electronically on a password protected website.

We may revise the contents of the Manual, and you must comply with each new or changed standard. You must make sure that the Manual is kept current at all times. In the event of any dispute as to the contents of the Manual, the terms of the master copy maintained by us at our home office will be controlling.

#### **CONFIDENTIAL INFORMATION**

You must not, during the term of the Franchise Agreement, or after the term of the Franchise Agreement, communicate, divulge or use for the benefit of any other person, partnership, association, or corporation any confidential information, knowledge or know-how concerning the methods of operation of the Franchised Business which may be communicated to you or which you may learn because of your operation under the terms of the Franchise Agreement. Confidential information includes methods of business management; sales and promotion techniques; your client database; know-how, knowledge of, and experience in operating a Vanguard Key Clubs; and any other information that we designate as proprietary or confidential, including; workout and exercise programming and training techniques and

strategies. You may divulge this confidential information only to those of your employees who must have access to it to operate your Vanguard Key Clubs. Any and all information, knowledge, know-how, techniques and other data which we designate as confidential will be deemed confidential for purposes of the Franchise Agreement.

At our request, you must have your Operating Owner and/or General Manager and any personnel having access to any of our confidential information sign agreements that say that they will maintain the confidentiality of information they receive in connection with their employment by you at your Vanguard Key Clubs. The agreements must be in a form satisfactory to us, including specific identification of us and our affiliates as a third-party beneficiaries of the covenants with the independent right to enforce them and that they prohibit any direct or indirect ownership in a competing business.

### **Item 15**

#### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

**The Franchised Business must always be under your direct full-time supervision or that of your Operating Owner or a General Manager for a multi-unit operation. This individual shall have the minimum business experience we require, which includes at least three years of experience in a similar business, , satisfactory completion of our initial training program, and final approval by us. We recommend, but do not require that you be the General Manager for your Franchised Business. Regardless of who operates your Franchised Business, you must still make sure that the Franchised Business is operated according to our standards and specifications and in compliance with the terms of your Franchise Agreement. You must keep us informed of the identity of your current Operating Owner and General Manager (if other than you). An Operating Owner must own a minimum of 5% of your Franchised Business. A General Manager hired to operate multiple units need not have an investment in the business.**

The General Manager and other key employees may, in our sole discretion, have to sign the Non-Disclosure and Non-Compete Agreement, Exhibit J in the Franchise Agreement, not to compete with businesses under the System while employed by you and for two years after their employment ends, and an agreement not to reveal confidential information obtained while employed by you. We will be a third-party beneficiary of each of these agreements with the independent right to enforce the agreement's terms.

If you are a business entity, anyone who owns a 5% or greater interest in the entity must personally guarantee the performance of all of your obligations under your Agreement and agree to be personally liable for your breach of the Agreement by signing the Guaranty and Assumption of Obligations, which is attached as Exhibit C to the Franchise Agreement.

You must operate the Franchised Business in strict conformity with all applicable Federal, state and local laws, ordinances and regulations. These laws, ordinances and regulations vary from jurisdiction to jurisdiction. You must learn of the existence and requirements of all laws, ordinances and regulations

applicable to the Vanguard Key Clubs and you must adhere to them and to the then-current implementation or interpretation of them.

#### **Item 16**

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

You must offer the services and products we periodically specify, in strict accordance with our standards and specifications. You may not sell any services or products that we have not authorized and you must discontinue offering any services, products or programs that we may, in our sole discretion, disapprove in writing at any time.

We may periodically change required or authorized services, products or programs and there are no limits on our right to do so. If we modify the System, you may have to add or replace equipment, signs and fixtures, and you may have to make improvements or modifications as necessary to maintain uniformity with our current standards and specifications.

On a case-by-case basis, we may allow you or other Vanguard Key Clubs franchisees to offer certain additional services, products or programs that are not otherwise part of the System. We will decide which franchisees can offer additional products or services based on test marketing, the franchisee's qualifications and operational history, differences in regional or local markets and other factors. If we allow these deviations, we do not have to grant you a similar variance or other special accommodation.

We may designate the minimum and/or maximum prices that you may charge, as permitted by applicable law. In doing so, we do not guarantee that you will earn any level of sales or profitability by following our recommended or required pricing.

You are restricted by the Franchise Agreement, the Manual and any other practice or custom with respect to the goods or services that you may offer, which must be approved by us. **You are not restricted as to the customers whom you may solicit or service, except as described in Item 12.**

#### **Item 17**

##### **RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

##### **THE FRANCHISE RELATIONSHIP**

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

Provision	Section in Franchise Agreement	Summary
a. Length of the franchise term	4.1	10 years
b. Renewal or extension of the term	4.2	You may renew for two additional terms of five years each, subject to (c) below.
c. Requirements for franchisee to renew or extend	4.2	<p>You may renew the Franchise Agreement if you: have the right to maintain possession of the approved location or an approved substitute location for the term of the renewal; have remodeled your Vanguard Key Clubs as necessary to comply with our then-current System standards; have satisfied all monetary obligations owed to us and our Affiliate; have paid a renewal fee; are not currently in default of any provision of the Franchise Agreement or any other agreement between you and us and have not been in default more than twice during the term of the Franchise Agreement; have given timely written notice of your intent to renew; sign a current Franchise Agreement; comply with current qualifications and training requirements; and sign a general release. We have the right to modify the boundaries of your Designated Territory on renewal.</p> <p>You may be asked to sign a contract with materially different terms and conditions than your original contract, but the fees on renewal will not be greater than the fees that we then impose on similarly situated renewing franchisees.</p>
d. Termination by franchisee	Not applicable	You may terminate the Franchise Agreement under any grounds available to you by law.
e. Termination by franchisor without cause	Not applicable	
f. Termination by franchisor with cause	16	We may terminate the Franchise Agreement only if you default and do not cure the default (if the default is curable).
g. “Cause” defined – curable defaults	16.2	Curable defaults include failure to comply with mandatory specifications and failure to make payments when due

h. “Cause” defined – non-curable defaults	16.1	<p>Non-curable defaults include: you fail to establish and equip the Franchised Business; fail to satisfactorily complete training; make a material misrepresentation or omission in the application for the franchise; are convicted of or plead no contest to a felony or other crime or offense likely to affect the reputation of either party or the Franchised Business; use the Manual, our trade secrets or confidential information in an unauthorized manner; abandon the Franchised Business for five consecutive days; surrender or transfer of control for Franchised Business in an unauthorized manner; fail to maintain the Franchised Business under the supervision of an Operating Owner, or General manager in the case of a multi-Unit operation; understate any amounts due by 2% or more; are adjudicated bankrupt, insolvent or make a general assignment for the benefit of creditors; misuse or make unauthorized use for the Marks; fail on two or more occasions within any 12 months to submit reports or records or to pay any fees due us or any affiliate; violate any health, safety or other laws or conduct the Franchised Business in a manner creating a health or safety hazard; fail to comply with any applicable law or regulation (including anti-terrorism laws) within 10 days of receiving notice of that failure; repeatedly breach the Franchise Agreement or fail to comply with our mandatory specifications; default under any other agreement between you and us.</p>
i. Franchisee’s obligations on termination/ non-renewal	17.1	<p>On termination or non-renewal of the Franchise Agreement, you must: stop operating the Franchised Business; stop using any trade secrets, confidential information, the System and the Marks; if requested, assign your interest in the approved location to us; cancel or assign to us any assumed names; pay all sums owed to us including damages and costs incurred in enforcing the termination provisions of the Franchise Agreement; return the Manual, trade secrets and all other confidential information; assign your telephone and facsimile numbers and telephone listings to us; assign website and internet listings to us; and comply with the covenants not to compete and any other surviving provisions of the Franchise Agreement.</p>
j. Assignment of contract by franchisor	18.1	<p>There are no restrictions on our right to assign our interest in the Franchise Agreement.</p>

k. “Transfer” by franchisee – defined	18.2	“Transfer” includes transfer of ownership in the franchise, the Franchise Agreement, the approved location, assets of the Franchised Business or the franchisee entity.
l. Franchisor approval of transfer by franchisee	18.2	You may not transfer your interest in any of the items listed in (k) above without our prior written consent.
m. Conditions for franchisor approval of transfer	18.2	We will consent to a transfer if: the proposed transfer is at least one year after the effective date of the Franchise Agreement; we have not exercised our right of first refusal; all obligations owed to us and our Affiliate are paid; you and the transferee have signed a general release; the prospective transferee meets our business and financial standards; the transferee and all persons owning any interest in the transferee sign the existing or then-current Franchise Agreement; you provide us with a copy of all contracts and agreements related to the transfer; you or the transferee pay a transfer fee; the transferee or the owners of transferee have agreed to be personally bound by all provisions of the Franchise Agreement; you have agreed to guarantee performance by the transferee, if requested by us; the transferee has obtained all necessary consents and approvals of third parties; you or all of your equity owners have signed the Confidentiality and Non-Competition Agreement; and the transferee has agreed that its General Manager, whether that be the Franchisee, Operating Owner or a hired GM, will complete the initial training program before assuming management of the Franchised Business.
n. Franchisor’s right of first refusal to acquire franchisee’s business	19	We may match an offer for your Franchised Business or an ownership interest you propose to sell.
o. Franchisor’s option to purchase franchisee’s business	17.5	Upon expiration or termination of the Franchise Agreement, we have the right to purchase all or a portion of the assets of the Franchised Business for book value.
p. Death or disability of franchisee	18.6	If you (or one of your owners) die or become incapacitated, your representative must transfer, subject to the terms of the Franchise Agreement your interest in the Franchised Business within 180 days of death or incapacity or we may terminate the Franchise Agreement.

q. Non-competition covenants during the term of the franchise	7.3	You, your owners (and members of their families and household) and your officers, directors, executives managers or professional staff are prohibited from: attempting to divert any business or customer of the Franchised Business to a Competitive Business or causing injury or prejudice to the Marks or the System; owning or working for a Competitive Business. A Competitive Business is any business offering the same or substantially similar products and services as those offered by a Vanguard Key Clubs.
r. Non-competition covenants after the franchise is terminated or expires	17.2	For two years after the termination or expiration of the Franchise Agreement, you, your owners (and members of their families and households) and your officers, directors, executives managers or professional staff are prohibited from owning or working for a Competitive Business operation within 25 miles of the Designated Territory or within 25 miles of any other Franchised Business in the System; or soliciting or influencing any of our employees or business associates to compete with us or terminate their relationship with us.
s. Modification of the agreement	22.6	The Franchise Agreement can be modified only by written agreement between you and us. We may modify the Manual without your consent if the modification does not materially alter your fundamental rights.
t. Integration/merger clause	22.6	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to state law.) Any representations or promises outside of the Disclosure Document and Franchise Agreement may not be enforceable.
u. Dispute resolution by arbitration or mediation	23	Arbitration in New Hampshire is required. Prior to filing most proceedings, each party has the right to demand non-binding mediation.
v. Choice of forum	23	You and your Owners must, and we may, bring claims in federal or state courts located in the state where our principal place of business is located (currently, New Hampshire), without regard to choice of law provisions. (Subject to applicable state law)
w. Choice of law	22.16	New Hampshire law applies, without regard to conflict-of-laws rules. (Subject to applicable state law)

## THE MULTI-UNIT DEVELOPER RELATIONSHIP

Provision	Section in Multi-Unit Development Agreement	Summary
a. Length of the franchise term	1	Term of minimum development schedule
b. Renewal or extension of the term	1	Not renewable, but you may negotiate a new agreement
c. Requirements for multi-unit developer to renew or extend	Not applicable	
d. Termination by multi-unit developer	Not applicable	You may seek to terminate your Multi-Unit Development Agreement on any ground permitted by law
e. Termination by franchisor without cause	Not applicable	
f. Termination by franchisor with cause	4	We may terminate the Multi-Unit Development Agreement if you are in breach of the Agreement and do not cure the breach (if the breach is curable)
g. “Cause” defined – curable defaults	4	You fail to comply with any provision of the Multi-Unit Development Agreement that is not considered incurable
h. “Cause” defined – non-curable defaults	4	Unauthorized transfer; a general partnership interest is terminated for any reason (if you are a limited partnership); you or your owners make a material misrepresentation to us in obtaining the development rights; you or your owners are convicted of a felony or other crime that may adversely affect the goodwill associated with the Marks; you fail on three separate occasions in any 12 month period to comply with the agreement; we have delivered to you a notice of termination of any Franchise Agreement between you and us
i. Multi-unit developer’s obligations on termination/ non-renewal	5	Lose development rights

j. Assignment of contract by franchisor	6	No restriction on our right to assign
k. "Transfer" by multi-unit developer – defined	6	Includes a transfer or sale of an ownership interest in you or sale of the development rights
l. Franchisor approval of transfer by multi-unit developer	6	Any proposed transfer must be approved by us
m. Conditions for franchisor approval of transfer	6	All of your obligations under the Multi-Unit Development Agreement and all Franchise Agreements are assumed by the transferee; you are not in default; the transferee qualifies; transferee signs new agreements; you sign general release; transfer fee paid
n. Franchisor's right of first refusal to acquire multi-unit developer's business	Not applicable	
o. Franchisor's option to purchase multi-unit developer's business	Not applicable	
p. Death or disability of multi-unit developer	6	Interest must be transferred to an approved party within 12 months

q. Non-competition covenants during the term of the franchise	Not applicable	You and your Owners may not: own, manage, engage in, be employed by, advise, make loans to, or have any other interest in (i) any business that offers for sale Vanguard Key Clubs or related services or products, (ii) any Vanguard Key Clubs business or similar facility or business, or (iii) any entity that grants franchises or licenses for any of these types of businesses (a “Competitive Business”) in the United States; divert or attempt to divert any business or customer or potential business or customer of the Company to any Competitive Business, by direct or indirect inducement or otherwise; perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks and the System; use any vendor relationship established through your association with us for any purpose other than to purchase products or equipment for use or retail sale in the Company; or directly or indirectly solicit for employment any person who at any time within the immediate past 12 months has been employed by us, or our affiliates, or by any of our franchisees.
r. Non-competition covenants after the franchise is terminated or expires	5	No interest in a competing business for two years within 25 miles of any Franchised Business in the System.
s. Modification of the agreement	7	Must be in writing by both parties
t. Integration/merger clause	7	Only the terms of the Multi-Unit Development Agreement and other related written agreements are binding (subject to state law.) Any representations or promises outside of the Disclosure Document and Multi-Unit Development Agreement may not be enforceable
u. Dispute resolution by arbitration or mediation	8	Prior to filing most proceedings, each party has the right to demand non-binding mediation.
v. Choice of forum	8	You and your Owners must, and we may, bring claims in federal or state courts located in the state where our principal place of business is located (currently, New Hampshire), without regard to choice of law provisions. (Subject to applicable state law)

w. Choice of law	8	New Hampshire law applies, without regard to conflict-of-laws rules. (Subject to applicable state law)
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**Item 18**

**PUBLIC FIGURES**

We do not presently use any public figures to promote our franchise.

**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 Craig J. Annis at 200 Kensington Rd. Hampton Falls, NH 03844, and the appropriate state regulatory agencies.

**Item 20**  
**OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 1**  
**Systemwide Outlet Summary**  
**For Fiscal years ended 2024, 2023, 2022**

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	2022	0	0	0
	2023	0	0	0
	2024	0	0	0
*Company- Owned	2022	6	6	0
	2023	6	6	0
	2024	6	6	0
Total Outlets	2022	6	6	0
	2023	6	6	0
	2024	6	6	0

\* The Company-Owned Businesses in the above chart is owned and operated by our Affiliate.

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)**  
**For Fiscal years ended 2024, 2023, 2022**

Column 1 State	Column 2 Year	Column 3 Number of Transfers
None	2022	0
	2023	0
	2024	0
Total	2022	0
	2023	0
	2024	0

**Table No. 3**  
**Status of Franchised Outlets**  
**For Fiscal years ended 2024, 2023, 2022**

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Termin- ations	Col 6 Non- Renewals	Col 7 Reacquired by Franchisor	Col 8 Ceased Operations – Other Reasons	Col 9 Outlets at End of the Year
Maine	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
	2024	0	0	0	0	0	0	0
Massachusetts	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
	2024	0	0	0	0	0	0	0
New Hampshire	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
	2024	0	0	0	0	0	0	0
Total	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
	2024	0	0	0	0	0	0	0

**Table No. 4**  
**Status of Company-Owned Outlets**  
**For Fiscal years ended 2024, 2023, 2022**

Col 1 State	Col 2 Year	Col 3 Outlets at Start of Year	Col 4 Outlets Opened	Col 5 Outlets Reacquired from Franchisee	Col 6 Outlets Closed	Col 7 Outlets Sold to Franchisee	Col 8 Outlets at End of the Year
Maine	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
	2024	1	0	0	0	0	1
Massachusetts	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
	2024	1	0	0	0	0	1
New Hampshire	2022	4	0	0	0	0	4
	2023	4	0	0	0	0	4
	2024	4	0	0	0	0	4
Total	2022	6	0	0	0	0	6
	2023	6	0	0	0	0	6
	2024	6	0	0	0	0	6

\* The Company-Owned Outlets in the above chart is owned and operated by our Affiliate.

**Table No. 5**  
**Projected Openings as of December 31, 2024**

Column 1 State	Column 2 Franchise Agreements Signed but Outlet Not Opened	Column 3 Projected New Franchised Outlets in the Next Fiscal Year	Column 4 Projected New Company-Owned Outlets in the Next Fiscal Year
All States	0	0	0
Total	0	0	0

A list of the names of all franchisees and the addresses and telephone numbers of their businesses is provided in Exhibit D to this Disclosure Document.

The name, city, state and current business telephone number (or if unknown, the last known home telephone number) of every franchisee who had a business terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the applicable agreement during the most recently completed fiscal year or who has not communicated with us within 10 weeks of the issuance date of this disclosure document will be listed on Exhibit E to this Disclosure Document when applicable. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

During the last three fiscal years, we have not had any franchisees sign confidentiality provisions that would restrict their ability to speak openly about their experience with Key Club Development Corporation.

There are no trademark-specific organizations formed by our franchisees that are associated with Key Club Development Corporation.

## **Item 21**

### **FINANCIAL STATEMENTS**

Attached to this Disclosure Document as Exhibit F is our audited financial statements as of December 31, 2024, December 31, 2023, and December 31, 2022.

Our fiscal year end is December 31<sup>st</sup>.

**Item 22**  
**CONTRACTS**

The following agreements are attached as exhibits to this Disclosure Document:

Exhibit B	Franchise Agreement (with exhibits)
Exhibit C	Multi-Unit Development Agreement (with exhibits)
Exhibit I	Form of General Release
Exhibit J	Nondisclosure And Non-Compete Agreement

**Item 23**  
**RECEIPTS**

Two copies of an acknowledgment of your receipt of this Disclosure Document appear at the end of the Disclosure Document. Please return one signed copy to us and retain the other for your records.

**Exhibit A to the Key Club Development Corporation Franchise Disclosure Document**

**LIST OF STATE ADMINISTRATORS/AGENTS FOR SERVICE OF PROCESS**

Listed here are the names, addresses and telephone numbers of the state agencies having responsibility for franchising disclosure/registration laws and for service of process. We may not yet be registered to sell franchises in any or all of these states.

If a state is not listed, Key Club Development Corporation has not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed below in which Key Club Development Corporation has appointed an agent for service of process.

There may also be additional agents appointed in some of the states listed.

<b><u>CALIFORNIA</u></b>	<b><u>CONNECTICUT</u></b>
California Business Oversight Commissioner Department of Business Oversight 320 West 4th Street, Suite 750 Los Angeles, CA 90013 (213) 576-7500 Toll Free (866) 275-2677	State of Connecticut Department of Banking Securities & Business Investments Division 260 Constitution Plaza Hartford, CT 06103-1800 (860) 240-8230
1515 K Street, Suite 200 Sacramento, CA 95814 (916) 445-7205	Agent: Banking Commissioner
1350 Front Street San Diego, CA 92101 (619) 525-4233	
One Sansome Street, Suite 600 San Francisco, CA 94104 (415) 972-8559	

<p><b><u>HAWAII</u></b></p> <p>(state administrator)</p> <p>Business Registration Division Department of Commerce and Consumer Affairs 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722</p> <p>(agent for service of process)</p> <p>Commissioner of Securities State of Hawaii 335 Merchant Street Honolulu, Hawaii 96813 (808) 586-2722</p>	<p><b><u>ILLINOIS</u></b></p> <p>Franchise Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465</p>
<p><b><u>INDIANA</u></b></p> <p>(state administrator)</p> <p>Indiana Secretary of State Securities Division, E-111 302 Washington Street Indianapolis, Indiana 46204 (317) 232-6681</p> <p>(agent for service of process)</p> <p>Indiana Secretary of State 201 State House 200 West Washington Street Indianapolis, Indiana 46204 (317) 232-6531</p>	<p><b><u>MARYLAND</u></b></p> <p>(state administrator)</p> <p>Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2021 (410) 576-6360</p> <p>(for service of process)</p> <p>Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2021 (410) 576-6360</p>

<p><b><u>MICHIGAN</u></b>            (state administrator)</p> <p>Consumer Protection Division            Antitrust and Franchise Unit            Michigan Department of Attorney General            525 W. Ottawa Street, 6<sup>th</sup> Floor            Lansing, Michigan 48933            (517) 373-7117</p> <p>(for service of process)</p> <p>Corporations Division            Bureau of Commercial Services            Department of Labor and Economic Growth            P.O. Box 30054            Lansing, Michigan 48909</p>	<p><b><u>MINNESOTA</u></b>            (state administrator)</p> <p>Minnesota Department of Commerce            85 7<sup>th</sup> Place East, Suite 500            St. Paul, Minnesota 55101-2198            (651) 296-6328</p> <p>(for service of process)</p> <p>Minnesota Commissioner of Commerce</p>
<p><b><u>NEW YORK</u></b>            (state administrator)</p> <p>NYS Department of Law            Investor Protection Bureau            28 Liberty Street, 21<sup>st</sup> Floor            New York, New York 10005            (212) 416-8222</p> <p>(for service of process)</p> <p>Secretary of State            99 Washington Avenue            Albany, New York 12231            (518) 474-4750</p>	<p><b><u>NORTH DAKOTA</u></b></p> <p>North Dakota Securities Department            State Capitol, Fifth Floor, Dept. 414            600 East Boulevard Avenue            Bismarck, North Dakota 58505            (701) 328-4712</p> <p>(for service of process)</p> <p>North Dakota Securities Commissioner</p>
<p><b><u>OREGON</u></b></p> <p>Department of Insurance and Finance            Corporate Securities Section            Labor and Industries Building            Salem, Oregon 97310            (503) 378-4387</p>	<p><b><u>RHODE ISLAND</u></b></p> <p>Securities Division            Department of Business Regulation,            Bldg 69, First Floor            John O. Pastore Center            1511 Pontiac Avenue            Cranston, Rhode Island 02920            (401) 462-9582</p>

<p><b><u>SOUTH DAKOTA</u></b></p> <p>Department of Labor &amp; Regulation  Division of Securities  445 East Capitol Avenue  Pierre, South Dakota 57501  (605) 773-4823</p>	<p><b><u>VIRGINIA</u></b></p> <p>State Corporation Commission  Division of Securities and Retail Franchising  1300 East Main Street, 9th Floor  Richmond, Virginia 23219  (804) 371-9051</p> <p>(for service of process)  Clerk of the State Corporation Commission  1300 East Main Street, 1<sup>st</sup> Floor  Richmond, Virginia 23219  (804) 371-9733</p>
<p><b><u>WASHINGTON</u></b>  (state administrator)</p> <p>Department of Financial Institutions  Securities Division  P.O. Box 9033  Olympia, Washington 98507-9033  (360) 902-8760</p> <p>(for service of process)  Director, Department of Financial Institutions  Securities Division  150 Israel Road S.W.  Tumwater, Washington 98501</p>	<p><b><u>WISCONSIN</u></b>  (state administrator)</p> <p>Division of Securities  Department of Financial Institutions  345 W. Washington Ave., 4<sup>th</sup> Floor  Madison, Wisconsin 53703  (608) 266-1064</p> <p>(for service of process)  Administrator, Division of Securities  Department of Financial Institutions  345 W. Washington Ave., 4<sup>th</sup> Floor  Madison, Wisconsin 53703</p>

**Exhibit B to the Key Club Development Corporation Disclosure Document**

**FRANCHISE AGREEMENT**

**Exhibit C to the Key Club Development Corporation Disclosure Document**

**MULTI-UNIT DEVELOPMENT AGREEMENT**

**Exhibit D to the Key Club Development Corporation Disclosure Document**

**LIST OF FRANCHISEES AND MULTI-UNIT DEVELOPERS**

None as of the date of the issuance of this document

**Exhibit E to the Key Club Development Corporation Disclosure Document**

**LIST OF FRANCHISEES AND MULTI-UNIT DEVELOPERS  
WHO HAVE LEFT THE SYSTEM**

None as of the date of the issuance of this document

**Exhibit F to the Key Club Development Corporation Disclosure Document**

**FINANCIAL STATEMENTS**



**Citrin Cooperman & Company, LLP**  
Certified Public Accountants

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New York, NY 10020  
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citrincooperman.com

#### **CONSENT OF INDEPENDENT AUDITORS**

To the Shareholder  
Key Club Development Corporation

Citrin Cooperman & Company, LLP consents to the inclusion in the Franchise Disclosure Document to be issued by Key Club Development Corporation (the "Franchisor") dated April 29, 2024, of our report dated April 29, 2024, on our audits of the financial statements of Franchisor as of December 31, 2023 and 2022, and for each of the years in the three-year period ended December 31, 2023.

*Citrin Cooperman & Company, LLP*  
New York, New York  
April 29, 2024

"Citrin Cooperman" is the brand under which Citrin Cooperman & Company, LLP, a licensed independent CPA firm, and Citrin Cooperman Advisors LLC serve clients' business needs. The two firms operate as separate legal entities in an alternative practice structure. The entities of Citrin Cooperman & Company, LLP and Citrin Cooperman Advisors LLC are independent member firms of the Moore North America, Inc. (MNA) Association, which is itself a regional member of Moore Global Network Limited (MGNL). All the firms associated with MNA are independently owned and managed entities. Their membership in, or association with, MNA should not be construed as constituting or implying any partnership between them.

**KEY CLUB DEVELOPMENT CORPORATION  
FINANCIAL STATEMENTS  
YEARS ENDED DECEMBER 31, 2023, 2022 AND 2021**

**KEY CLUB DEVELOPMENT CORPORATION  
FOR THE YEARS ENDED DECEMBER 31, 2023, 2022 AND 2021**

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## INDEPENDENT AUDITOR'S REPORT

To the Management  
Key Club Development Corporation

### Opinion

We have audited the accompanying financial statements of Key Club Development Corporation, which comprise the balance sheets as of December 31, 2023 and 2022, and the related statements of operations and retained earnings, and cash flow for each of the years in the three-year period ended December 31, 2023, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Key Club Development Corporation as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2023, in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Key Club Development Corporation and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Key Club Development Corporation's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

"Citrin Cooperman" is the brand under which Citrin Cooperman & Company, LLP, a licensed independent CPA firm, and Citrin Cooperman Advisors LLC serve clients' business needs. The two firms operate as separate legal entities in an alternative practice structure. The entities of Citrin Cooperman & Company, LLP and Citrin Cooperman Advisors LLC are independent member firms of the Moore North America, Inc. (MNA) Association, which is itself a regional member of Moore Global Network Limited (MGNL). All the firms associated with MNA are independently owned and managed entities. Their membership in, or association with, MNA should not be construed as constituting or implying any partnership between them.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Key Club Development Corporation's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Key Club Development Corporation's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*Citrin Cooperman & Company, LLP*  
New York, New York  
April 29, 2024

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**KEY CLUB DEVELOPMENT CORPORATION**  
**BALANCE SHEETS**  
**DECEMBER 31, 2023 AND 2022**

	<u>2023</u>	<u>2022</u>
<b><u>ASSETS</u></b>		
Cash	\$ 30,750	\$ 750
<b>TOTAL ASSETS</b>	<b>\$ 30,750</b>	<b>\$ 750</b>
<b><u>LIABILITIES AND SHAREHOLDER'S EQUITY</u></b>		
Liabilities		
Shareholder's equity:		
Common stock	100	100
Additional paid-in capital	30,650	650
Total shareholder's equity	30,750	750
<b>TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY</b>	<b>\$ 30,750</b>	<b>\$ 750</b>

See accompanying notes to financial statements.

**KEY CLUB DEVELOPMENT CORPORATION**  
**STATEMENTS OF OPERATIONS AND RETAINED EARNINGS**  
**FOR THE YEARS ENDED DECEMBER 31, 2023, 2022 AND 2021**

	<u>2023</u>	<u>2022</u>	<u>2021</u>
Revenues	\$ -	\$ -	\$ -
Selling, general and administrative expenses	_____	_____	_____
Net income	-	-	-
Retained earnings - beginning	_____	_____	_____
<b>RETAINED EARNINGS - ENDING</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

See accompanying notes to financial statements.

**KEY CLUB DEVELOPMENT CORPORATION**  
**STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31, 2023, 2022 AND 2021**

	<u>2023</u>	<u>2022</u>	<u>2021</u>
<b>Operating activities:</b>			
Net income	\$ _____ -	\$ _____ -	\$ _____ -
Net cash provided by (used in) operating activities	- - -	- - -	- - -
<b>Net cash provided by financing activities:</b>			
Contributions	30,000	- - -	- - -
Net increase in cash	30,000	- - -	- - -
Cash - beginning	750	750	750
<b>CASH - ENDING</b>	<b>\$ 30,750</b>	<b>\$ 750</b>	<b>\$ 750</b>

See accompanying notes to financial statements.

**KEY CLUB DEVELOPMENT CORPORATION**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023, 2022 AND 2021**

**NOTE 1. ORGANIZATION AND NATURE OF OPERATIONS**

Key Club Development Corporation (the "Company") is a New Hampshire corporation formed on October 25, 2017. The Company's primary business is to sell franchises pursuant to a non-exclusive license agreement executed in November 2017, between the Company and CJA Corporation (the "Licensor"), an entity related to the Company by common ownership and control. Pursuant to the Company's standard franchise agreement, franchisees will operate under the "Vanguard Key Clubs" name and system that will offer the right to operate exercise clubs located in the United States of America. The Company has not had operations from inception through December 31, 2023 and through the date these financial statements were available to be issued.

**NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of accounting**

The accompanying financial statements has been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

**Use of estimates**

The preparation of financial statement in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

**Revenue recognition**

The Company expects that it will derive substantially all its revenue from franchise agreements related to franchise fee revenue, royalty revenue, transfer fees, local advertising fees, and brand development fund revenue. No such franchise agreements have been executed as of the date this financial statement was available to be issued.

**Franchise fees, royalties and other franchise related fees**

Contract consideration from franchisees is expected to consist primarily of initial or renewal franchise fees, multi-unit agreement fees ("MUAs"), sales-based royalties, sales-based marketing and promotional fund fees and transfer fees payable by a franchisee for the transfer of their franchise unit to another franchisee. The Company expects to also enter into MUAs which grant a franchisee the right to develop three or more franchise units. The Company intends to collect an up-front fee for the grant of such rights. The initial franchise fees are nonrefundable and collectible when the underlying franchise agreement or MUA is signed by the franchisee. Sales-based royalties and sales-based marketing fund fees are payable on a monthly basis. Renewal and transfer fees are due from franchisees when an existing franchisee renews the franchise agreement for an additional term or when a transfer to a third party occurs, respectively.

KEY CLUB DEVELOPMENT CORPORATION  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2023, 2022 AND 2021

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Revenue recognition (continued)

*Franchise fees, royalties and other franchise related fees (continued)*

The Company's primary performance obligation under the franchise agreement includes granting certain rights to the Company's intellectual property in addition to a variety of activities relating to opening a franchise unit. Those services include training and other such activities commonly referred to collectively as "pre-opening activities." The Company will determine if a certain portion of those pre-opening activities provided is not brand specific and provides the franchisee with relevant general business information that is separate from the operation of a Company-branded franchise unit. The portion of pre-opening activities that is not brand specific will be deemed to be distinct as it provides a benefit to the franchisee and is not highly interrelated to the use of the Company's intellectual property, and will therefore be accounted for as a separate performance obligation. All other pre-opening activities are expected to be highly interrelated to the use of the Company's intellectual property and will therefore be accounted for as a single performance obligation, which is satisfied by granting certain rights to use the Company's intellectual property over the term of each franchise agreement.

The Company will estimate the stand-alone selling price of pre-opening activities using an adjusted market assessment approach. The Company will first allocate the initial franchise fees and the fixed consideration under the franchise agreement to the standalone selling price of the pre-opening activities and the residual, if any, to the right to access the Company's intellectual property. Consideration allocated to pre-opening activities that are not brand specific will be recognized when those performance obligations are satisfied.

Initial and renewal franchise fees allocated to the right to use the Company's intellectual property will be recognized as revenue on a straight-line basis over the term of the respective franchise agreement. MUAs generally consist of an obligation to grant the right to open three or more units. These development rights are not distinct from franchise agreements; therefore, up-front fees paid by franchisees for development rights are deferred and apportioned to each franchise agreement signed by the franchisee. The pro-rata amount apportioned to each franchise agreement will be recognized as revenue in the same manner as the initial and renewal franchise fees.

Royalties will be earned as a percentage of franchisee gross sales ("sales-based royalties") over the term of the franchise agreement, as defined in each respective franchise agreement. Franchise royalties, which represent sales-based royalties that are related entirely to the use of the Company's intellectual property will be recognized as franchisee sales occur and the royalty is deemed collectible.

KEY CLUB DEVELOPMENT CORPORATION  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2023, 2022 AND 2021

**NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

Revenue recognition (continued)

*Marketing and promotional fund*

The Company may maintain a marketing and promotional fund which will be established to collect and administer funds contributed for use in marketing and promotional programs for franchise units. Marketing and promotional fund fees will be collected from franchisees based on a percentage of franchisee gross sales. The Company has determined that it acts as a principal in the collection and administration of the marketing and promotional fund and therefore will recognize the revenues and expenses related to the marketing and promotional fund on a gross basis. The Company has determined that the right to access its intellectual property and administration of the brand fund are highly interrelated and therefore will be accounted for as a single performance obligation. As a result, revenues from the marketing and promotional fund represent sales-based royalties related to the right to access the Company's intellectual property, which will be recognized as franchisee sales occur.

If marketing and promotional fund fees exceed the related marketing and promotional fund expenses in a reporting period, advertising costs will be accrued up to the amount of marketing and promotional fund revenues recognized.

*Other revenues*

The Company will recognize revenue from other fees and other services provided to the franchisees as a single performance obligation, when the services are rendered.

*Incremental costs of obtaining a contract*

The Company will capitalize direct and incremental costs, principally consisting of commissions, associated with the sale of franchises and amortize them over the term of the franchise agreement and MUAs. In the case of costs paid related to MUAs for which no signed franchise agreement has been received, these costs are deferred until the signed franchise agreement is received.

Variable interest entities

In October 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2018-17, *Consolidation (Topic 810): Targeted Improvements to Related Party Guidance for Variable Interest Entities*, which no longer requires nonpublic companies to apply variable interest entity guidance to certain common control arrangements. The Company has elected to adopt and apply the alternative accounting and disclosures for certain variable interest entities provided to private companies pursuant to U.S. GAAP. The Company has determined that related party, as described in Note 5, meets the conditions under this standard, and accordingly, is not required to include the accounts of related parties in the Company's financial statements.

**KEY CLUB DEVELOPMENT CORPORATION**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023, 2022 AND 2021**

**NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

Accounts receivable

Accounts receivable will be stated at the amount the Company expects to collect. The Company will maintain allowances for doubtful accounts for estimated losses resulting from the inability of some of its franchisees to make required payments. The Company will assess collectibility by reviewing accounts receivable and its contract assets on a collective basis where similar risk characteristics exist. In determining the amount of the allowance for doubtful accounts, management will consider historical collectibility and makes judgments about the creditworthiness of the pool of franchisees based on credit evaluations. Current market conditions and reasonable and supportable forecasts of future economic conditions will be considered in adjusting the historical losses to determine the appropriate allowance for doubtful accounts. Uncollectible accounts will be written off when all collection efforts will be exhausted.

Subsequent events

In accordance with FASB Accounting Standards Codification 855, *Subsequent Events*, the Company has evaluated subsequent events through April 29, 2024, the date on which these financial statements were available to be issued. There were no material subsequent events that required recognition or disclosure in these financial statements.

**NOTE 3. LIQUIDITY**

Since inception, the Company's operations have been funded through contributions from the Company's sole shareholder. All of the Company's operating expenses since its inception have been absorbed and paid for by the sole shareholder, who does not intend to be reimbursed. The Company is incurring expenditures in the near term to benefit the future as it looks to sell franchises. As such, certain expenses could be reduced or eliminated in order to improve operating cash flows as needed in the future. As of the date these financial statements were available to be issued, the Company continues to focus on selling franchises. The Company believes that it will meet its funding requirements for one year from the date these financial statements were available to be issued. If necessary, management of the Company has been advised that the sole shareholder will continue to provide any financial assistance needed by the Company should its cash flows from operations combined with its available cash balances not be sufficient to meet its working capital needs. Management believes that the sole shareholder has the intent and ability to provide the funds needed, if any, to continue to fund the operations of the Company for at least one year from the date these financial statements were available to be issued or until such time that the Company generates meaningful revenues and attain profitable operations.

**NOTE 4. CONCENTRATION OF CREDIT RISK**

The Company places its cash, which may at times be in excess of Federal Deposit Insurance Corporation insurance limits, with a major financial institution. Management believes that this policy will limit the Company's exposure to credit risk.

**KEY CLUB DEVELOPMENT CORPORATION  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2023, 2022 AND 2021**

**NOTE 5. RELATED-PARTY TRANSACTIONS**

**License agreement**

On November 7, 2017, the Company entered into a one-year non-exclusive license agreement with the Licensor for the use of the registered name "Vanguard Key Clubs" (the "license agreement"). The agreement automatically renews for additional one-year periods unless one party gives the other party notice of termination. Pursuant to the license agreement, the Company acquired the right to sell "Vanguard Key Clubs" franchises, and the right to earn franchise fees, royalties and other fees from franchisees. The Licensor will not license the trademarks and/or confidential information to any third parties for the purpose of operating a competing franchise system. There were no license fee expenses for the year ended December 31, 2023, 2022 and 2021.

**Exhibit G to the Key Club Development Corporation Disclosure Document**

**BRAND STANDARDS MANUAL TABLE OF CONTENTS**

<b>Chapter Title</b>	<b>Number of Pages</b>
Preface and Introduction	10
Required Offerings	2
Customer Service and Policies	6
Operations	5
Safety and Security	6
Financial Management	5
Marketing	21
<b>Total Pages</b>	<b>55</b>

**Exhibit H to the Key Club Development Corporation Disclosure Document**

**MULTI-STATE ADDENDUM**

**CALIFORNIA APPENDIX**

1. California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination or non-renewal of a franchise. If the Franchise Agreement or Multi-Unit Development Agreement contains provisions that are inconsistent with the law, the law will control.
2. The Franchise Agreement and Multi-Unit Development Agreement provide for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 *et seq.*).
3. The Franchise Agreement and Multi-Unit Development Agreement contain covenants not to compete which extend beyond the termination of the agreements. These provisions may not be enforceable under California law.
4. Section 31125 of the California Corporation Code requires the franchisor to provide you with a disclosure document before asking you to agree to a material modification of an existing franchise.
5. Neither the franchisor, any person or franchise broker in Item 2 of the Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 79a *et seq.*, suspending or expelling such persons from membership in such association or exchange.
6. The Franchise Agreement and Multi-Unit Development Agreement require binding arbitration. The arbitration will occur in New Hampshire with the costs being borne equally by the parties. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of New Hampshire and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.
7. The Franchise Agreement and Multi-Unit Development Agreement require application of the laws of New Hampshire. This provision may not be enforceable under California law.
8. You must sign a general release if you renew or transfer your franchise. California Corporation Code 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code 31000 through 31516). Business and Professions Code 20010

voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code 20000 through 20043).

9. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

10. The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

11. OUR WEBSITE, [WWW.VANGUARDKEYCLUBS.COM](http://WWW.VANGUARDKEYCLUBS.COM), HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT at [WWW.DBO.CA.GOV](http://WWW.DBO.CA.GOV).

**ADDENDUM REQUIRED BY THE STATE OF ILLINOIS**

1. The following item must be included within the Disclosure Document and shall replace the language that is in the Disclosure Document itself:

Section 4, Jurisdiction and Venue, of the Illinois Franchise Disclosure Act of 1987 (“Act”) states that “any provision in the franchise agreement which designates jurisdiction or venue in a forum outside of this State is void with respect to any cause of action which otherwise is enforceable in this State, provided that a franchise agreement may provide for arbitration in a forum outside of this State.” This Section of the Act replaces any contradictory language contained in the Franchise Agreement and Multi-Unit Development Agreement.

2. Illinois law governs the Franchise Agreement and Multi-Unit Development Agreement.

3. Any releases and/or waivers that we request you to sign must conform with Section 41, Waivers Void, of the Illinois Franchise Disclosure Act of 1987 which states that “any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void. This Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding potential or actual lawsuit filed under any of the provisions of this Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.”

4. Under Illinois law at 200.608, Jurisdiction and Venue, a franchise agreement may not provide for a choice of law of any state other than Illinois. The Summary column of Items 17(v) and (w) of the Disclosure Document are amended to state “Illinois law”. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended accordingly.

5. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to comply with Section 27, Periods of Limitation, of the Act to allow any and all claims and actions arising out of or relating to these Agreements, the relationship of Franchisor and Franchisee and/or Area Developer, or your operation of the Franchise brought by you against us shall be commenced within 3 years from the occurrence of the facts giving rise to such claim or action, within 1 year after you become aware of the facts or circumstances indicating you may have a claim for relief, or 90 days after delivery to you of a written notice disclosing the violation, or such claim or action will be barred.

6. Item 17(g) of the Disclosure Document, Article 16 of the Franchise Agreement and Article 4 of the Multi-Unit Development Agreement are amended by changing the time frame to cure defaults, excluding defaults for safety or security issues, to 30 days.

**ADDENDUM REQUIRED BY THE STATE OF INDIANA**

1. To be added to Item 3 of the Disclosure Document, is the following statement:

There are presently no arbitration proceedings to which the Franchisor is a party.

2. Item 17 of the Disclosure Document is amended to reflect the requirement under Indiana Code 23-2-2.7-1 (9), which states that any post term non-compete covenant must not extend beyond the franchisee's exclusive territory.

3. Item 17 is amended to state that this is subject to Indiana Code 23-2-2.7-1 (10).

4. Under Indiana Code 23-2-2.7-1 (10), jurisdiction and venue must be in Indiana if the franchisee so requests. This amends Articles 22 and 23 of the Franchise Agreement and Articles 7 and 8 of the Multi-Unit Development Agreement.

5. Under Indiana Code 23-2-2.7-1 (10), franchisee may not agree to waive any claims or rights.

## **ADDENDUM REQUIRED BY THE STATE OF MARYLAND**

This will serve as the State Addendum for the State of Maryland for Key Club Development Corporation Franchise Disclosure Document and for its Franchise and Multi-Unit Development Agreements. The amendments to the Franchise and Multi-Unit Development Agreements included in this addendum have been agreed to by the parties.

1. Item 17 of the Disclosure Document is amended to state that the 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.

2. Item 17 of the Disclosure Document is amended to state that a franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

3. Item 17 of the Disclosure Document is amended to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

4. Item 17 of the Disclosure Document is amended to state that the provisions in the Franchise Agreement and Area Development Agreement which provide for termination upon bankruptcy of the franchisee/multi-unit developer may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

5. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to permit a franchisee to bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

6. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

7. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to state that the 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.

8. The Franchise Agreement, Multi-Unit Development Agreement and Franchisee Disclosure Acknowledgment Statement are amended to include the following statement: "All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability 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."

## **DISCLOSURE REQUIRED BY THE STATE OF MICHIGAN**

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

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

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

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

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

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

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

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

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

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

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000, franchisee has the right to request an escrow arrangement.

Any questions regarding this notice should be directed to:

Consumer Protection Division  
Attn: Marilyn McEwen  
525 W. Ottawa Street, 6<sup>th</sup> Floor  
Lansing, Michigan 48933  
(517) 373-7117

## **ADDENDUM REQUIRED BY THE STATE OF MINNESOTA**

This addendum to the Disclosure Document is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and effectively amends and revises said Disclosure Document and Franchise Agreement and Multi-Unit Development Agreement as follows:

1. Item 13 of the Disclosure Document and Article 6 of the Franchise Agreement are amended by the addition of the following language to the original language that appears therein:

“In accordance with applicable requirements of Minnesota law, Franchisor shall protect Franchisee’s right to use the trademarks, service marks, trade names, logotypes or other commercial symbols and/or shall indemnify Franchise from any loss, costs or expenses arising out of any claim, suit or demand regarding such use.”

2. Item 17 of the Disclosure Document, Articles 4 and 18 of the Franchise Agreement and Article 6 of the Multi-Unit Development Agreement are amended by the addition of the following language to the original language that appears therein:

“With respect to franchises governed by Minnesota law, the franchisor will comply with Minnesota Statutes Sec. 80C.14, Subds.3, 4 and 5, which require (except in certain specified cases) that a franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the franchise agreement and that consent to the transfer of the franchise will not be unreasonably withheld.”

3. Item 17 of the Disclosure Document, Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement are amended by the addition of the following language to amend the Governing Law, Jurisdiction and Venue, and Choice of Forum sections:

“Minn. Stat. Sec. 80C.21 and Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of the franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.”

4. Item 17 of the Disclosure Document, Articles 4 and 18 of the Franchise Agreement and Article 6 of the Multi-Unit Development Agreement are amended by the addition of the following language to the original language that appears therein:

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

5. Any reference to liquidated damages in the Franchise Agreement is hereby deleted in accordance with Minn. Rule 2860.4400J which prohibits requiring you to consent to liquidated damages.

6. Section 23.4 of the Franchise Agreement and Section 8.4 of the Multi-Unit Development Agreement hereby deleted in accordance with Minn. Rule 2860.4400J which prohibits waiver of a jury trial.

7. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement regarding Limitations of Claims is hereby amended to comply with Minn. Stat. §80C.17, Subd. 5.

8. Item 6, Insufficient Fund Fees: NSF fees are governed by Minnesota Statute 604.113; which puts a cap of \$30 on a NSF check. This applies to everyone in Minnesota who accepts checks except banks.

9. Under Minn. Rule 2860.440J, the franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. A court will determine if a bond is required. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are hereby amended accordingly.

## **ADDENDUM REQUIRED BY THE DEPARTMENT OF LAW OF THE STATE OF NEW YORK**

Rev. April 2, 2024

### **NEW YORK STATE ADDENDUM TO FDD**

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR RESOURCES OR INFORMATION.**  
**REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN ANYTHING IN THIS FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS THAT ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is to be added at the end of Item 3:

Except as provided above, the following applies to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

- A. No such party has an administrative, criminal, or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.
- B. No such party has pending actions other than routine litigation incidental to the business that is significant in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.
- C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten years immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the "Summary" sections of Item 17(c), titled "Requirements for a franchisee to renew or extend," and Item 17(m), titled "Conditions for franchisor approval of transfer":

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; this proviso intends that the non-waiver provisions of General Business Law Sections 687(4) and 687(5) be satisfied.

4. The following language replaces the "Summary" section of Item 17(d), titled "Termination by a franchisee": "You may terminate the agreement on any grounds available by law."
5. The following is added to the end of the "Summary" sections of Item 17(v), titled "Choice of forum," and Item 17(w), titled "Choice of law":

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or the franchisee by Article 33 of the General Business Law of the State of New York.

6. Franchise Questionnaires and Acknowledgements--No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.
7. Receipts--Any sale made must be in compliance with § 683(8) of the Franchise Sale Act (N.Y. Gen. Bus. L. § 680 et seq.), which describes the

time period a Franchise Disclosure Document (offering prospectus) must be provided to a prospective franchisee before a sale may be made. New York law requires a franchisor to provide the Franchise Disclosure Document at the earliest of the first personal meeting, ten (10) business days before the execution of the franchise or other agreement, or the payment of any consideration that relates to the franchise relationship.

**DISCLOSURES REQUIRED BY NORTH CAROLINA LAW**

The State of North Carolina has not reviewed and does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the State. If you have any questions about this investment, see an attorney before you sign a contract or agreement.

If the seller fails to deliver the product(s), equipment or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and demand that the contract be cancelled. (N.C.G.S. §66-95)

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

## **ADENDUM REQUIRED BY THE STATE OF NORTH DAKOTA**

This addendum to the Disclosure Document, Franchise Agreement and Multi-Unit Development Agreement effectively amends and revises said documents as follows:

1. Item 17(c) of the Disclosure Document, Articles 4 and 18 of the Franchise Agreement and Article 6 of the Multi-Unit Development Agreement are hereby amended to indicate that a franchisee shall not be required to sign a general release.

2. Covenants not to compete are generally considered unenforceable in the State of North Dakota, in accordance with Section 51-19-09 of the North Dakota Franchise Investment Law. Item 17(r) of the Disclosure Document, Article 17 of the Franchise Agreement and Article 5 of the Multi-Unit Development Agreement are amended accordingly.

3. Item 6 and Item 17(i) of the Disclosure Document and Article 17 of the Franchise Agreement requires the franchisee to consent to termination or liquidated damages. Since the Commissioner has determined this to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law, these provisions are hereby deleted in each place they appear in the Disclosure Document and Franchise Agreement used in North Dakota.

4. Item 17(u) of the Disclosure Document, Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement are amended to provide that arbitration shall be held at a site that is agreeable to all parties.

5. Item 17(v) of the Disclosure Document and the provisions of Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement which require jurisdiction of courts of Rockingham County, New Hampshire are deleted.

6. Item 17(w) of the Disclosure Document, Article 22 of the Franchise Agreement and Article 7 of the Multi-Unit Development Agreement are amended to indicate that the agreements are to be construed according to the laws of the State of North Dakota.

7. Apart from civil liability as set forth in Section 51-19-12 N.D.C.C., which is limited to violations of the North Dakota Franchise Investment Law (registration and fraud), the liability of the franchisor to a franchisee is based largely on contract law. Despite the fact that those provisions are not contained in the franchise investment law, those provisions contain substantive rights intended to be afforded to North Dakota residents. Therefore, North Dakota franchisees will not be required to waive their rights under North Dakota law.

8. The provisions of Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement which require a franchisee to consent to (1) a waiver of trial by jury and (2) a waiver of exemplary and punitive damages are contrary to Section 51-19-09 of the North Dakota Franchise Investment Law and are hereby deleted.

9. The provisions of Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement which require a franchisee to consent to a limitation of claims are hereby amended to state that the statute of limitations under North Dakota law applies.

**ADDENDUM REQUIRED BY THE STATE OF RHODE ISLAND**

The following amends Item 17 and is required to be included within the Disclosure Document and shall be deemed to supersede the language in the Disclosure Document itself:

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that:

“A provision in a franchise agreement restricting jurisdiction or venue to a forum outside of this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.”

**ADDENDUM REQUIRED BY THE COMMONWEALTH OF VIRGINIA**

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

1. Additional Disclosure: The following statements are added to Item 17.h:

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

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

### **ADDENDUM REQUIRED BY THE STATE OF WASHINGTON**

The State of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST

Key Club Development Corporation

\_\_\_\_\_  
Witness

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

FRANCHISEE:

\_\_\_\_\_  
Witness

\_\_\_\_\_

## Exhibit I to the Key Club Development Corporation Disclosure Document

### FORM OF GENERAL RELEASE

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Key Club Development Corporation, a New Hampshire Corporation, with an address at 200 Kensington Rd. Hampton Falls, NH 03844 (the "Franchisor"), and \_\_\_\_\_, a \_\_\_\_\_ with a principal address at \_\_\_\_\_ (hereinafter referred to as "Releasor"), wherein the parties hereto, in exchange for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, and in reliance upon the representations, warranties, and comments herein are set forth, do agree as follows:

1. Release by Releasor:

Releasor does for itself, its successors and assigns, hereby release and forever discharge generally the Franchisor and any affiliate, wholly owned or controlled corporation, subsidiary, successor or assign thereof and any shareholder, officer, director, employee, or agent of any of them, from any and all claims, demands, damages, injuries, agreements and contracts, indebtedness, accounts of every kind or nature, whether presently known or unknown, suspected or unsuspected, disclosed or undisclosed, actual or potential, which Releasor may now have, or may hereafter claim to have or to have acquired against them of whatever source or origin, arising out of or related to any and all transactions of any kind or character at any time prior to and including the date hereof, including generally any and all claims at law or in equity, those arising under the common law or state or federal statutes, rules or regulations such as, by way of example only, franchising, securities and anti-trust statutes, rules or regulations, in any way arising out of or connected with the Agreement, and further promises never from this day forward, directly or indirectly, to institute, prosecute, commence, join in, or generally attempt to assert or maintain any action thereon against the Franchisor, any affiliate, successor, assign, parent corporation, subsidiary, director, officer, shareholder, employee, agent, executor, administrator, estate, trustee or heir, in any court or tribunal of the United States of America, any state thereof, or any other jurisdiction for any matter or claim arising before execution of this Agreement. In the event Releasor breaches any of the promises covenants, or undertakings made herein by any act or omission, Releasor shall pay, by way of indemnification, all costs and expenses of the Franchisor caused by the act or omission, including reasonable attorneys' fees.

2. Releasor hereto represents and warrants that no portion of any claim, right, demand, obligation, debt, guarantee, or cause of action released hereby has been assigned or transferred by Releasor party to any other party, firm or entity in any manner including, but not limited to, assignment or transfer by subrogation or by operation of law. In the event that any claim, demand or suit shall be made or institute against any released party because of any such purported assignment, transfer or subrogation, the assigning or transferring party agrees to indemnify and hold such released party free and harmless from and against any such claim, demand or suit, including reasonable costs and attorneys' fees incurred in connection therewith. It is further agreed that this indemnification and hold harmless agreement shall not require payment to such claimant as a condition precedent to recovery under this paragraph.

3. Each party acknowledges and warrants that his, her or its execution of this Agreement is free and voluntary.

4. New Hampshire law shall govern the validity and interpretation of this Agreement, as well as the performance due thereunder. This Agreement is binding upon and inures to the benefit of the respective assigns, successors, heirs and legal representatives of the parties hereto.

5. In the event that any action is filed to interpret any provision of this Agreement, or to enforce any of the terms thereof, the prevailing party shall be entitled to its reasonable attorneys' fees and costs incurred therein, and said action must be filed in the State of New Hampshire.

6. This Agreement may be signed in counterparts, each of which shall be binding against the party executing it and considered as the original.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this agreement effective as of the date first above.

Witness:

RELEASOR:

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(Name)

Witness:

Key Club Development Corporation:

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

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

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

## **Exhibit J to the Key Club Development Corporation Disclosure Document**

### **FRANCHISEE DISCLOSURE ACKNOWLEDGMENT STATEMENT & QUESTIONNAIRE**

As you know, Key Club Development Corporation (the “Franchisor”) and you are preparing to enter into a franchise agreement (the “Franchise Agreement”) for the establishment and operation of a Vanguard Key Clubs Business (the “Franchised Business”). The purpose of this Questionnaire is to determine whether any statements or promises were made to you by employees or authorized representatives of the Franchisor, or by employees or authorized representatives of a broker acting on behalf of the Franchisor (“Broker”) that have not been authorized, or that were not disclosed in the Disclosure Document or that may be untrue, inaccurate or misleading. The Franchisor, through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights, fully understands and comprehends that the purchase of a franchise is a business decision, complete with its associated risks, and (b) that you are not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by Franchisor.

In the event that you are intending to purchase an existing Franchised Business from an existing Franchisee, you may have received information from the transferring Franchisee, who is not an employee or representative of the Franchisor. The questions below do not apply to any communications that you had with the transferring Franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Are you seeking to enter into the Franchise Agreement in connection with a purchase or transfer of an existing Franchised Business from an existing Franchisee?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. I had my first face-to-face meeting with a Franchisor representative on \_\_\_\_\_, 20\_\_\_\_\_. Please identify the individual you had first face-to face meeting with\_\_\_\_\_.

3. Have you received and personally reviewed the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Do you understand all of the information contained in the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, what parts of the Franchise Agreement, any Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary.)

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5. Have you received and personally reviewed the Franchisor's Disclosure Document that was provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Did you sign a receipt for the Disclosure Document indicating the date you received it?

Yes \_\_\_\_\_ No \_\_\_\_\_

7. Do you understand all of the information contained in the Disclosure Document and any state-specific Addendum to the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, what parts of the Disclosure Document and/or Addendum do you not understand? (Attach additional pages, if necessary.)

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8. Have you discussed the benefits and risks of establishing and operating a Franchised Business with an attorney, accountant, or other professional advisor?

Yes \_\_\_\_\_ No \_\_\_\_\_ Please identify your advisor \_\_\_\_\_

If No, do you wish to have more time to do so?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. Do you understand that the success or failure of your Franchised Business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor

and supply costs, location, lease terms, your management capabilities and other economic, and business factors?

Yes \_\_\_\_\_ No \_\_\_\_\_

10. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the actual or potential revenues, profits or operating costs of any particular Franchised Business operated by the Franchisor or its franchisees (or of any group of such businesses), that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_ If you answered Yes; please identify that party \_\_\_\_\_

11. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn in operating the franchised business that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_ If you answered Yes; please identify that party \_\_\_\_\_

12. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the total amount of revenue the Franchised Business will generate, that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_ If you answered Yes; please identify that party \_\_\_\_\_

13. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the costs you may incur in operating the Franchised Business that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_ If you answered Yes; please identify that party \_\_\_\_\_

14. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the likelihood of success that you should or might expect to achieve from operating a Franchised Business?

Yes \_\_\_\_\_ No \_\_\_\_\_ If you answered Yes; please identify that party \_\_\_\_\_

15. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the Disclosure Document or franchise agreement?

Yes \_\_\_\_\_ No \_\_\_\_\_ If you answered Yes; please identify that party \_\_\_\_\_

16. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_ No \_\_\_\_\_

17. Have you paid any money to the Franchisor concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_ No \_\_\_\_\_

18. Have you spoken to any other franchisee(s) of this system before deciding to purchase this franchise? If so, who? \_\_\_\_\_

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If you have answered No to question 9, or Yes to any one of questions 10-17, please provide a full additional explanation of each answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered Yes to question 9, and No to each of questions 10-17, please leave the following lines blank.

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I signed the Franchise Agreement and Addendum (if any) on \_\_\_\_\_, 20\_\_\_\_, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them. By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. In addition, by signing this Questionnaire, you also acknowledge that:

A. You recognize and understand that business risks, which exist in connection with the purchase of any business, make the success or failure of the franchise subject to many variables, including among other things, your skills and abilities, the hours worked by you, competition, interest rates, the economy, inflation, franchise location, operation costs, lease terms and costs and the marketplace. You hereby acknowledge your awareness of and willingness to undertake these business risks.

B. You agree and state that the decision to enter into this business risk is in no manner predicated upon any oral representation, assurances, warranties, guarantees or promises made by Franchisor or any of its officers, employees or agents (including the Broker or any other broker) as to the likelihood of success of the franchise. Except as contained in the Disclosure Document, you acknowledge that you have not received any information from the Franchisor or any of its officers, employees or agents (including the Broker or any other broker) concerning actual, projected or forecasted franchise sales, profits or earnings. If you believe that you have received any information concerning

actual, average, projected or forecasted franchise sales, profits or earnings other than those contained in the Disclosure Document, please describe those in the space provided below or write “None”.

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C. You further acknowledge that the President of the United States of America has issued Executive Order 13224 (the “Executive Order”) prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the “Anti-Terrorism Measures”). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly involved in terrorism. For that reason, you hereby certify that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, is:

- (i) a person or entity listed in the Annex to the Executive Order;
- (ii) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (iii) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (iv) owned or controlled by terrorists or sponsors of terrorism.

You further covenant that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Sign here if you are taking the franchise as an

INDIVIDUAL

Sign here if you are acquiring the franchise as a  
CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP

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Signature

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

---

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Print Name of Legal Entity

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

---

Signature

Signature

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

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

Title\_\_\_\_\_

Signature

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

Signature

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



# VANGUARD KEY CLUBS

**Key Club Development Corporation**

**FRANCHISE AGREEMENT**

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**FRANCHISEE**

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**DATE OF AGREEMENT**

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**EXHIBITS:**

- A Approved Location; Designated Territory
- B Confidentiality and Non-Competition Agreement
- C Guaranty and Assumption of Obligations
- D Principal Owner's Statement
- E Collateral Assignment and Assumption of Lease
- F Standard Lease Rider
- G Internet Website and Listings Agreement; Telephone Listings Agreement
- H Electronic Funds Transfer Agreement
- I Multi-State Addendum
- J Franchisee Disclosure Acknowledgment Statement

## FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Key Club Development Corporation, a New Hampshire "C" Corporation having its principal address at 200 Kensington Rd. Hampton Falls, NH 03844 ("we", "us" or "our") and \_\_\_\_\_ with a principal address is \_\_\_\_\_ ("you" or "your").

### WITNESSETH:

**WHEREAS**, we and our affiliate have developed a System identified by the service mark "Vanguard Key Clubs" (the "Mark" or "Proprietary Mark") and relating to offering a Retail Franchised Indoor 24 hour access key club fitness centers and all necessary support and consultation and related products ("Proprietary Products"); and

**WHEREAS**, in addition to the Proprietary Marks, the distinguishing characteristics of the System include, among other things, a proprietary trade dress that incorporates methods, uniform standards, specifications and procedures for operations; procedures for management control; training and assistance; and merchandising, advertising and promotional programs, and may include interior design, layout, décor, color scheme, fixtures and furnishings; materials and supplies; all of which may be changed, improved and further developed; and

**WHEREAS**, we grant to qualified persons and business entities the right to own and operate a single Franchised Business using the System and the Marks at a location approved by us; and

**WHEREAS**, you desire to own and operate a Franchised Business, have applied for the Franchise and such application has been approved by us in reliance upon all of the representations made herein and therein; and

**WHEREAS**, you desire to obtain a franchise to use the System and the Proprietary Mark at the location we have approved, pursuant to the provisions hereof, and you have had a full and adequate opportunity to be thoroughly advised of the terms and conditions of this Franchise Agreement by counsel of your own choosing and you represent and warrant that you have the business experience and financial ability to operate a Franchised Business; and

**WHEREAS**, you acknowledge that you have read this Agreement and our Disclosure Document ("Disclosure Document") and that you understand and accept the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain uniform high standards of quality at all Vanguard Key Clubs and to protect the goodwill of the Proprietary Mark; and

**WHEREAS**, we expressly disclaim the making of any warranty or guarantee, expressed or implied, oral or written, regarding the potential revenues, profits or success of the business venture contemplated by this Agreement. You acknowledge that you have not received or relied upon any such warranty or guarantee; and

**WHEREAS**, you acknowledge that you have no knowledge of any representations by us, our officers, directors, shareholders or representatives about the franchise offered hereunder, about us or our franchising programs and policies that are contrary to the statements in the Disclosure Document or to the terms of this Agreement; and

**WHEREAS**, you acknowledge that this Agreement places detailed and substantial obligations on you, including strict adherence to our reasonable present and future requirements regarding facilities,

equipment, suppliers, operating procedures, management methods, merchandising strategies, sales promotion programs and related matters. You acknowledge that future improvements, changes and developments in the System may require additional expense to be undertaken by you.

**NOW, THEREFORE**, we and you, intending to be legally bound, agree as follows:

## **Article 1**

### **DEFINITIONS**

Whenever used in this Agreement, the following words and terms have the following meanings:

**“Affiliate”** means any business entity that controls, is controlled by, or is under common control with us;

**“Agreement”** means this agreement entitled “Vanguard Key Clubs Franchise Agreement” and all instruments supplemental hereto or in amendment or confirmation hereof;

**“Approved Location”** means the site for the operation of the Franchised Business selected by you and approved in writing by us;

**“Approved Supplier(s)”** has the meaning given to such term in Section 13.1;

**“Brand Development Fund”** has the meaning given to such term in Section 3.3;

**“Competitive Business”** means any business that offers (or grants franchises or licenses to others to operate a business that offers) goods or services the same as or substantially similar to those provided by Franchised Businesses or in which Trade Secrets and other Confidential Information could be used to the disadvantage of us, any of our Affiliates or our other franchisees; provided, however, that the term “Competitive Business” shall not apply to (a) any business operated by you under a Franchise Agreement with us, or (b) any business operated by a publicly held entity in which you own less than a five percent (5%) legal or beneficial interest;

**“Confidential Information”** means technical and non-technical information used in or related to Franchised Businesses that is not commonly known by or available to the public, including, without limitation, Trade Secrets and any other information identified as confidential when delivered by us. Confidential Information shall not include, however, any information that: (a) is now or subsequently becomes generally available to the public through no fault of yours; (b) you can demonstrate was rightfully in your possession, without obligation of nondisclosure, prior to disclosure pursuant to this Agreement; (c) is independently developed without the use of any Confidential Information; or (d) is rightfully obtained from a third party who has the right, without obligation of nondisclosure, to transfer or disclose such information;

**“Designated Territory”** means the geographic area of territorial exclusivity granted to you under this Agreement as defined by Section 2.5;

**“Effective Date”** means the date on which this Agreement is fully executed, thereby commencing its effectiveness and term;

**“Electronic Depository Transfer Account”** means an account established at a national banking institution approved by us and providing us with access to electronically withdraw any funds due us;

**“Franchise”** means the right granted to you by us to use the System and the Marks at the Approved Location;

**“Franchised Business”** means the Vanguard Key Clubs to be established and operated by you pursuant to this Agreement;

**“Franchisor Indemnitees”** has the meaning given to such term in Section 21.3;

**“General Manager”** means the person designated by you who has primary responsibility for managing the day-to-day affairs of the Franchised Business. Your General Manager must have the minimum business experience we require, must successfully complete our initial training program, and must be approved by us. While we do not require you to act as the General Manager for your Franchised Business, you understand and acknowledge that you shall remain responsible for the General Manager’s operation of your Franchise Business in compliance with this Agreement, the Manual and our System standards and specifications, as the Manual and such standards and specifications may be modified by us from time to time;

**“Gross Sales”** means the total selling price of all services and products and all income of every other kind and nature related to the Franchised Business, whether for cash or credit and regardless of collection in the case of credit. If a cash shortage occurs, the amount of Gross Sales will be determined based on the records of the point of sale system and any cash shortage will not be considered in the determination. Gross Sales expressly excludes taxes collected from your customers and paid to the appropriate taxing authority, customer refunds or adjustments, and tips paid by clients to your employees;

**“Gross Sales Reports”** has the meaning given to such term in Section 12.2;

**“Incapacity”** means the absence of your principal for twenty (20) days or more. Returns to work for less than four (4) consecutive days shall not toll the running of the above-mentioned twenty (20) day period;

**“Internet”** means any one (1) or more local or global interactive communications media that is now available, or that may become available, including sites and domain names on the World Wide Web;

**“Local Marketing”** has the meaning given to such term in Section 11.2;

**“Manual”** means the Vanguard Key Clubs Confidential Operations Manual, whether in paper or electronic form, and any other items as may be provided, added to, changed, modified or otherwise revised by us from time to time that contain or describe the standards, methods, procedures and specifications of the System, including other operations, administration and managers’ manuals and all books, computer programs, password-protected portions of an Internet site, pamphlets, memoranda and other publications prepared by us or on our behalf;

**“Marks”** or **“Proprietary Marks”** means the service mark Vanguard Key Clubs and such other trade names, trademarks, service marks, trade dress, designs, graphics, logos, emblems, insignia, fascia, slogans, copyrights, drawings and other commercial symbols as we may designate to be used in connection with Franchised Businesses;

**“Royalty Fee”** has the meaning given to such term in Section 3.2; and

**“Trade Secrets”** means information in any form that is used in or related to Franchised Businesses and is not commonly known by or available to the public including, but not limited to, protocols and techniques, materials and techniques, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, passwords, lists of actual or potential clients or suppliers and which information: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

## **Article 2**

### **GRANT OF FRANCHISE**

#### **2.1     Grant**

We hereby grant to you, and you undertake and accept, upon the terms and conditions herein contained, the right to establish and operate one (1) Franchised Business at the Approved Location using the System and Marks.

#### **2.2     Approved Location**

The street address (or detailed description of the premises) of the Approved Location shall be identified on Exhibit A hereto after we have approved of such location pursuant to Section 5.1.

#### **2.3     Approved Location Not Determined**

If the Approved Location of the Franchised Business is not determined as of the Effective Date, then we and you shall determine the geographic area in which the Franchised Business is to be located. You shall follow our procedures in locating a suitable site for the Franchised Business, and when the Approved Location is determined, its address will be inserted into Exhibit A hereto. The failure to insert such address shall not automatically affect the enforceability of this Agreement.

#### **2.4     Sub-Franchising; Agents**

You shall not sublicense the use of the System or Marks to any person or entity to perform any part of your rights or obligations granted hereunder, or grant any person or entity the right to act as your agent to perform any part of your rights or obligations hereunder and any attempt by you to do so shall be void and of no force and effect.

#### **2.5     Designated Territory**

So long as this Agreement is in force and effect and you are not in default in any material respect under any of the terms hereof, we shall not establish, own or operate, or grant rights to, or license, any other person to establish, own or operate, any other Franchised Business or other substantially similar business anywhere within the geographic area designated by us for your Franchised Business (“Designated Territory”). The Designated Territory will be identified on Exhibit A hereto and may be defined by streets, highways, natural, or political boundaries, or zip codes, and may be outlined on a map attached to Exhibit A.

You understand and acknowledge that if any non-traditional site (in an urban setting or downtown area, or in locations that have a captive market, such as an enclosed shopping mall, military base, office building, or similar location) is located within the physical boundaries of your Designated Territory, then

the premises of this non-traditional site will not be included in your Designated Territory and you will have no rights to this non-traditional site. If your Franchise Business is located at a non-traditional site, you will not receive an exclusive territory.

## **2.6 Our Reserved Rights**

We retain the right, on behalf of ourselves or through Affiliates, in our discretion and without granting any rights to you:

(a) to establish and operate, and grant rights to other franchise owners to establish and operate, Vanguard Key Clubs or similar businesses at any locations outside your Designated Territory and on any terms and conditions we deem appropriate;

(b) to purchase or otherwise acquire the assets or controlling ownership of one or more businesses identical or similar to your Franchise Business (and/or franchise and/or license these businesses), some or all of which might be located anywhere, including within your Designated Territory, but if any of these businesses are located within your Designated Territory they will not operate using the Proprietary Marks;

(c) to be acquired (regardless of the form of transaction) by a business identical or similar to a Vanguard Key Clubs, even if the other business operates, franchises and/or licenses competitive businesses within your Designated Territory; and

(d) to engage in any other business activities not expressly prohibited by this Agreement, anywhere.

## **2.7 Your Right of First Refusal**

If a site becomes available that is in or near your Designated Territory we may, but are not required to, offer you the opportunity to open a Franchise Business at the site. You must be in compliance with this Agreement and current in all payments owed to us and/or our Affiliates. If we offer you this right of first refusal, you will have thirty (30) days after receiving information from us concerning the new Vanguard Key Clubs opportunity to accept the right of first refusal. If you decline this right of first refusal or do not respond to us within the thirty (30) day period, we may offer the opportunity to develop a Vanguard Key Clubs at the site to a third party or we or one of our affiliates may open a Franchise Business at the site.

## **Article 3**

### **FEES**

#### **3.1 Franchise Fee; Opening Assistance Fee**

Upon execution of this Agreement, you shall pay an initial franchise fee ("Franchise Fee") to us via certified check or wire transfer in immediately available funds in the amount of Twenty-Five Thousand Dollars (\$25,000). If this Agreement is for your second (2<sup>nd</sup>) or later Franchised Business, the Franchise Fee payable hereunder shall be Twenty Thousand Five Hundred Dollars (\$20,000). The Franchise Fee shall be deemed fully earned upon execution of this Agreement and is not refundable under any circumstances.

**If this Agreement is for your second (2<sup>nd</sup>) or later Franchised Business and you request opening assistance, an additional fee of Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid at execution of this Agreement.**

### **3.2 Royalty Fee**

On the Fifteenth Day of each month you shall pay to us, without offset, credit or deduction of any nature, so long as this Agreement shall be in effect, a (“Royalty Fee”) equal to Five Percent of Gross Sales for the previous ending month. Each Royalty Fee shall be accompanied by a Gross Sales Report, as required by Section 12.2, for the same period. You shall provide the Gross Sales Report to us by facsimile transmission, e-mail or in such other form as we specify. If the 15th day of the month is not a business day, then payment shall be due on the next business day.

If you do not report the Gross Sales, we may debit your account for one hundred twenty percent (120%) of the last Royalty Fee and Brand Development Fee (described in Section 3.3 below) that we debited. If the Royalty Fee and Brand Development Fee we debit are less than the Royalty Fee and Brand Development Fee you actually owe us, once we have been able to determine your true and correct Gross Sales, we will debit your account for the balance on a day we specify. If the Royalty Fee and Brand Development Fee we debit are greater than the Royalty Fee and Brand Development Fee you actually owe us, we will credit the excess against the amount we otherwise would debit from your account for the next payment due.

If any state imposes a sales or other tax on the Royalty Fees, then we have the right to collect this tax from you.

### **3.3 Brand Development Fee**

We have the right to establish and administer a System-wide marketing, advertising and promotion fund (“Brand Development Fund”) upon thirty (30) days prior notice by us to you. When the Brand Development Fund is established, you shall contribute monthly to the Brand Development Fund (“Brand Development Fee”) an amount equal to two percent (2%) of Gross Sales. Brand Development Fees shall be payable at the same time and in the same manner as Royalty Fees as provided in Section 3.2. When established, the Brand Development Fund shall be maintained and administered by us or our designee in accordance with the provisions contained in Section 11.3.

### **3.4 Taxes**

You shall pay to us an amount equal to all sales taxes, use taxes and similar taxes imposed on the fees payable by you to us hereunder and on services or goods furnished to you by us at the same time as you remit such fees to us, whether such services or goods are furnished by sale, lease or otherwise, unless the tax is an income tax assessed on us for doing business in the state where the Franchised Business is located or other federal, state or local taxes assessed against our income.

### **3.5 Electronic Funds Transfer**

You shall pay all Royalty Fees, Brand Development Fees, amounts due for purchases by you from us and/or our Affiliates and other amounts due to us by electronic funds transfer (“EFT”) from your bank account, and you shall execute and deliver any and all documents necessary in order to effectuate EFT transactions, including, but not limited to, the agreement attached hereto as Exhibit G and any documents required by our and/or your bank. You shall provide us with continuous access to such account for the purpose of receiving any payments due to us. You shall ensure that the balance in the account is sufficient to cover amounts owed to us prior to the date such amounts are due. Once established, you shall not close the account without our consent.

### **3.6 Interest on Late Payments**

All Royalty Fees, Brand Development Fees, amounts due for purchases by you from us and/or our Affiliates and other amounts that are not received by us within five (5) days after the due date shall bear interest at the rate of eighteen percent (18%) per annum (or the highest rate allowed by law, whichever is lower) from the date payment is due to the date payment is received by us. Interest shall accrue from the original due date until payment is received in full. You shall pay us for all costs incurred by us in the collection of any unpaid and past due Royalty Fees, Brand Development Fees or any other amounts due us, including reasonable accounting and legal fees.

### **3.7 Application of Payments**

Notwithstanding any designation by you, we have the right to apply any payments by you to any past due indebtedness of yours and accrued interest thereon for Royalty Fees, Brand Development Fees, purchases from us and/or our Affiliates or any other amount owed to us.

## **Article 4**

### **TERM AND RENEWAL**

#### **4.1 Initial Term**

This Agreement shall be effective and binding for an initial term of ten (10) years from the Effective Date, unless sooner terminated pursuant to Section 16.

#### **4.2 Renewal Term**

Subject to the conditions below, you have the right to obtain a renewal franchise at the expiration of this Agreement by entering into a new franchise agreement with us. Your right to obtain a successor franchise is limited to two (2) additional terms of five (5) years each. To qualify for a renewal franchise, each of the following conditions shall have been fulfilled and remain true as of the last day of the term of this Agreement:

(a) You have, during the entire term of this Agreement, substantially complied with all material provisions;

(b) You have access to and, for the duration of the renewal franchise's term, the right to remain in possession of the Approved Location, or a suitable substitute location approved by us which is in full compliance with our then-current specifications and standards;

(c) You have, at your expense, made such capital expenditures as were necessary to remodel and/or redecorate the Approved Location to ensure that the Franchised Business reflects our then-current System standards and specifications;

(d) You have satisfied all monetary obligations owed by you to us (or any Affiliate) and have timely met these obligations throughout the term of this Agreement;

(e) You are not currently in default in any material respect of any provision of this Agreement or any other agreement between you and us and have not been in default in any material respect more than twice during the initial term;

(f) You have given written notice of your request for a renewal franchise not less than nine (9) months nor more than twelve (12) months prior to the end of the term of this Agreement, provided that we have no obligation to grant you a renewal franchise without the timely receipt of such notice;

(g) You have executed our then-current form of franchise agreement, or have executed renewal documents at our election (with appropriate modifications to reflect the fact that the Franchise Agreement relates to the grant of a renewal franchise), which franchise agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement by requiring, among other things, a different percentage Royalty Fee or Brand Development Fee; provided, however, that you shall not be required to pay the then-current Franchise Fee but shall be required to pay a renewal fee equal to Five Thousand Dollars (\$5,000);

(h) You have met our then-current qualifications for a new franchisee and have agreed to comply with any training requirements;

(i) You have executed a general release of any and all claims against us, any Affiliate and against our respective officers, directors, shareholders, managers, members, partners, owners and employees and;

(j) As part of the process of renewing this Agreement, we reserve the right to re-evaluate your then-existing Designated Territory according to certain demographics, including the character of the neighborhood where your Franchise Business is located and population. Since your Designated Territory includes a certain minimum population, your Designated Territory under the renewal Franchise Agreement will be modified to accommodate shifts and changes in population. Our intent is to make the target demographics of your renewal Designated Territory similar to the target demographics of your original Designated Territory. A re-evaluation of your Designated Territory may result in your renewal Designated Territory being smaller or larger than your original Designated Territory. We cannot guarantee that you will achieve any particular level of success with the renewal Designated Territory or that your results will be the same as or similar to your results from operating in the original Designated Territory.

#### **4.3 Failure to Renew**

For the purposes hereof, you shall be deemed to have irrevocably elected not to renew the franchise hereunder (and the option to do so shall thereupon terminate) if you fail to execute and return to us our then-current Franchise Agreement and other ancillary documents required by us, together with payment of the renewal fee, for a renewal franchise within thirty (30) days after we have delivered them to you.

#### **4.4 Refusal to Renew Franchise Agreement**

We can refuse to renew your franchise if your lease, sublease or other document by which you have the right to occupy the Approved Location is not extended before your renewal term is to take effect to cover the period of the renewal or if you do not have a written commitment from your landlord to renew the lease or sublease for a period at least equal to the renewal term. We may also refuse to renew your franchise under other circumstances, including, but not limited to, your failure to substantially comply with the terms of this Agreement, your failure to pay amounts owed to us when due, or your failure to cure of any defaults incurred during the initial term of this Agreement, if applicable.

#### **4.5      Renewal Under Law**

Even though we decline the renewal of your franchise, it is possible that we can be required to renew it under a law, rule, regulation, statute, ordinance, or legal order that is applicable at the time. If that happens, to the extent it is allowed by the concerned law, rule, regulation, statute, ordinance or order, your renewal term will be subject to the conditions of the Franchise Agreement we are using for new franchisees at the time the renewal period begins. If we are not then offering new franchises, your renewal period will be subject to the terms in the Franchise Agreement that we indicate. If for any reason that is not allowed, the renewal term will be governed by the terms of this Agreement.

### **Article 5**

#### **APPROVED LOCATION**

##### **5.1      Selection of Territory**

We do not require you to operate your Vanguard Key Clubs from leased space. However, if you decide to lease or purchase space for your Franchised Business we reserve the right to approve of the location of your Vanguard Key Clubs business. If you do not have a location for the Franchised Business that we have approved when you sign this Agreement, then after you sign this Agreement you shall have ninety (90) days to locate a site for your Franchised Business and submit to us all of the information we require to evaluate your proposed site, including evidence of your favorable prospects for obtaining the site, such as a lease, purchase agreement or similar document. We shall have thirty (30) days after we receive all of the information required in order to review the proposed site. If we do not specifically approve the site within this thirty (30) day period, the site is deemed not approved. If we approve of the site you propose, the site will be designated as the Approved Location for purposes of Section 2.2. If you are unable to locate a site within ninety (90) days after this Agreement is signed, we may grant you an extension of this timeframe or we may terminate this Agreement.

We shall provide you with general guidelines to assist you in selecting a site suitable for the Approved Location. We have the right to approve or disapprove a proposed location based on such factors as we deem appropriate, including the condition of the premises, demographics and population density of the surrounding area, proximity to other Franchised Businesses, lease requirements, visibility, ease of access, available parking and overall suitability. You shall not locate the Franchised Business on a selected site without our prior written approval, which approval will not be unreasonably withheld or delayed. *We do not represent that we, any Affiliate or any of our owners or employees have special expertise in selecting sites. Neither our assistance nor approval is intended to indicate or indicates that the Franchised Business will be profitable or successful at the Approved Location. You are solely responsible for finding and selecting a site for the Franchised Business. Our approval of a proposed territory only indicates that the territory meets our minimum requirements for a Vanguard Key Clubs at the time of our evaluation.*

##### **5.2      Lease of Approved Location**

After the approval of the Approved Location, you shall execute a lease for, or a binding agreement to purchase, the Approved Location, the terms of which must have been previously approved by us. We shall not unreasonably withhold our approval. *Our review of a lease or purchase agreement, or any advice or recommendation offered by us, shall not constitute a representation or guarantee that you will succeed at the Approved Location nor constitute an expression of our opinion regarding the terms of such lease or purchase agreement.*

We shall be entitled to require that nothing contained in your lease or purchase agreement is contradictory to, or likely to interfere with, our rights or your duties under this Agreement. You shall take all actions reasonably necessary to maintain the lease, if any, of the Approved Location while this Agreement is in effect. Any default for which the lease may be terminated shall also be deemed a default hereunder and the time to cure the same shall expire when the lease is terminated. We have the right to require that the lease for the Approved Location be collaterally assigned by you to us, pursuant to the terms of our standard **Collateral Assignment of Lease in the form attached hereto as Exhibit E**, to secure performance by you of your obligation under this Agreement. Our approval of a lease shall be conditioned upon inclusion of terms in the lease acceptable to us and shall include a **Standard Lease Rider in the form attached hereto as Exhibit F**. At our option, the lease shall also contain such provisions as we may reasonably require, including:

- (a) a provision reserving to us the right, at our election, to receive an assignment of the leasehold interest upon termination or expiration of the Franchise;
- (b) a provision expressly permitting the lessor of the premises to provide us all sales and other information lessor may have obtained or received relating to the operation of the Franchised Business, as we may request;
- (c) a provision requiring the lessor to provide us with a copy of any written notice of deficiency sent by the lessor to you, and granting to us the right (but not the obligation) to cure any deficiency under the lease should you fail to do so within fifteen (15) days after the expiration of the period in which you may cure the default;
- (d) a provision allowing you to display the Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;
- (e) a provision prohibiting the Approved Location from being used for any purpose other than the operation of the Franchised Business;
- (f) a provision allowing us, upon expiration or termination of the lease, to enter the Approved Location and remove any signs containing the Marks and/or to otherwise de-identify the location, at your expense and without liability for trespass or tort; and
- (g) a provision stating that upon default of this Agreement, we or our nominee have the right, but not the obligation, to take possession of the Approved Location and operate the Franchised Business.

### **5.3 Development of the Approved Location**

In connection with the development of the Approved Location, you shall:

- (a) **engage a competent licensed architect or engineer to prepare, for our approval, construction plans for the build-out of your Franchised Business if you choose to lease space.** Our review of your construction plans is only meant to assess that the build-out of your Franchised Business is in compliance with our System standards and presentation of the Marks. You are solely responsible for making sure that all construction plans comply with all applicable laws, ordinances and/or building codes;
- (b) obtain all zoning classifications and clearances that may be required by state and local laws, ordinances or regulations;

(c) obtain all building, utility, sign, health, and business permits and licenses, and any other permits and licenses required for the build-out and operation of the Franchised Business and certify in writing and provide evidence to us that all such permits and certifications have been obtained;

**(d) engage a qualified, licensed general contractor approved by us to complete construction of all required improvements to the Approved Location;**

(e) purchase any supplies or inventory necessary for the operation of the Franchised Business; and

(f) purchase and install all equipment, signs, furniture and fixtures, including any computer equipment, required for the operation of the Franchised Business.

#### **5.4 Opening**

Before opening the Franchised Business and commencing business, you shall:

(a) fulfill all of your obligations pursuant to the other provisions of this Article 5;

(b) furnish us with a certificate of insurance or such other evidence of insurance coverage and payment of premiums as we may request to verify that you have obtained all required insurance coverages;

(c) complete initial training to our satisfaction, and ensure that all other required persons have completed initial training to our satisfaction;

(d) hire the personnel necessary or required for the operation of the Franchised Business;

(e) obtain all necessary operating permits and licenses;

(f) if you are a business entity, you have caused each of your stock certificates or other ownership interest certificates to be conspicuously endorsed upon the face thereof a statement in a form satisfactory to us that such ownership interest is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon transfers and assignments by this Agreement;

(g) pay in full all amounts due and owing to us; and

(h) we have provided our written consent for the Franchised Business to open.

You shall comply with these conditions and be prepared to open and continuously operate the Franchised Business within six (6) months after the Effective Date. If your Franchised Business is not opened within this required timeframe we may grant you an extension of time or we may terminate this Agreement. Time is of the essence.

#### **5.5 Use of Approved Location**

You shall not use the Approved Location for any purpose other than for the operation of a Franchised Business in full compliance with this Agreement and the Manual, unless otherwise approved in writing by us.

## **5.6 Relocation**

You may relocate your Franchise Business within your Designated Territory only with our prior written approval and the new site must be located within your Designated Territory. We will use our then-current site selection criteria to review the proposed new location. We will not unreasonably withhold our approval of your relocation. We reserve the right to require you to sign our then-current Franchise Agreement with a term equal to the remaining term under your original Franchise Agreement, but you will not pay another Franchise Fee. Any such relocation shall be at your sole expense, and shall proceed in accordance with the requirements set forth in Sections 5.1 through 5.3. You shall reimburse us for any costs incurred by us in providing assistance to you, including legal and accounting fees. Notwithstanding the foregoing, we have no obligation to provide relocation assistance. If no relocation site meets with our approval, this Agreement shall terminate as provided in Section 16.

## **Article 6**

### **PROPRIETARY MARKS**

#### **6.1 Ownership**

You acknowledge and understand that we are the owner or are the licensee of the owner of the Marks. Any references herein to our right, title and interest in and to the Marks shall be deemed to include the owner's right, title and interest in and to the Marks.

Your right to use the Marks is derived solely from this Agreement, is nonexclusive and is limited to the conduct of business by you pursuant to, and in compliance with, this Agreement, the Manual and all applicable standards, specifications and operating procedures prescribed from time to time by us. Any unauthorized use of the Marks by you is a breach of this Agreement and an infringement of our rights in and to the Marks. Your use of the Marks, and any goodwill created thereby, shall inure to our benefit. You shall not at any time acquire an ownership interest in the Marks by virtue of any use it may make of the Marks. This Agreement does not confer any goodwill, title or interest in the Marks to you. You shall not, at any time during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of any of the Marks.

#### **6.2 Limitations on Use**

You shall not use any Mark or portion of any Mark as part of any business entity name or trade name, with any prefix, suffix or other modifying words, terms, designs or symbols or in any modified form, without our prior written consent. You shall not use any Mark in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in writing by us. You shall give such notices of trademark and service mark registrations as we specify and obtain such fictitious or assumed name registrations as may be required under applicable law. You shall not register or seek to register as a trademark or service mark, either with the United States Patent and Trademark Office or with any similar registry of any state or foreign country, any of the Marks or a trademark or service mark that is confusingly similar to any Mark licensed to you hereunder. **You shall include on your letterhead, forms, cards and other such identification, and shall display at the Approved Location, a prominent notice stating that the Franchised Business is an “Independently Owned and Operated Franchise.”** You shall not claim any rights in or to any Mark or modification or variation thereof.

### **6.3 Notification of Infringements and Claims**

You shall promptly notify us of any infringement of the Marks or challenge to your use of any of the Marks or claim by any person of any rights in any of the Marks of which you have knowledge. You shall not communicate with any person other than us and, through your counsel, our counsel in connection with any such infringement, challenge or claim; provided, however, you may communicate with your own counsel at your own expense. We have the right to take any action in connection with any such infringement, challenge or claim and have the right to exclusively control any litigation or other proceeding arising out of any infringement, challenge, or claim or otherwise relating to any of the Marks but we shall not be required to take such action. You shall, at our expense, execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be reasonably necessary or advisable to protect and maintain our interests in any such litigation or other proceeding or to otherwise protect and maintain our interest in the Marks.

### **6.4 Indemnification for Use of Marks**

We shall reimburse you for all expenses reasonably incurred by you in any trademark or similar proceeding disputing your authorized use of any Mark, provided that you have timely notified us of such proceeding and have complied in all material respects with this Agreement and our directions in responding to such proceeding. At our option, we or our designee may defend and control the defense of any proceeding arising directly from your use of any Mark. This indemnification shall not include any expenses you incur related to of removing signage or discontinuance of the use of the Marks. This indemnification shall not apply to litigation between us and you wherein your use of the Marks is disputed or challenged by us. This indemnification shall not apply to any separate legal fees or costs incurred by you in seeking independent counsel separate from the counsel representing us and you in the event of litigation disputing our and your use of the Marks.

### **6.5 Discontinuance of Use**

If it becomes advisable at any time, in our discretion, to modify or discontinue use of any Mark and/or to adopt or use one or more additional or substitute proprietary marks, then you shall be obligated to comply with any such instruction by us. We shall not have any obligation in such event to reimburse you for your documented expenses of compliance and we will not be liable to you for any expenses, losses or damages sustained by you as a result of any Mark addition, modification, substitution or discontinuation. You waive any claim arising from or relating to any Mark change, modification or substitution. You covenant not to commence or join in any litigation or other proceeding against us for any of these expenses, losses or damages.

### **6.6 Right to Inspect**

To preserve the validity and integrity of the Marks and any copyrighted materials licensed hereunder, and to ensure that you are properly employing the Marks in the operation of the Franchised Business, we and our designees have the right to enter and inspect the Franchised Business and the Approved Location at all reasonable times and without prior notice to you and, additionally, have the right to observe the manner in which you render services and conduct activities and operations, and to inspect facilities, equipment, accessories, products, supplies, reports, forms and documents and related data to ensure that you are operating the Franchised Business in accordance with the quality control provisions and performance standards established by us. We and our agents shall have the right, at any reasonable time and without prior notice to you, to remove sufficient quantities of products, supplies or other inventory items offered for retail sale, or used in rendering services, to test whether such products or items meet our then-current standards. We or our designee have the right to observe you and your employees during the operation of the Franchised Business and to interview and survey (whether in person or by mail) clients and employees and to photograph and videotape the premises.

## Article 7

### **TRADE SECRETS AND CONFIDENTIAL INFORMATION**

#### **7.1 Requirement of Confidentiality**

You acknowledge that we will disclose Trade Secrets and other Confidential Information to you during the initial training program, through the Manual, and as a result of guidance furnished to you during the term of this Agreement. You shall not acquire any interest in the Trade Secrets or other Confidential Information, other than the right to utilize it in the development and operation of the Franchised Business and in performing your duties during the term of this Agreement. You acknowledge that the use or duplication of the Trade Secrets or other Confidential Information in any other business venture would constitute an unfair method of competition. You acknowledge that the Trade Secrets and other Confidential Information are proprietary and are disclosed to you solely on the condition that you (and all holders of a legal or beneficial interest in you and all officers, directors, executives, managers and members of the professional staff of yours): (a) shall not use the Trade Secrets or other Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Trade Secrets and other Confidential Information during and after the term of this Agreement; (c) shall not make any unauthorized copies of any portion of the Trade Secrets or other Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by us to prevent unauthorized use or disclosure of the Trade Secrets and other Confidential Information. You shall enforce this Section as to your employees, agents and representatives and shall be liable to us for any unauthorized disclosure or use of Trade Secrets or other Confidential Information by any of them. This Section shall survive the termination of this Agreement indefinitely.

#### **7.2 Additional Developments**

All ideas, concepts, techniques or materials concerning the Franchised Business, whether or not protectable intellectual property and whether created by or for you or your owners or employees, must be promptly disclosed to us and will be deemed our sole and exclusive property and works made-for-hire for us, and no compensation will be due to you or your owners or employees therefore. We may incorporate such items into the System. To the extent any item does not qualify as a "work made-for-hire" for us, you shall assign ownership of that item, and all related rights to that item, to us and shall sign any assignment or other document as we reasonably request to assist us in obtaining or preserving intellectual property rights in the item. We shall disclose to you concepts and developments of other franchisees that are made part of the System. As we may reasonably request and at our expense, you shall take all actions reasonably necessary to assist our efforts to obtain or maintain intellectual property rights in any item or process related to the System, whether developed by you or not.

#### **7.3 Exclusive Relationship**

You acknowledge that we would be unable to protect the Trade Secrets and other Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among franchisees if owners of Franchised Businesses and members of their immediate families and households were permitted to hold an interest in or perform services for any Competitive Business. Therefore, during the term of this Agreement, neither you nor any holder of a legal or beneficial interest in you (or any member of their immediate families and households), nor any officer, director, executive, or manager of yours, either directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person, partnership, corporation, limited liability company or other business entity, shall:

(a) Divert or attempt to divert any business or client of the Franchised Business to any Competitive Business, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System;

(b) Own an interest in, manage, operate, or perform services for any Competitive Business wherever located; or

(c) Solicit or otherwise attempt to induce or influence any employee or other business associate of ours or any other Franchised Business to compete against, or terminate or modify his, her or its employment or business relationship with, us or any other Franchised Business.

#### **7.4 Confidentiality and Non-Competition Agreements with Certain Individuals**

In addition to the restrictive covenants set forth in Section 7.3 above, we have the right to require you and any holder of a legal or beneficial interest in you, and any officer, director, executive, or manager of yours, to execute a nondisclosure and non-competition agreement, in a form the same as or similar to the Confidentiality and Non-Competition Agreement attached hereto as Exhibit B, upon execution of this Agreement or prior to each such person's affiliation with you. Upon our request, you shall provide us with copies of all Confidentiality and Non-Competition Agreements signed pursuant to this Section. Such agreements shall remain on file at your offices and are subject to audit or review as otherwise set forth herein. We shall be a third party beneficiary of each agreement with the independent right to enforce covenants contained in such agreements.

#### **7.5 Reasonableness of Restrictions**

You acknowledge that the restrictive covenants contained in this Section are essential elements of this Agreement and that without their inclusion, we would not have entered into this Agreement. You acknowledge that each of the terms set forth herein, including the restrictive covenants, is fair and reasonable and is reasonably required for the protection of us, the Trade Secrets and other Confidential Information, the System and the Marks and you waive any right to challenge these restrictions as being overly broad, unreasonable or otherwise unenforceable. If, however, a court of competent jurisdiction determines that any such restriction is unreasonable or unenforceable, then you shall submit to the reduction of any such activity, time period or geographic restriction necessary to enable the court to enforce such restrictions to the fullest extent permitted under applicable law. It is the desire and intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in any jurisdiction where enforcement is sought.

#### **7.6 Relief for Breaches of Confidentiality, Non-Solicitation and Non-Competition**

##### **Covenants**

You further acknowledge that an actual or threatened violation of the covenants contained in Article 7 of this Agreement will cause us immediate and irreparable harm, damage and injury that cannot be fully compensated for by an award of damages or other remedies at law. Accordingly, we shall be entitled, as a matter of right, to an injunction from any court of competent jurisdiction restraining any further violation by you of this Agreement, such right to an injunction shall be cumulative and in addition to, and not in limitation of, any other rights and remedies that we may have at law or in equity.

## Article 8

### TRAINING AND ASSISTANCE

#### **8.1 Initial Training Program**

We will conduct an initial training program that you and your General Manager must attend and complete to our satisfaction. Although initial training is mandatory for you and your General Manager, it is also available for up to two (2) additional employees (for a maximum of four (4) trainees) for no additional training fee. If you wish to send additional trainees to our initial training program, you must pay our then-current training fee. You must also pay for all expenses you and your trainees incur related to attending our training program, including travel, lodging, meals and applicable wages.

The initial training is conducted at our Affiliate's Vanguard Key Clubs Corporate Offices in Hampton Falls, New Hampshire, or other locations that we designate, and is up to five (5) days in duration. You understand and acknowledge that we have the right to train personnel from multiple franchisees at any training program. We also reserve the right to modify our training program as needed based on the needs and/or experience of any individual trainee.

If you or your General Manager fail to complete our initial training program to our satisfaction, we will offer you and your General Manager (or a replacement General Manager, if we determine your original General Manager cannot satisfactorily complete our training program) the opportunity to retake our training program at your expense, including payment of our training fee. If you or your General Manager cannot complete our training program on the second (2<sup>nd</sup>) attempt, we may terminate this Agreement.

If this Agreement is for your second (2<sup>nd</sup>) or later Vanguard Key Clubs, whether being opened pursuant to a Multi-Unit Development Agreement or not, we reserve the right to not provide our training program and for you to train all of your personnel and managers. If in this circumstance you request that we provide our initial training program, you shall pay our then-current training fee for each trainee you send to us, as well as such trainees' expenses while attending the initial training program.

#### **8.2 Opening Assistance**

In conjunction with the opening of the Franchised Business, we shall send one (1) of our representatives to your Franchised Business to provide on-site opening assistance for up to five (5) days. **If you are opening your second (2<sup>nd</sup>) or later Vanguard Key Clubs, this only applies if you have requested opening assistance in writing and paid the \$2,500 fee.**

#### **8.3 Failure to Complete Initial Training Program**

If we determine that you are unable to satisfactorily complete the applicable training program described above, we shall have the right to terminate this Agreement and refund your Franchise Fee, less our reasonable expenses.

#### **8.4 General Managers**

Your Franchised Business shall be under the daily operation of an individual whom we have approved to be your General Manager. You understand and acknowledge that if during the term of this Agreement you name a new General Manager, then **the new General Manager must be trained to our satisfaction within thirty (30) days after the new General Manager begins employment with you.** We reserve the right to require you to send your new General Manager to us to be trained and, in such

event, you shall pay our then-current training fee and shall pay for the trainee's expenses while attending training, including travel, lodging, meals, wages and benefits.

### **8.5      Refresher Training; Franchise Meetings**

We reserve the right to hold refresher training courses, and we may designate that attendance at refresher training is mandatory for you, your General Manager and/or other Franchise Business personnel. We may also conduct an annual meeting of our franchisees to discuss changes to the System, new offerings and refresher training. If we choose to hold an annual meeting, attendance will be mandatory for you and your General Manager. While we do not expect to charge a fee for any refresher training program or franchisee meeting, you must pay all of the expenses you and your attendees incur, including travel, lodging, meals, and wages.

### **8.6      On-Site Assistance and Training**

At your reasonable request or if we determine it is necessary, we shall provide additional assistance and/or training at your Franchised Business. You shall pay our then-current per diem rate for each trainer sent to the Franchised Business to provide additional assistance and/or training and, in addition, you shall reimburse each trainer's expenses while providing such additional assistance and/or training, including travel, lodging and meals.

## **Article 9**

### **CONFIDENTIAL OPERATIONS MANUAL**

#### **9.1      Loan to You**

While this Agreement is in effect, we shall loan to you one (1) copy of the Manual or grant you access to an electronic copy of the Manual. You shall conduct the Franchised Business in strict accordance with the provisions set forth in the Manual. The Manual may consist of one (1) or more separate manuals and other materials as designated by us and may be in written or electronic form. We own the copyrights in the Manual. You shall not copy or duplicate the Manual in whole or in part. The Manual shall, at all times, remain our sole property and shall promptly be returned to us upon expiration or termination of this Agreement.

#### **9.2      Revisions**

We have the right to add to or otherwise modify the Manual from time to time to reflect changes in the specifications, standards, operating procedures and rules prescribed by us; provided, however, that no such addition or modification shall materially alter your fundamental status and rights under this Agreement. We may make such additions or modifications without prior notice to you. You shall immediately, upon notice, adopt any such changes and shall ensure that your copy of the Manual is up-to-date at all times. If a dispute as to the contents of the Manual arises, the terms of the master copy of the Manual maintained by us at our headquarters shall be controlling.

#### **9.3      Confidentiality**

The Manual contains our Trade Secrets and other Confidential Information and shall be kept confidential by you both during the term of the Franchise and subsequent to the expiration or termination of this Agreement. You shall at all times ensure that your copy of the Manual is available at the Approved Location in a current and up-to-date manner. If in paper form or stored on computer-readable media, you shall maintain the Manual in a locked receptacle at the Approved Location, or if in electronic form, you shall maintain the Manual in a password-protected file. You shall only grant authorized personnel, as defined in the Manual, access to the key or combination of such receptacle or the password

to such file (or intranet site, if the Manual is maintained on-line by us in a password-protected site). You shall not disclose, duplicate or otherwise use any portion of the Manual in an unauthorized manner.

## **Article 10**

### **FRANCHISE SYSTEM**

#### **10.1 Uniformity**

You shall strictly comply, and shall cause the Franchised Business to strictly comply, with all requirements, specifications, standards, operating procedures and rules set forth in this Agreement, the Manual or other communications supplied to you by us.

#### **10.2 Modification of the System**

We have the right to change or modify the System from time to time including, without limitation, the adoption and use of new or modified Marks or copyrighted materials, and new or additional computer hardware, software, equipment, inventory, supplies or sales and marketing techniques. You shall accept and use any such changes in, or additions to, the System as if they were a part of this Agreement as of the Effective Date. You shall make expenditures for such changes, additions or modifications in the System that may be reasonably required. Any required expenditure for changes or upgrades to the System shall be in addition to expenditures for repairs and maintenance as required in Section 13.2.

#### **10.3 Variances**

We have the right to vary standards, materials or specifications for any franchisee based upon that particular franchisee's qualifications, the peculiarities of the particular site or circumstances, the demographics of the trade area, business potential, existing business practices or any other condition that we deem to be of importance to the successful operation of any particular Franchised Business. We shall not be required to disclose or grant to you a like or similar variance hereunder.

## **Article 11**

### **ADVERTISING AND PROMOTIONAL ACTIVITIES**

#### **11.1 Grand Opening Advertising Campaign**

You agree to spend between Two Thousand Five Hundred Dollars (\$2,500) and Five Thousand Dollars (\$5,000) to conduct advertising to promote the opening of your Franchise Business. The campaign must be conducted **at least 30 days prior to the opening and extend for at least 30 days following the opening**. Your grand opening advertising campaign must be approved by us, including the advertising to be used and where it will be placed, before you may begin the campaign. Your campaign must include certain elements, such as a mailer promotion and other promotions we specify. At our request, you would give us the money for your grand opening advertising campaign and we will conduct the campaign on your behalf.

#### **11.2 Local Marketing**

(a) Every month, you shall spend not less than two percent (2%) of the previous month's Gross Sales on advertising, promotions and public relations within the Designated Territory ("Local Marketing"). Local Marketing expenditures shall be made directly by you to providers of advertising services, provided, however, that any advertising you propose to use must first be approved by

us, as described below. **Within thirty (30) days of a request from us, you shall provide us with evidence of your Local Marketing expenditures, including verification copies of the advertising and any other information that we may require.**

(b) All advertising must be completely ethical and not misleading, must be conducted professionally and must conform to our standards. Any advertising that has not been furnished by us or that we have not approved **within the preceding twelve (12) months must be submitted to us for our review.** We will have fifteen (15) days after our receipt of the materials to advise you whether they are approved or not. If we do not provide you with oral or written approval within this fifteen (15) days, the materials are **deemed not approved.** Any advertising or promotional materials you provide to us for our review will become our property, and there will be no restriction on our use or dissemination of these materials. We reserve the right to require you to include certain language in your advertising, including, but not limited to, "Franchises Available", our Website address and our telephone number.

(c) At our request, you must display any Vanguard Key Clubs and Proprietary Product brochures that we designate. If we require this, we will provide the brochures at no cost to you. We reserve the right to include language in either or both of these brochures concerning our franchise opportunity.

### **11.3 Brand Development Fund**

We have the right (but not the obligation) to establish a Brand Development Fund, as defined in Section 3.3. When such Brand Development Fund has been established, we shall give you thirty (30) days' advance notice that you are required to pay the Brand Development Fee, as described in Section 3.3. The Brand Development Fund shall be maintained and administered by us or our designee as follows:

(a) We will control the creative concepts and the materials and media to be used, and we will determine the placement and allocation of advertisements. We may use print, television, radio, Internet or other media for advertisements and promotions. We do not guarantee that any particular franchisee will benefit directly or in proportion to their contribution from the placement of advertising by the Brand Development Fund.

(b) We may use the Brand Development Fees to meet any cost of, or reimburse us for our cost of, producing, maintaining, administering and directing consumer advertising (including the cost of preparing and conducting television, radio, Internet, magazine, direct mail and newspaper advertising campaigns and other public relations activities; developing and/or hosting an Internet website or similar activities; employing advertising agencies to assist therein; providing promotional brochures; conducting market research; and providing other marketing materials to franchisees). We may prepare all advertising and promotional materials in-house, or we may use a national or regional advertising agency to prepare advertising and promotional materials.

(c) The Brand Development Fund will be maintained in an account separate from our general funds and we will not use them for any of our general operating expenses, except that we may reimburse ourselves for our reasonable administrative costs and overhead, including employee salaries, related to the administration of the Brand Development Fund. We will not use money from the Brand Development Fund to prepare or place advertising that is a solicitation of franchise sales.

(d) We expect to use all contributions in the fiscal year they are made, but any monies remaining in the Brand Development Fund at the end of any year will carry over to the next year. We will use any interest or other earnings of the Brand Development Fund before using current

contributions. We intend for the Brand Development Fund to be perpetual, but we have the right to terminate the Brand Development Fund at any time. If we terminate the Brand Development Fund, any remaining money in the Brand Development Fund will be used for advertising and promotional purposes or will be returned to contributors on a *pro rata* basis. If we terminate the Brand Development Fund we may reinstate it at any time, and any reinstated Brand Development Fund will be administered as described above.

(e) All Vanguard Key Clubs locations owned by us or our Affiliates will make similar contributions to the Brand Development Fund as required of franchisees.

(f) We will have an unaudited statement of the Brand Development Fund prepared each year and we will provide you with a copy if you request it. We are not required to have the Brand Development Fund audited, but if an audited is prepared it will be at the expense of the Brand Development Fund.

(g) You acknowledge that the Brand Development Fund is not a trust and we assume no fiduciary duty in administering the Brand Development Fund.

#### **11.4 Marketing Cooperatives**

We may, in our discretion, create a regional marketing cooperative (“Cooperative”) in any area where two (2) or more Vanguard Key Clubs are located, and establish the rules and regulations therefor. Immediately upon our request, you must become a member of the Cooperative for the area in which some or all of the Designated Territory is located. In no event may the Franchise Business be required to be a member of more than one (1) Cooperative. The Cooperative must be governed in the manner we prescribe. Each member of the Cooperative shall make monthly contributions thereto in an amount as determined by a majority vote of the Cooperative members. Any funds you contribute to a Cooperative will count toward your Local Marketing requirement as set forth in Section 11.3 above; provided, however, that in the event the amount you contribute to a Cooperative is less than the amount you are required to spend for Local Marketing, you shall nevertheless spend the difference locally. The following provisions apply to each Cooperative:

(a) the Cooperative must be organized and governed in a form and manner, and commence operation on a date that we approve in advance in writing;

(b) the Cooperative must be organized for the exclusive purpose of administering advertising programs; developing, subject to our approval, standardized promotional materials for the members’ use in local advertising within the Cooperative’s area;

(c) the Cooperative may adopt its own rules and procedures, but such rules or procedures must be approved by us and must not restrict or expand your rights or obligations under this Agreement;

(d) except as otherwise provided in this Agreement, and subject to our approval, any lawful action of the Cooperative (including, without limitation, imposing assessments for local advertising) at a meeting attended by members possessing more than fifty percent (50%) of the total voting power in the Cooperative is binding upon you if approved by members possessing more than fifty percent (50%) of the total voting power possessed by members in attendance, with each Fitness Studio (both franchised and owned by us or our affiliates) having one (1) vote, but no franchisee (or commonly controlled group of franchisees) may have more than twenty-five percent (25%) of the vote in the Cooperative regardless of the number of Vanguard Key Clubss owned;

(e) without our prior written approval, the Cooperative may not use, nor furnish to its members, any advertising or promotional plans or materials; all such plans and materials must be submitted to us in accordance with the procedure set forth in Section 11.3;

(f) no later than the fifteenth (15<sup>th</sup>) day of each month, each member/franchisee must submit its contribution to the Cooperative, together with such other statements or reports as we or the Cooperative may require, with our prior written approval; and

(g) if an impasse occurs because of a Cooperative members' inability or failure, within forty-five (45) days, to resolve any issue affecting the Cooperative's establishment or effective functioning, upon request of any Cooperative member, that issue must be submitted to us for consideration, and our resolution of such issue is final and binding on all Cooperative members.

## **11.5 Websites**

We alone may establish, maintain, modify or discontinue all internet, worldwide web and electronic commerce activities pertaining to the System. We have established one or more websites accessible through one or more uniform resource locators ("URLs") and we may design and provide for the benefit of your Franchise Business a "click through" subpage at our website for the promotion of your Franchise Business. If we establish one or more websites or other modes of electronic commerce and if we provide a "click through" subpage at the website(s) for the promotion of your Franchise Business, you must routinely provide us with updated copy, photographs and news stories about your Franchise Business suitable for posting on your "click through" subpage. We reserve the right to specify the content, frequency and procedure you must follow for updating your "click through" subpage.

Any websites or other modes of electronic commerce that we establish or maintain may – in addition to advertising and promoting the products, programs or services available at Vanguard Key Clubs – also be devoted in part to offering Vanguard Key Clubs franchises for sale and be used by us to exploit the electronic commerce rights which we alone reserve.

In addition to these activities, we may also establish an intranet through which downloads of operations and marketing materials, exchanges of franchisee e-mail, System discussion forums and System-wide communications (among other activities) can be done. You may not maintain your own website; otherwise maintain a presence or advertise on the internet or any other mode of electronic commerce in connection with your Franchise Business; establish a link to any website we establish at or from any other website or page; or at any time establish any other website, electronic commerce presence or URL which in whole or in part incorporates the Vanguard Key Clubs name or any names confusingly similar to the Proprietary Marks.

You are not permitted to promote your Franchise Business or use any of the Proprietary Marks in any manner on any social or networking websites, such as Facebook, LinkedIn, FourSquare, Groupon or Twitter, without our prior written consent. We will control all social media initiatives. You must comply with our System standards regarding the use of social media in your Franchise Business's operation, including prohibitions on your and the Franchise Business's employees posting or blogging comments about the Franchise Business or our System, other than on a website established or authorized by us ("social media" includes personal blogs, common social networks like Facebook and Instagram, professional networks like LinkedIn, live-blogging tools like Twitter, virtual worlds, file, audio and video-sharing sites, and other similar social networking or media sites or tools). We reserve the right to provide access to branded social media pages/handles/assets, and you must update these regularly. We reserve the right to conduct collective/national campaigns via local social media on your behalf.

We alone will be, and at all times will remain, the sole owner of the copyrights to all material which appears on any website we establish and maintain, including any and all material you may furnish to us for your “click through” subpage.

We and our affiliates may sell products under the Proprietary Marks anywhere and through any method of distribution other than a Vanguard Key Clubs, including sales through channels of distribution such as the Internet, catalog sales, telemarketing or other direct marketing sales (together, “alternative distribution channels”). You may not use alternative distribution channels to make sales anywhere and you will not receive any compensation for our sales through alternative distribution channels. Any orders placed with us or our affiliates through alternative distribution channels will be fulfilled by us or our affiliates and if the order is delivered to an address within your Designated Territory, we will share the revenue from the sale with you. We will pay ten percent (10%) of the cost of the order to you; we reserve the right to deduct this amount from any Royalty Fees you owe to us rather than making direct payment to you. If we receive an inquiry via our website concerning products and services offered by a Vanguard Key Clubs, the inquiry will be forwarded to the appropriate franchisee or Franchise Business to be handled. If you receive an inquiry forwarded by us and you are unwilling or unable to respond to the inquiry, then we or a third party (including another franchisee) may respond to the inquiry and you will not be entitled to any portion of any revenues resulting from the inquiry.

#### **11.6 Advisory Councils**

We have the right to form one or more advisory councils to work with us to improve various aspects of the System, including advertising conducted by the Brand Development Fund, new products and services, and other matters. If we choose to form an advisory council, its members will be made up of franchisees and our representatives. The franchisee representatives may be chosen by us or elected by other franchisees. If you participate on an advisory council you must pay for any expenses related to your participation, including travel, lodging and meals expenses related to attending advisory council meetings. If formed, the advisory council will act in an advisory capacity only and will not have decision making authority. We will have the power to form, merge, change or dissolve any advisory council, in our discretion.

### **Article 12**

#### **ACCOUNTING, RECORDS AND REPORTING OBLIGATIONS**

##### **12.1 Records**

During the term of this Agreement, you shall maintain full, complete and accurate books, records and accounts in accordance with the standard accounting system prescribed by us in the Manual or otherwise in writing. You shall notify us in writing when you have engaged the services of a bookkeeper. You shall retain during the term of this Agreement, and for five (5) years thereafter, all books and records related to the Franchised Business including, without limitation, purchase orders, invoices, payroll records, sales tax records, state and federal tax returns, bank statements, cancelled checks, deposit receipts, cash receipts and disbursement journals, general ledgers, and any other financial records designated by us or required by law.

##### **12.2 Gross Sales Reports**

You shall maintain an accurate record of Gross Sales and shall deliver to us a statement of Gross Sales (“Gross Sales Report”) each month in a form that we approve or prescribe. **The Gross Sales Report for the preceding month must be provided to us together with payment of the Royalty Fee and Brand Development Fee, as described in Article 3.**

### **12.3 Financial Statements**

You shall supply to us on or **before the fifteenth (15<sup>th</sup>) day of each month**, in a form approved by us, a **balance sheet as of the end of the last day of the preceding month and an income statement for the preceding month and the fiscal year-to-date**. These financial statements must be accurate and shall commence from your first month of operation. You shall, at your expense, submit to us within one hundred twenty (120) days after the end of each fiscal year an income statement for the fiscal year just ended and a **balance sheet as of the last day of the fiscal year**. Such financial statements shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis. If required by us, such financial statements shall be reviewed or audited by a certified public accountant. You shall submit to us such other periodic reports in the manner and at the times specified in the Manual or otherwise in writing.

### **12.4 Other Reports**

You shall submit to us copies of all state sales tax returns that are required to be filed with the appropriate governmental agency and such other records as we may reasonably request from time to time or as specified in the Manual. We shall have the right to release financial and operational information relating to the Franchised Business to our lenders or prospective lenders. You shall certify as true and correct all reports to be submitted pursuant to this Agreement.

### **12.5 Computer System**

You shall purchase, install and use a computer and point-of-sale system consisting of hardware and software in accordance with our specifications and shall upgrade such systems in accordance with our requirements. We shall have full access at all times during the term of this Agreement to all of your computer and point-of-sale data and systems and all related information to permit us to verify your compliance with its obligations under this Agreement. You shall install any communications equipment necessary to permit our full access, at your expense.

You shall, at all times during the term of this Agreement, have maintenance contracts for your computer system and point-of-sale system as prescribed by us. In addition, in our discretion, we may require you to update, upgrade and/or replace its computer system and point-of-sale system (including hardware and software components), and there are no contractual limitations on our right to require you to obtain such updates, upgrades and/or replacements, or the cost of such updates, upgrades and/or replacements.

### **12.6 Right to Inspect**

We or our designee have the right, during normal business hours and without notice to you, to examine, copy and audit your books, records and tax returns. If the audit or any other inspection should reveal that any payments to us have been underpaid, then you shall immediately pay to us the amount of the underpayment plus interest from the date such amount was due until paid at the rate of eighteen percent (18%) per annum (or the highest rate allowed by law, whichever is lower). If the audit or any other inspection discloses an underpayment or understatement of at least two percent (2%) of the amount due for any period covered by the audit, or if the audit is required due to your failure to provide required reports to us, you shall, in addition to any other payments required above, reimburse us for any and all costs and expenses connected with the inspection (including, without limitation, travel expenses and reasonable accounting and attorneys' fees). The foregoing remedies shall be in addition to any other remedies we may have under this Agreement or at law.

## **12.7 Release of Records**

At our request, you shall authorize and direct any third parties, including accounting professionals, to release to us all accounting and financial records arising from or relating to the operation of the Franchised Business including, but not limited to, records evidencing Gross Sales, profits, losses, income, tax liabilities, tax payments, revenues, expenses, and any correspondence, notes, memoranda, audits, business records, or internal accounts within said third parties' possession, custody or control, and to continue to release such records to us on a monthly basis for the length of the unexpired term of this Agreement or until such time as we withdraw our request. You shall execute all documents necessary to facilitate the release of records referenced herein to us.

# **Article 13**

## **STANDARDS OF OPERATIONS**

### **13.1 Authorized Products, Services and Suppliers**

You acknowledge that the reputation and goodwill of the System is based in large part on offering high quality services and products to your clients. Accordingly, you shall use or provide at the Franchised Business only those products, supplies, signs, equipment and other items and services that we from time to time approve (and that are not thereafter disapproved) and that comply with our specifications and quality standards. If required by us, any such items or services shall be purchased only from Approved Suppliers that we designate or approve (which might include, or be limited to, us or an Affiliate). You shall not offer for sale, sell or provide through the Franchised Business or from the Approved Location any services or products that we have not approved.

(a) We shall provide you, in the Manual or other written or electronic form, with a list of specifications and, if required, a list of Approved Suppliers for some or all of the supplies, signs, equipment and other approved or specified items and services, and we may from time to time issue revisions to such list. If we are or an Affiliate is an Approved Supplier, you shall execute a standard form purchase or supply agreement for the items to be supplied by us or any Affiliate, if we or the Affiliate require such agreement. You understand and acknowledge that our Affiliate is currently or may become the sole Approved Supplier for the Proprietary Products you may be required to purchase, use and offer for sale in your Franchise Business. If you desire to use any services or products that we have not approved (for services and products that require supplier approval), you shall first send us sufficient information, specifications and/or samples for us to determine whether the service or product complies with our standards and specifications or whether the supplier meets our Approved Supplier criteria. You shall bear all reasonable expenses incurred by us in connection with determining whether we shall approve an item, service or supplier. We will decide within a reasonable time (usually thirty (30) days) after receiving the required information whether you may purchase or lease such items or services or from such supplier. Approval of a supplier may be conditioned on the supplier's ability to provide sufficient quantity of product; quality of products or services at competitive prices; production and delivery capability; and dependability and general reputation. Nothing in this Section shall be construed to require us to approve any particular supplier, or to require us to make available to you or any prospective supplier the evaluation criteria that we deem confidential.

(b) Notwithstanding anything contrary in this Agreement, we have the right to review from time to time our approval of any items or suppliers. We may revoke our approval of any item, service or supplier at any time by notifying you or the supplier. You shall, at your own expense, promptly cease using, selling or providing any items or services disapproved by us and shall promptly cease purchasing from suppliers disapproved by us.

(c) We have the right to designate certain programs, products and services not otherwise authorized for general use as part of the System to be offered locally or regionally based upon such factors as we determine including, but not limited to, franchisee qualifications, test marketing and regional or local differences. We have the right to give our consent to one (1) or more franchisees to provide to its clients certain products or services not authorized for general use as part of the System. Such consent will be granted in our sole discretion and shall not create any rights in you to provide alternate products or services.

(d) We have the right to retain volume rebates, markups and other benefits from suppliers or in connection with the furnishing of suppliers. You shall have no entitlement to or interest in any such benefits.

### **13.2 Appearance and Maintenance of the Franchised Business**

You shall maintain the Franchised Business and the Approved Location in "like new" condition, subject to reasonable wear and tear, and shall repair or replace furnishings, equipment, fixtures and signage as necessary to comply with the health and safety standards and specifications of us and your lessor and any applicable laws or regulations. The expense of such maintenance shall be borne by you and shall be in addition to any required System modifications, as described in Section 10.2.

### **13.3 Redecoration, Remodeling and Modernization of the Franchised Business**

At our request, which request shall not occur more frequently than every five (5) years, you shall redecorate, remodel, refurbish and/or modernize your Franchised Business to meet our then-current image for Vanguard Key Clubs. The redecoration, remodeling, refurbishing and/or modernization described in this Section 13.3 shall be in addition to any regular maintenance and cleaning that you must perform.

### **13.4 Ownership and Management**

(a) The Franchised Business shall, at all times, be under the direct supervision of a General Manager. The General Manager shall have completed our initial training program to our satisfaction. You shall keep us informed, in writing, at all times of the identity of your General Manager. You must not engage in any business or other activities that will conflict with your obligations under this Agreement.

(b) You shall notify us promptly if the General Manager cannot continue to serve or no longer qualifies as a General Manager. You will have thirty (30) days from the date of the notice (or from any date that we independently determine the General Manager no longer meets our standards) to take corrective action. During that thirty (30) day period, you shall provide for interim management of the Franchised Business in compliance with this Agreement.

(c) You shall designate and retain at all times during the term of this Agreement the number of employees and other personnel as we require in the Manual or otherwise in writing.

(d) We reserve the right to require any of your employees to execute covenants of confidentiality and non-competition, as described herein.

### **13.5 Days and Hours of Operations**

You shall keep the Franchised Business open for business during normal business hours as specified in the Manual, subject to applicable law.

### **13.6 Licenses and Permits**

You shall secure and maintain in force all required licenses, permits and certificates necessary for the operation of the Franchised Business and shall operate the Franchised Business in full compliance with all applicable laws, ordinances and regulations. You shall ensure that each of your employees has any certifications or licenses required by applicable law. We make no representation to you with regard to any legal requirements that you must satisfy or comply with in connection with the operation of the Franchised Business. You shall be solely responsible for investigating and complying with all such laws, ordinances and regulations with regard to the operation of the Franchised Business.

### **13.7 Notifications of Proceedings**

You shall notify us in writing of the commencement of any action, suit or proceeding involving you or the Franchised Business, and of the issuance of any order, writ, injunction, award or decree that may affect the operation or financial condition of the Franchised Business not more than five (5) days after such commencement or issuance. You shall deliver to us, not more than five (5) days after your receipt thereof, a copy of any inspection report, warning, certificate or rating by any governmental agency relating to any health or safety law, rule or regulation that reflects your failure to meet and maintain the highest applicable rating or your noncompliance or less than full compliance with any applicable law, rule or regulation. In addition, any and all consumer related complaints shall be answered by you within fifteen (15) days after receipt thereof or such shorter period of time as may be provided in the complaint. A copy of said answer shall be forwarded to us within three (3) days of the date that said answer is forwarded to the complainant. Furthermore, in the event of any bona fide dispute as to liability for taxes assessed or other indebtedness, you may contest the validity or the amount of tax or indebtedness in accordance with procedures of the taxing authority or applicable law; provided, however, in no event shall you permit a tax sale or seizure by levy of execution or similar writ or warrant of attachment by a creditor to occur against the premises of the Franchised Business or any improvements thereon.

### **13.8 Compliance with Good Business Practices**

You acknowledge that the quality of service, and every detail of appearance and demeanor of you and your employees, is material to this Agreement and the relationship created hereby. Therefore, you shall endeavor to maintain high standards of quality and service in the operation of the Franchised Business. You shall at all times endeavor to give prompt, courteous and efficient service to clients of the Franchised Business. The Franchised Business shall in all dealings with its clients, vendors and the general public adhere to the highest standards of honesty, fair dealing and ethical conduct. If we deem that you did not fairly handle a complaint, we have the right to intervene. We have the right to terminate this Agreement for repeated violation of this Section. You shall reimburse us for all costs reasonably incurred by us in handling complaints for the Franchised Business pursuant to this Section.

### **13.9 Uniforms**

You shall abide by any uniform requirements stated in the Manual. Uniforms, if required, must be purchased from an Approved Supplier, if such is designated, or if none, then a supplier who meets our specifications and quality standards for uniforms.

### **13.10 Credit Cards; Gift Cards; Loyalty Cards**

You shall, at your expense, lease or purchase the necessary equipment and/or software and shall have arrangements in place with Visa, MasterCard and such other credit card issuers as we may designate, from time to time, to enable the Franchised Business to accept such methods of payment from its clients.

You shall sell or otherwise issue gift cards, loyalty cards or certificates (together “Gift Cards”) that have been prepared utilizing the standard form of **Gift Card** provided or designated by us, and only in the manner specified by us in the Manual or otherwise in writing. You shall fully honor all Gift Cards that are in the form provided or approved by us. **You shall sell, issue, and redeem (without any offset against any Royalty Fees) Gift Cards in accordance with procedures and policies specified by us in the Manual or otherwise in writing, including those relating to procedures by which you shall request reimbursement for Gift Cards issued by other Franchised Businesses and for making timely payment to us, other operators of Franchised Businesses, or a third-party service provider for Gift Cards issued from your Franchised Business that are honored by us or other Franchised Business operators.** You shall issue and honor any loyalty cards that we designate or approve for the System.

### **13.11 Best Efforts**

You shall use your reasonable best efforts to promote and increase the sales and recognition of products and services offered through the Franchised Business. You shall require all of your employees, managers, officers, agents and representatives to make a good faith effort to enhance and improve the System and the sales of all services and products provided as part of the System.

### **13.12 Minimum Proprietary Product Purchases**

We may require that each month during the term of this Agreement you purchase a minimum amount of Proprietary Products.

## **Article 14**

### **OUR ADDITIONAL OPERATIONS ASSISTANCE**

#### **14.1 General Advice and Guidance; Pricing**

We shall be available to render advice, discuss problems and offer general guidance to you by telephone, e-mail, facsimile, newsletters and other methods with respect to planning, opening and operating the Franchised Business.

We may advise you in writing, from time to time and as permitted by applicable law, concerning the minimum and/or maximum prices that you should charge your customers for services and products provided or sold under the System. **Any such advice, if given at all, will be binding on you and you agree to comply with our pricing guidelines.** Nothing contained herein shall be deemed a representation by us that if you follow such guidelines you will, in fact, generate or optimize profits. You are obligated to inform us of all prices charged for services and products sold by you and to inform us of any modifications of your prices.

#### **14.2 Periodic Visits**

We or our designee shall make periodic visits to the Franchised Business for the purposes of consultation, assistance and guidance with respect to various aspects of the operation and management of the Franchised Business. We or the designee who visits the Franchised Business may prepare, for the benefit of both us and you, written reports detailing any problems or concerns discovered during any such visit and outlining any required or suggested changes or improvements in the operations of the Franchised Business. A copy of any such written report may be provided to you. You shall implement any required changes or improvements in a timely manner.

### **14.3 System Improvements**

We shall communicate improvements in the System to you as such improvements may be developed or acquired by us and implemented as part of the System.

### **14.4 Marketing and Promotional Materials**

We may periodically provide formats for advertising and promotional materials including ad-slicks, brochures, flyers and other materials to you for you to produce and use in the operation of the Franchised Business.

## **Article 15**

### **INSURANCE**

#### **15.1 Types and Amounts of Insurance Coverage**

You agree to purchase and maintain in full force and effect throughout the term of this Agreement at your expense, insurance protecting you, your employees, and us, our officers, and employees, against loss, liability, fire, personal injury, death, property damages, or theft arising from, or occurring in connection with the operation and promotion of the Franchised Business. All insurance policies shall be obtained no later than thirty (30) days before the Franchised Business opens for business. We may delay your opening until all required insurance coverages have been obtained.

We may regulate the types, amounts, terms and conditions of insurance coverage required for your Franchised Business and standards for underwriters of policies providing required insurance coverage; our protection and rights under the policies as an additional named insured; required or impermissible insurance contract provisions; assignment of policy rights to us; periodic verification of insurance coverage that must be furnished to us; our right to obtain insurance coverage at your expense if you fail to obtain required coverage; our right to defend claims; and similar matters relating to insured and uninsured claims. Our specific insurance requirements will be contained in the Manual.

Currently you must have the following insurance coverages: (1) general commercial liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate; (2) business interruption insurance; (3) workers compensation, employer's liability and other insurance required by the state in which your Franchise Business is located; (4) any insurance required according to the terms of the lease or purchase agreement for the Franchise Business; and (5) any other insurance we may require in the future.

You must maintain all required policies in force during the entire term of this Agreement and any renewal terms. Each insurance policy must name us and our Affiliate (and, if we request, our directors, employees or shareholders) as additional insureds and must provide us with thirty (30) days' advance written notice of any material modification, cancellation or expiration of the policy.

#### **15.2 Future Increases**

We have the right to reasonably increase the minimum liability protection requirement annually and require different or additional insurance coverage(s) to reflect inflation, changes in standards of liability, future damage awards or other relevant changes in circumstances.

### **15.3 Carrier Standards**

Such policies shall be written by an insurance company licensed in the state in which you operate and having at least an "A" Rating Classification as indicated in the latest issue of A.M. Best's Key Rating Guide.

### **15.4 Evidence of Coverage**

Your obligation to obtain and maintain the foregoing policies shall not be limited in any way by reason of any insurance that may be maintained by us, nor shall your performance of this obligation relieve you of liability under the indemnity provisions set forth in Section 21.3. You shall provide, annually, or more frequently if requested by us, certificates of insurance showing compliance with the foregoing requirements. Such certificates shall state that said policy or policies shall not be canceled or altered without at least thirty (30) days' prior written notice to us and shall reflect proof of payment of premiums.

### **15.5 Failure to Maintain Coverage**

Should you not procure and maintain insurance coverage as required by this Agreement, or if not produced by you upon our request, we have the right (but not the obligation) to immediately procure such insurance coverage and to charge the premiums to you, which charges, together with a ten percent (10%) administrative fee for expenses incurred by us in connection with such procurement, shall be payable by you immediately upon notice.

## **Article 16**

### **DEFAULT AND TERMINATION**

#### **16.1 Termination by Us – No Opportunity to Cure**

We have the right to terminate this Agreement, without any opportunity to cure by you, if:

- (a) You fail to establish and equip the Franchised Business pursuant to Article 5;
- (b) You fail to satisfactorily complete any training program pursuant to Article 8;
- (c) You made any material misrepresentation or omission in your application for the Franchise or otherwise in writing to us in the course of entering into this Agreement;
- (d) You, any of your owners or your General Manager is/are convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect the reputation of us, you or the Franchised Business;
- (e) You disclose, duplicate or otherwise use in an unauthorized manner any portion of the Manual, the Trade Secrets or any other Confidential Information;
- (f) You abandon, fail or refuse to actively operate the Franchised Business for five (5) or more consecutive days (unless the Franchised Business has not been operational for a purpose approved by us), or, if first approved by us or otherwise permitted under Section 5.6, you fail to relocate the Franchised Business;
- (g) You surrender or transfer control of the operation of the Franchised Business without our approval, make or attempt to make an unauthorized direct or indirect assignment of the

Franchise or an ownership interest in you, or fail or refuse to assign the Franchise or the interest in you of a deceased or incapacitated owner thereof as herein required;

(h) You fail to maintain the Franchised Business under the primary supervision of a General Manager during the one hundred eighty (180) days following the death or incapacity of you or any holder of a legal or beneficial interest in you pursuant to Section 18.6;

(i) You submit to us on two (2) or more separate occasions at any time during the term of the Franchise any reports or other data, information or supporting records that understate any Royalty Fee or any other fees owed to us by two percent (2%) or more for any accounting period and you are unable to demonstrate that such understatements resulted from inadvertent error;

(j) You, or any of your partners, if you are a partnership, or any of your officers, directors, shareholders, or members, if you are a corporation or limited liability company, shall become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by you or such a petition is filed against and not opposed by you; if you are adjudicated a bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver or other custodian for you or your business or assets is filed and consented to by you; if a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law should be instituted by or against you; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless a *supersedeas* bond is filed); if you are dissolved; if execution is levied against your business or property; if suit to foreclose any lien or mortgage against the premises or equipment is instituted against you and not dismissed within thirty (30) days; or if the real or personal property of the Franchised Business shall be sold after levy thereupon by any sheriff, marshal, or constable.

(k) You misuse or make any unauthorized use of any of the Marks or commit any other act that can reasonably be expected to impair the goodwill associated with any of the Marks;

(l) You fail on two (2) or more separate occasions within any period of twelve (12) consecutive months to submit reports or other information or supporting records when due, to pay any Royalty Fee, Brand Development Fee, amounts due for purchases from us and/or any Affiliate, or other payment when due to us and/or any Affiliate, whether or not such failures to comply are corrected after notice thereof is delivered to you;

(m) You, after receiving notice of violation, continue to violate any health or safety law, ordinance or regulation, or operate the Franchised Business in a manner that presents a health or safety hazard to clients, employees or the public after having received notice of such health or safety hazards from us or any governmental authority;

(n) You fail to comply with any applicable law or regulation within ten (10) days after being given notice of non-compliance or fail to comply with all applicable laws and ordinances relating to the Franchised Business, including Anti-Terrorism Laws, or if your or any of your owners' assets, property, or interests are blocked under any law, ordinance, or regulation relating to terrorist activities, or you or any of your owners otherwise violate any such law, ordinance, or regulation;

(o) You repeatedly breach this Agreement or repeatedly fail to comply with mandatory specifications, customer service standards or operating procedures prescribed in the Manual, whether or not previous breaches or failures are cured;

(p) You default under any other agreement between us (or any Affiliate) and you, such that we or our Affiliate, as the case may be, have the right to terminate such agreement or such agreement automatically terminates;

(q) You engage in any activity exclusively reserved to us.

### **16.2 Termination by Us – Opportunity to Cure**

Except as otherwise provided in Section 16.1, we have the right to terminate this Agreement for the following breaches and defaults by giving notice of such termination stating the nature of the default; provided, however, that you may avoid termination by curing such default or failure (or by providing proof acceptable to us that you have made all reasonable efforts to cure such default or failure and shall continue to make all reasonable efforts to cure until a cure is affected if such default or failure cannot reasonably be cured before the effective date of the termination) within the specified period:

(a) within five (5) days of receiving notice of your failure to pay any amounts due to us; or

(b) within thirty (30) days of receiving notice of any other default by you under this Agreement or upon your failure to substantially comply with any mandatory specification, standard or operating procedure prescribed in the Manual or otherwise prescribed in writing.

### **16.3 Reinstatement and Extension**

If provisions of this Agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation or non-renewal other than in accordance with applicable law, we may reinstate or extend the term of this Agreement for the purpose of complying with applicable law by submitting a written notice to you without waiving any of our rights under this Agreement.

### **16.4 Our Right to Discontinue Services to You**

If we deliver to you a notice of termination pursuant to this Article 16, then in addition to our other remedies, we have the right to suspend our performance of any of our obligations under this Agreement including, without limitation, the sale or supply of any services or products for which we are or an Affiliate is an Approved Supplier to you, until such time as you correct the breach.

### **16.5 Cross Default, Non-Exclusive Remedies, Etc.**

Any default by you (or any person/company affiliated with you) under this Agreement may be regarded as a default under any other agreement between us (or any of our Affiliates) and you (or any of your Affiliates). Any default by you (or any person/company affiliated with you) under any other agreement, including, but not limited to, any lease and/or sublease, between us (or any of our Affiliates) and you (or any person/company affiliated with you), and any default by you (or any person/company affiliated with you) under any obligation to us (or any of our Affiliates) may be regarded as a default under this Agreement. Any default by you (or any person/company affiliated with you) under any lease, sublease, loan agreement, security interest or otherwise, whether with us, any of our Affiliates and/or any third party may be regarded as a default under this Agreement and/or any other agreement between us (or any of our Affiliates) and you (or any of your Affiliates).

In each of the foregoing cases, we (and any of our Affiliates) will have all remedies allowed at law, including termination of your rights (and/or those of any person/company affiliated with you) and our (and/or our Affiliates') obligations. No right or remedy which we may have (including termination)

is exclusive of any other right or remedy provided under law or equity and we may pursue any rights and/or remedies available.

### **16.6 Amendment Pursuant to Applicable Law**

Notwithstanding anything to the contrary contained in this Article, if any valid, applicable law or regulation of a competent governmental authority having jurisdiction over this franchise and the parties hereto shall limit our rights of termination under this Agreement or shall require longer notice periods than those set forth above, this Agreement is deemed amended to satisfy the minimum notice periods or restrictions upon such termination required by such laws and regulations; provided, however, that such constructive amendment shall not be deemed a concession by us that the grounds for termination set forth in this Agreement do not constitute "good cause" for termination within the meaning ascribed to that term by any applicable law or regulation. We shall not be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, hearing or proceeding relating to this Agreement or the termination of this Agreement.

## **Article 17**

### **RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION**

#### **17.1 Actions to be Taken**

Except as otherwise provided herein, upon termination or expiration of the Franchise, this Agreement and all rights granted hereunder to you shall terminate and you shall:

(a) immediately cease to operate the Franchised Business and shall not thereafter, directly or indirectly, represent to the public or hold yourself out as a present or former franchisee of ours;

(b) cease to use the Trade Secrets and other Confidential Information, the System and the Marks including, without limitation, all signs, slogans, symbols, logos, advertising materials, stationery, forms and any other items that display or are associated with the Marks;

(c) upon demand by us, immediately assign (or, if an assignment is prohibited, sublease for the full remaining term, and on the same terms and conditions as your lease) your interest in the lease then in effect for the Approved Location to us and you shall furnish us with evidence satisfactory to us of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement, and we have the right to pay rent and other expenses directly to the party to whom such payment is ultimately due;

(d) take such action as may be necessary to cancel or assign to us, at our option, any assumed name or equivalent registration filed with state, city or county authorities that contains the name "Vanguard Key Clubs" or any other Marks, and you shall furnish us with evidence satisfactory to us of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement;

(e) pay all sums owing to us and any Affiliate, which may include, but not be limited to, all damages, costs and expenses, including reasonable attorneys' fees, unpaid Royalty Fees, Brand Development Fees, amounts owed for the purchase of products, and any other amounts due to us or any Affiliates;

(f) pay to us all costs and expenses, including reasonable attorneys' fees, incurred by us subsequent to the termination or expiration of the Franchise in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement;

(g) immediately return to us the Manual, Trade Secrets and all other Confidential Information including records, files, instructions, brochures, agreements, disclosure statements and any and all other materials provided by us to you relating to the operation of the Franchised Business (all of which are acknowledged to be our property);

(h) assign all internet and website listings and telephone listings and numbers for the Franchised Business to us and shall notify your internet service provider, the telephone company and all applicable listing agencies of the termination or expiration of your right to use any such websites or internet listings or telephone numbers or facsimile numbers associated with the Marks in any regular, classified or other telephone directory listing and shall authorize transfer of same to us or at our direction; and

(i) comply with all other provisions of this Agreement applicable following termination or expiration.

## **17.2 Post-Termination Covenant Not to Compete**

You acknowledge that the restrictive covenants contained in this Section and in Article 7 are fair and reasonable and are justifiably required for purposes including, but not limited to, (i) to protect our Trade Secrets and other Confidential Information; (ii) to induce us to grant a Franchise to you; and (iii) to protect us against our costs in training you and your officers, directors, executives, professional staff and General Managers.

You waive any right to challenge these restrictions as being overly broad, unreasonable or otherwise unenforceable. If, however, a court of competent jurisdiction determines that any such restriction is unreasonable or unenforceable, then you shall submit to the reduction of any such activity, time period or geographic restriction necessary to enable the court to enforce such restrictions to the fullest extent permitted under applicable law. It is the desire and intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in any jurisdiction where enforcement is sought.

Except as otherwise approved in writing by us, neither you, nor any holder of a legal or beneficial interest in you, nor any officer, director, executive, manager or member of the professional staff of yours, shall, for a period of two (2) years after the expiration or termination of this Agreement, regardless of the cause of termination, either directly or indirectly, for themselves or through, on behalf of or in conjunction with any person, persons, partnership, corporation, limited liability company or other business entity:

(a) own an interest in, manage, operate or provide services to any Competitive Business located or operating (a) within a twenty-five (25) mile radius of the Approved Location (or within the Designated Territory, if greater), or (b) within a twenty-five (25) mile radius of the location of any other Franchised Business in existence at the time of termination or expiration; or

(b) solicit or otherwise attempt to induce or influence any employee or other business associate of ours to terminate or modify his, her or its business relationship with us or to compete against us.

In furtherance of this Section, we have the right to require certain individuals to execute standard form confidentiality or non-competition agreements the same as or similar to the standard form Confidentiality and Non-Competition Agreement attached as Exhibit B.

### **17.3 Relief for Breaches of Confidentiality, Non-Solicitation and Non-Competition**

You acknowledge that an actual or threatened violation of the covenants contained in Article 7 of this Agreement will cause us immediate and irreparable harm, damage and injury that cannot be fully compensated for by an award of damages or other remedies at law. Accordingly, we shall be entitled, as a matter of right, to an injunction from any court of competent jurisdiction restraining any further violation by you of this Agreement, and such right to an injunction shall be cumulative and in addition to, and not in limitation of, any other rights and remedies that we may have at law or in equity.

### **17.4 Unfair Competition**

If you operate any other business, you shall not use any reproduction, counterfeit, copy or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, that is likely to cause confusion, mistake or deception, or that is likely to dilute our or the owner's rights in the Marks. You shall not utilize any designation of origin, description or representation that falsely suggests or represents an association or connection with us. This Section is not intended as an approval of your right to operate other businesses and in no way is it intended to contradict Section 17.1 or 17.2.

### **17.5 De-Identification of Approved Location**

If we elect not to receive an assignment or sublease of the Approved Location, you shall make such modifications or alterations to the Approved Location (including changing telephone and facsimile numbers) immediately upon termination or expiration of this Agreement as may be necessary to prevent any association between us or the System and any business subsequently operated by you or others at the Approved Location. You shall make such specific additional changes to the Approved Location as we may reasonably request for that purpose including, without limitation, removal of all physical and structural features identifying or distinctive to the System. If you fail or refuse to comply with the requirements of this Section, we have the right to enter upon the Approved Location for the purpose of making or causing to be made such changes as may be required, without liability for trespass or tort and at your expense, which expense you shall pay upon demand.

### **17.6 Our Option to Purchase Certain Assets**

We have the right (but not the duty), for a period of thirty (30) days after termination or expiration of this Agreement, to purchase any or all assets of the Franchised Business including leasehold improvements, equipment, supplies and other inventory. The purchase price shall be equal to the assets' book value, excluding any goodwill. If we elect to exercise this option to purchase, we have the right to set off all amounts due from you under this Agreement, if any, against the purchase price.

### **17.7 Survival of Certain Provisions**

All obligations of us and you that expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding their expiration or termination and until satisfied or by their nature expire.

### **17.8 Liquidated Damages**

Upon termination of this Agreement according to its terms and conditions, you agree to pay to us within fifteen (15) days after the effective date of this Agreement's termination, in addition to the amounts owed hereunder, liquidated damages equal to the average monthly Royalty Fees you paid or owed to us during the twelve (12) months of operation preceding the effective date of termination multiplied by (a) twenty-four (24) (being the number of months in two (2) full years), or (b) the number of months remaining in the Agreement had it not been terminated, whichever is higher.

The parties hereto acknowledge and agree that it would be impracticable to determine precisely the damages we would incur from this Agreement's termination and the loss of cash flow from Royalty Fees due to, among other things, the complications of determining what costs, if any, we might have saved and how much the Royalty Fees would have grown over what would have been this Agreement's remaining term. The parties hereto consider this liquidated damages provision to be a reasonable, good faith pre-estimate of those damages.

The liquidated damages provision only covers our damages from the loss of cash flow from the Royalty Fees. It does not cover any other damages, including damages to our reputation with the public and landlords and damages arising from a violation of any provision of this Agreement other than the Royalty Fee section. You and each of your owners agree that the liquidated damages provision does not give us an adequate remedy at law for any default under, or for the enforcement of, any provision of this Agreement other than the Royalty Fee section.

## **Article 18**

### **TRANSFERABILITY OF INTEREST**

#### **18.1 Transfer by Us**

We shall have the right to assign this Agreement and all of our attendant rights and privileges to any person, firm, corporation or other entity provided that, with respect to any assignment resulting in the subsequent performance by the assignee of our functions: (i) the assignee shall, at the time of such assignment, be financially responsible and economically capable of performing our obligations; and (ii) the assignee shall expressly assume and agree to perform such obligations.

You expressly affirm and agree that we may sell our assets, our rights to the Proprietary Marks or to the System outright to a third party; may go public; may engage in a private placement of some or all of our securities; may merge, acquire other corporations, or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of said Proprietary Marks (or any variation thereof) and/or the loss of association with or identification of Key Club Development Corporation as Franchisor. Nothing contained in this Agreement shall require us to remain in the same business or to offer the same products and services, whether or not bearing the Proprietary Marks, in the event that we exercise our right to assign our rights in this Agreement.

#### **18.2 Transfer by You to a Third Party**

Your rights and duties as set forth in this Agreement, and the Franchise herein granted, are personal to you (or your owners), and we have entered into this Agreement in reliance upon your personal or collective skill and financial ability. Accordingly, neither you nor any holder of a legal or beneficial interest in you may sell, assign, convey, give away, pledge, mortgage, sublicense or otherwise transfer, whether by operation of law or otherwise, any interest in this Agreement, the Franchise granted hereby, the Approved Location used in operating the Franchised Business, its assets or any part or all of the ownership interest in you without our prior written approval; provided that transfer by and between legal or beneficial owners shall be permissible and shall not require our consent. Any purported transfer without such approval shall be null and void and shall constitute a material breach of this Agreement. If you are in compliance with this Agreement, our consent to such transfer shall be conditioned upon the satisfaction of the following requirements:

(a) you have complied with the requirements set forth in Article 19 regarding our right of first refusal to acquire the interest being sold;

(b) all obligations owed to us and/or our Affiliate, and all other outstanding obligations relating to the Franchised Business, are fully paid and satisfied;

(c) you (and any transferring owners, if you are a business entity) have executed a general release of any and all claims against us, including our officers, directors, shareholders, managers, members, partners, owners and employees, in their corporate and individual capacities including, without limitation, claims arising under federal, state or local laws, rules or ordinances, and any other matters incident to the termination of this Agreement or to the transfer of your interest herein or to the transfer of your ownership of all or any part of the Franchise;

(d) the prospective transferee has satisfied us that it meets our management, business and financial standards, and otherwise possesses the character and capabilities, including business reputation and credit rating, as we may require to demonstrate ability to conduct the Franchised Business and prospective transferee/assignee has satisfied our training requirements;

(e) the transferee and, if we require, all persons owning any interest in the transferee, have, at our option, executed the then-current Franchise Agreement for new franchisees, which may be substantially different from this Agreement, including different Royalty Fee and Brand Development Fee rates and other material provisions, of this Agreement. If a new franchise agreement is executed, we have the right to limit its term to the remaining term of this Agreement;

(f) the transferee has executed a general release of any and all claims against us and our officers, directors, shareholders, managers, members, partners, owners and employees, in their corporate and individual capacities, with respect to any representations regarding the Franchise or the business conducted pursuant thereto or any other matter that may have been made to the transferee by you;

(g) you have provided us with a complete copy of all contracts and agreements and related documentation between you and the prospective transferee relating to the intended sale or transfer of the Franchise;

(h) you have paid to us, together with your request for approval of the transfer, a transfer fee equal to fifty percent (50%) of our then-current Franchise Fee;

(i) unless a new Franchise Agreement is signed, the transferee, or all holders of a legal or beneficial interest in the transferee, has agreed to be personally bound jointly and severally by all provisions of this Agreement for the remainder of its term;

(j) you have agreed to be bound to the obligations of the new franchise agreement and to guarantee the full performance thereof by the transferee, if required by us;

(k) the transferee has obtained all necessary consents and approvals by third parties (such as the lessor of the Approved Location) and all applicable federal, state and local laws, rules, ordinances and requirements applicable to the transfer have been complied with or satisfied;

(l) you have, and if you are an entity, all of the holders of a legal and beneficial interest in you have, executed and delivered to us a confidentiality and non-competition agreement in a

form the same as or similar to the standard form Confidentiality and Non-Competition Agreement attached as Exhibit B;

(m) the transferee agrees that its General Manager shall complete, to our reasonable satisfaction, a training program in substance similar to the initial training described in Section 8.1 prior to assuming the management of the day-to-day operation of the Franchised Business;

(n) the transferee has, at our request, remodeled, refurbished, redecorated and/or modernized the Franchised Business to meet our then-current image for all Franchised Businesses; and

(o) the transferee, if required by us, has executed a Guaranty and Assumption of Obligations in the form attached to this Agreement as Exhibit C.

Notwithstanding the foregoing, no transfer from a transferee to a third party shall be permitted during the first year of this Agreement.

Our consent to a transfer of any interest in this Agreement, or of any ownership interest in the Franchised Business, shall not constitute a waiver of any claims we may have against the transferor or the transferee, nor shall it be deemed a waiver of our right to demand compliance with the terms of this Agreement.

### **18.3 Transfer to a Controlled Entity**

If you wish to transfer this Agreement or any interest herein to a corporation, limited liability company or other legal entity (“Controlled Entity”), which Controlled Entity was formed for the convenience of your ownership of the Franchise, financial planning, tax or other convenience, our consent to such transfer shall be conditioned upon the satisfaction of the following requirements subject to applicable state law:

(a) the Controlled Entity is newly organized and its charter provides that its activities are confined exclusively to the operation of the Franchised Business;

(b) you or all holders of a legal or beneficial interest in you own all of the equity and voting power of the outstanding stock or other capital interest in the Controlled Entity;

(c) all of your obligations to us or any Affiliate are fully paid and satisfied; provided, however, that neither you nor the Controlled Entity shall be required to pay a transfer fee as required pursuant to Section 18.2;

(d) the Controlled Entity has entered into a written agreement with us expressly assuming the obligations of this Agreement and all other agreements relating to the operation of the Franchised Business. If the consent of any other party to any such other agreement is required, you have obtained such written consent and provided the same to us prior to our consent;

(e) all holders of a legal or beneficial interest in the Controlled Entity have entered into an agreement with us jointly and severally guaranteeing the full payment of the Controlled Entity’s obligations to us and the performance by the Controlled Entity of all the obligations of this Agreement;

(f) each stock certificate or other ownership interest certificate of the Controlled Entity has conspicuously endorsed upon the face thereof a statement in a form satisfactory to us that it is

held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon transfers and assignments by this Agreement;

(g) copies of the Controlled Entity's articles of incorporation, bylaws, operating agreement, and other governing regulations or documents, including resolutions of the board of directors authorizing entry into this Agreement, have been promptly furnished to us. Any amendment to any such documents shall also be furnished to us immediately upon adoption; and

(h) the Franchise may be transferred to a Controlled Entity without payment of a transfer fee one (1) time only.

The term of the transferred franchise shall be the unexpired term of this Agreement, including all renewal rights, subject to any and all conditions applicable to such renewal rights.

Our consent to a transfer of any interest in this Agreement, or of any ownership interest in the Franchised Business, shall not constitute a waiver of any claims we may have against the transferor or the transferee, nor shall it be deemed a waiver of our right to demand compliance with the terms of this Agreement.

#### **18.4 Our Disclosure to Transferee**

We have the right, without liability of any kind or nature whatsoever to you, to make available for inspection by any intended transferee of yours all or any part of our records relating to this Agreement, the Franchised Business or to the history of the relationship of the parties hereto. You hereby specifically consent to such disclosure by us and shall release and hold us harmless from and against any claim, loss or injury resulting from an inspection of our records relating to the Franchised Business by an intended transferee identified by you.

#### **18.5 For-Sale Advertising**

You shall not, without our prior written consent, place in, on or upon the location of the Franchised Business, or in any communication media, any form of advertising relating to the sale of the Franchised Business or the rights granted hereunder.

#### **18.6 Transfer by Death or Incapacity**

Upon your death or incapacity (as determined by a court of competent jurisdiction), if you are an individual, or upon the death or incapacity of any holder of at least a twenty-five percent (25%) legal or beneficial interest in you, the appropriate representative of such person (whether administrator, personal representative or trustee) will, within a reasonable time not exceeding one hundred eighty (180) days following such event, transfer such individual's interest in the Franchised Business or in you to a third party approved by us, which may be one or more individuals who would succeed to such interest under will or under the laws of intestacy. Such transfers, including transfers by will or inheritance, shall be subject to the conditions for assignments and transfers contained in this Agreement. During such one hundred eighty (180) day period, the Franchised Business must remain at all times under the primary management of a General Manager who otherwise meets our management qualifications.

## Article 19

### OUR RIGHT OF FIRST REFUSAL

#### **19.1 Submission of Offer**

If you, or any of your owners, propose to sell the Franchised Business (or any of its assets outside of the normal course of business), any ownership interest in you or any ownership interest in the Franchise granted hereunder, you shall obtain and deliver a *bona fide*, executed written offer or proposal to purchase, along with all pertinent documents including any contract or due diligence materials, to us. The offer must apply only to an approved sale of the assets or interests listed above and may not include any other property or rights of you or any of your owners.

#### **19.2 Our Right to Purchase**

We shall, for sixty (60) days from the date of delivery of all such documents, have the right, exercisable by written notice to you, to purchase the offered assets or interest for the price and on the same terms and conditions contained in such offer communicated to you. We have the right to substitute cash for the fair market value of any form of payment proposed in such offer. Our credit shall be deemed at least equal to the credit of any proposed buyer. After providing notice to you of our intent to exercise this right of first refusal, we shall have up to one hundred twenty (120) days to close the purchase. We shall be entitled to receive from you all customary representations and warranties given by you as the seller of the assets or such ownership interest or, at our election, such representations and warranties contained in the proposal.

#### **19.3 Non-Exercise of Right of First Refusal**

If we do not exercise this right of first refusal within sixty (60) days, the offer or proposal may be accepted by you or any of your owners, subject to our prior written approval as required by Section 18.2. Should the sale fail to close within one hundred twenty (120) days after the offer is delivered to us, or if the terms of the offer change, our right of first refusal shall renew and be implemented in accordance with this Section.

## Article 20

### YOUR BENEFICIAL OWNERS

You represent, and we enter into this Agreement in reliance upon such representation, that the individuals identified in Exhibit D attached hereto are holders of a legal or beneficial interest in you. Your further represent that such Exhibit D shall be updated as necessary by you to reflect any changes in such ownership, subject to our approval of any transfers as described above.

## Article 21

### RELATIONSHIP AND INDEMNIFICATION

#### **21.1 Relationship**

This Agreement is purely a contractual relationship between the parties and does not appoint or make you an agent, legal representative, joint venturer, partner, employee, servant or independent contractor of ours for any purpose whatsoever. You may not represent or imply to third parties that you are an agent of ours, and you are in no way authorized to make any contract, agreement, warranty or representation on our behalf, or to create any obligation, express or implied, on our behalf. During the term of this Agreement, and any extension or renewal hereof, you shall hold yourself out to the public only as a franchisee and an independent owner of the Franchised Business operating the Franchised Business pursuant to a franchise from us. You shall take such affirmative action as may be necessary to

do so including, without limitation, exhibiting a notice of that fact in a conspicuous place on the Approved Location and on all forms, stationery or other written materials, the content of which we have the right to specify. Under no circumstances shall we be liable for any act, omission, contract, debt or any other obligation of yours. We shall in no way be responsible for any injuries to persons or property resulting from the operation of the Franchised Business. Any third party contractors and vendors retained by you to convert or construct the premises are independent contractors of yours alone.

## **21.2 Standard of Care**

This Agreement does not establish a fiduciary relationship between the parties. Unless otherwise specifically provided in this Agreement with respect to certain issues, whenever this Agreement requires you to obtain our written consent or permits you to take any action or refrain from taking any action, we are free to act in our own self-interest without any obligation to act reasonably, to consider the impact on you or to act subject to any other standard of care limiting our right, except as may be provided by statute or regulation.

## **21.3 Indemnification**

You shall hold harmless and indemnify us, any Affiliate, all holders of a legal or beneficial interest in us and all officers, directors, executives, managers, members, partners, owners, employees, agents, successors and assigns (collectively "Franchisor Indemnitees") from and against all losses, damages, fines, costs, expenses or liability (including attorneys' fees and all other costs of litigation) incurred in connection with any action, suit, demand, claim, investigation or proceeding, or any settlement thereof, that arises from or is based upon your (a) ownership or operation of the Franchised Business; (b) violation, breach or asserted violation or breach of any federal, state or local law, regulation or rule; (c) breach of any representation, warranty, covenant, or provision of this Agreement or any other agreement between you and us (or an Affiliate); (d) defamation of us or the System; (e) acts, errors or omissions committed or incurred in connection with the Franchised Business, including any negligent or intentional acts; (f) infringement, violation or alleged infringement or violation of any Mark, patent or copyright or any misuse of the Trade Secrets or Confidential Information; or (g) infringement, violation or alleged infringement or violation of any patent, trademark or copyright or other rights controlled by third parties.

## **21.4 Right to Retain Counsel**

We shall give you immediate notice of any action, suit, demand, claim, investigation or proceeding that may give rise to a claim for indemnification by a Franchisor Indemnitee. We have the right to retain counsel of our own choosing in connection with any such action, suit, demand, claim, investigation or proceeding. In order to protect persons, property, our reputation or the goodwill of others, we have the right to, at any time without notice, take such remedial or corrective actions as we deem expedient with respect to any action, suit, demand, claim, investigation or proceeding if, in our sole judgment, there are grounds to believe any of the acts or circumstances listed above have occurred. You shall cooperate with us in our handling of any such action, suit, demand, claim, investigation or proceeding. If our exercise of our rights under this Section causes any of your insurers to refuse to pay a third party claim, all causes of action and legal remedies you might have against such insurer shall automatically be assigned to us without the need for any further action on either party's part. Under no circumstances shall we be required or obligated to seek coverage from third parties or otherwise mitigate losses in order to maintain a claim against you. The failure to pursue such remedy or mitigate such loss shall in no way reduce the amounts recoverable by us from you.

## **21.5 Indemnification for Use of Marks**

We agree to indemnify and hold you harmless for all damages and expenses you may incur in any trademark infringement proceeding disputing your authorized use of any Mark under this Agreement; provided you have timely notified us of the proceeding and comply with our directions in responding to the proceeding. At our option, we may defend and control the defense of any proceeding relating to any Mark; provided we may not settle any such dispute without your prior written consent unless, in connection with such settlement, you shall not be obligated to pay any amounts in settlement and you receive a general release of all claims.

## **Article 22**

### **GENERAL CONDITIONS AND PROVISIONS**

#### **22.1 No Waiver**

No failure of ours to exercise any power reserved to it hereunder, or to insist upon strict compliance by you with any obligation or condition hereunder, and no custom nor practice of the parties in variance with the terms hereof shall constitute a waiver of our right to demand exact compliance with the terms of this Agreement. Waiver by us of any particular default by you shall not be binding unless in writing and executed by us and shall not affect nor impair our right with respect to any subsequent default of the same or of a different nature. Subsequent acceptance by us of any payment(s) due shall not be deemed to be our waiver of any preceding breach by you of any terms, covenants or conditions of this Agreement.

#### **22.2 Injunctive Relief**

As any breach by you of any of the restrictions contained in Articles 6, 7, 9 and 17 would result in irreparable injury to us, and as the damages arising out of any such breach would be difficult to ascertain, in addition to all other remedies provided by law or in equity, we shall be entitled to seek injunctive relief (whether a restraining order, a preliminary injunction or a permanent injunction) against any such breach, whether actual or contemplated.

#### **22.3 Notices**

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, dispatched by overnight delivery envelope, or sent by facsimile to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:

Key Club Development Corporation  
200 Kensington Rd. Hampton Falls, NH 03844

Attention:

Craig J. Annis

Email: [info@vanguardkeyclubs.com](mailto:info@vanguardkeyclubs.com)

With a copy to:

\_\_\_\_\_

\_\_\_\_\_

Email:

To Franchisee:

\_\_\_\_\_

\_\_\_\_\_

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Email:

or at any such other address or addresses as the party to whom such notice, consent, approval, statement, authorization, documentation or other communication is to be given may designate by notice in writing so given to the other parties hereto as provided hereinbefore. Any notices, consents, approvals, statements, authorizations, documents or other communications, if mailed, shall be deemed to have been given on the fifth (5th) business day (except Saturdays and Sundays) following such mailing, or, if delivered personally or transmitted by telex or other form of electronic communication, shall be deemed to have been given on the day of delivery or transmission (as the case may be), if a business day, or if not a business day, on the business day next following the day of delivery or transmission (as the case may be).

#### **22.4      Guaranty and Assumption of Obligations**

All holders of a legal or beneficial interest in you of five percent (5%) or greater shall be required to execute, as of the date of this Agreement, the Guaranty and Assumption of Obligations attached as Exhibit C, through which such holders agree to assume and discharge all of your obligations under this Agreement and to be personally liable hereunder for all of the same. In the event of any approved transfer of a five percent (5%) or greater ownership interest in you, then said transferee shall also be obligated to execute the Guaranty and Assumption of Obligations.

#### **22.5      Approvals**

Whenever this Agreement requires our prior approval or consent, you shall make a timely written request to us therefore and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing. We make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you or any third party to which we would not otherwise be subject, by providing any waiver, approval, advice, consent or services to you in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

#### **22.6      Entire Agreement**

This Agreement, its exhibits and the documents referred to herein shall be construed together and constitute the entire, full and complete agreement between us and you concerning the subject matter hereof and shall supersede all prior agreements; provided, however, that nothing in this or any related agreement is intended to disclaim the representations made by us in the Disclosure Document that was furnished to you by us. No other representation, oral or otherwise, has induced Franchisee to execute this Agreement, and there are no representations (other than those within the Disclosure Document), inducements, promises or agreements, oral or otherwise, between the parties not embodied herein, that are of any force or effect with respect to the matters set forth in or contemplated by this Agreement or otherwise. No amendment, change or variance from this Agreement shall be binding on either party unless executed in writing by both parties.

#### **22.7      Severability and Modification**

Except as noted below, each paragraph, part, term and provision of this Agreement shall be considered severable. If any paragraph, part, term or provision herein is ruled to be unenforceable, unreasonable or invalid, such ruling shall not impair the operation of or affect the remaining portions, paragraphs, parts, terms and provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties; and such unenforceable, unreasonable or invalid paragraphs, parts, terms or provisions shall be deemed not part of this Agreement. If we determine that a finding of invalidity adversely affects the basic consideration of this Agreement, we have the right to, at our option, terminate this Agreement.

Notwithstanding the above, each of the covenants contained in Articles 7 and 17 shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of any such covenant is held to be unenforceable, unreasonable or invalid, then it shall be amended to provide for limitations on disclosure of Trade Secrets and other Confidential Information or on competition to the maximum extent provided or permitted by law.

## **22.8 Construction**

All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

## **22.9 Force Majeure**

Whenever a period of time is provided in this Agreement for either party to perform any act, except for your payment of monies to us and/or any Affiliate, neither party shall be liable nor responsible for any delays due to strikes, lockouts, casualties, acts of God, war, terrorism, governmental regulation or control or other causes beyond the reasonable control of the parties, and the time period for the performance of such act shall be extended for the amount of time of the delay. This clause shall not result in an extension of the term of this Agreement. You understand and acknowledge that a force majeure event shall not include your lack of funds.

## **22.10 Timing**

Time is of the essence; except as set forth in Section 22.9, failure to perform any act within the time required or permitted by this Agreement shall be a material breach.

## **22.11 Withholding Payments**

You shall not, for any reason, withhold payment of any Royalty Fees, Brand Development Fees, or other amounts due to us or to an Affiliate. You shall not withhold or offset any amounts, damages or other monies allegedly due to you against any amounts due to us. No endorsement or statement on any payment for less than the full amount due to us will be construed as an acknowledgment of payment in full, or an accord and satisfaction, and we have the right to accept and cash any such payment without prejudice to our right to recover the full amount due, or pursue any other remedy provided in this Agreement or by law. We have the right to apply any payments made by you against any of your past due indebtedness as we deem appropriate. We shall set off sums we owe to you against any unpaid debts owed by you to us.

## **22.12 Further Assurances**

Each party to this Agreement will execute and deliver such further instruments, contracts, forms or other documents, and will perform such further acts, as may be necessary or desirable to perform or complete any term, covenant or obligation contained in this Agreement.

## **22.13 Third-Party Beneficiaries**

Anything to the contrary notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than us or you, and our respective successors and assigns as may be contemplated by this Agreement, any rights or remedies under this Agreement.

## **22.14 Multiple Originals**

This Agreement may be executed in multiple copies and each executed copy will be deemed an original.

## **22.15 Compliance with Anti-Terrorism Laws**

You and your owners agree to comply, and to assist us to the fullest extent possible in our efforts to comply with Anti-Terrorism Laws (defined below). In connection with that compliance, you and your owners certify, represent, and warrant that none of your property or interests is subject to being blocked under, and that you and your owners otherwise are not in violation of, any of the Anti-Terrorism Laws. "Anti-Terrorism Laws" mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future federal, state, and local laws, ordinances, regulations, policies, lists, and other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by you or your owners, or any blocking of your or your owners' assets under the Anti-Terrorism Laws, shall constitute good cause for immediate termination of this Agreement.

## **22.16 Governing Law**

Except to the extent this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 or other federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire (without reference to its conflict of laws principles). The Federal Arbitration Act shall govern all matters subject to arbitration. References to any law refer also to any successor laws and to any published regulations for such law as in effect at the relevant time. References to a governmental agency also refer to any regulatory body that succeeds the function of such agency.

# **Article 23**

## **DISPUTE RESOLUTION**

### **23.1 Arbitration**

Except to the extent we elect to enforce the provisions of this Agreement by judicial process and injunction in our sole discretion, all disputes, claims and controversies between the parties arising under or in connection with this Agreement or the making, performance or interpretation thereof (including claims of fraud in the inducement and other claims of fraud and the arbitrability of any matter) which have not been settled through negotiation or mediation will be settled by binding arbitration in New Hampshire under the authority of New Hampshire Statutes. The arbitrator(s) will have a minimum of five (5) years of experience in franchising or distribution law and will have the right to award specific performance of this Agreement. If the parties cannot agree upon a mutually agreeable arbitrator, then the arbitration shall be conducted as per the selection method set forth in the New Hampshire Statutes. The proceedings will be conducted under the commercial arbitration rules of the American Arbitration Association to the extent such rules are not inconsistent with the provisions of this arbitration provision or the New Hampshire Statutes. The decision of the arbitrator(s) will be final and binding on all parties. This Section will survive termination or non-renewal of this Agreement under any circumstances. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction thereof. During the pendency of any arbitration proceeding, you and we shall fully perform our respective obligations under this Agreement.

### **23.2 Specific Performance**

Notwithstanding anything to the contrary contained in Section 23.1 above, we and you each have the right, in a proper case, to seek injunctions, restraining orders and orders of specific performance from a court of competent jurisdiction, provided that we agree to contemporaneously submit our dispute for arbitration on the merits as provided herein.

### **23.3 Injunctive Relief**

You agree that we will not be required to post a bond to obtain any injunctive relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction if warranted upon due hearing. All claims for damages by reason of the wrongful issuance of such injunction are hereby expressly waived. If we secure any such injunction or order of specific performance, you agree to pay to us an amount equal to the aggregate of our costs of obtaining such relief including, without limitation, reasonable legal fees, costs and expenses as provided in this Section and any damages incurred by us as a result of the breach of any such provision.

### **23.4 Litigation; Waiver of Jury Trial**

The parties agree that any litigation between you and us (and/or involving any principal of yours or which could be brought by you or on your behalf and including matters involving any of our related entities or otherwise), whether involving any litigation, dispute, controversy, claim, proceeding or otherwise between or involving you and us or otherwise, will be held exclusively before a court in the most immediate state judicial district and court encompassing our headquarters and having subject matter jurisdiction or (if a basis for Federal jurisdiction is present) the United States District Court for Rockingham County, New Hampshire, the parties consenting to the exclusive jurisdiction of such court(s) and WAIVING ALL RIGHTS TO TRIAL BY JURY

### **23.5 Limitations on Damages**

THE PARTIES AGREE THAT IN ANY LITIGATION BETWEEN US AND YOU (AND/OR ANY PRINCIPAL OF YOURS OR WHICH COULD BE BROUGHT BY YOU OR ON YOUR BEHALF) THE PARTIES KNOWINGLY WAIVE ALL RIGHTS TO TRIAL BY JURY. IN ANY LITIGATION OR OTHERWISE, THE PARTIES WAIVE ALL RIGHTS TO PUNITIVE, EXEMPLARY, MULTIPLE, PAIN-AND-SUFFERING, MENTAL DISTRESS OR SIMILAR DAMAGES AND AGREE THAT THE PARTIES MAY ONLY RECOVER ACTUAL FINANCIAL LOSSES.

### **23.6 Our Right to Cure**

Prior to your taking any legal or other action against us, whether for damages, injunctive, equitable or other relief (including but not limited to rescission) and whether by way of claim, counterclaim, cross-complaint, raised as an affirmative defense or otherwise, based on any alleged act or omission of ours, you will first give us sixty (60) days' prior written notice and opportunity to cure such alleged act or omission.

### **23.7 Timeframe for Action**

The parties agree that, except as provided below, no action or suit (whether by way of claim, counterclaim, cross-complaint, raised as an affirmative defense or otherwise) by either party will lie against the other (nor will any action or suit by you against any person and/or entity affiliated with us), whether for damages, rescission, injunctive or any other legal and/or equitable relief, in respect of any alleged breach of this Agreement, or any other claim of any type, unless such party will have commenced such action or suit before the expiration of the earlier of: (a) one hundred eighty (180) days after the date

upon which the state of facts giving rise to the cause of action comes to the attention of, or should reasonably have come to the attention of, such party; or (b) one (1) year after the initial occurrence of any act or omission giving rise to the cause of action, whenever discovered. Notwithstanding the foregoing limitations, where any federal, state or provincial law provides for a shorter limitation period than above described, whether upon notice or otherwise, such shorter period will govern.

The foregoing limitations may, where brought into effect by our failure to commence an action within the time periods specified, operate to exclude our right to sue for damages but will in no case, even upon expiration or lapse of the periods specified or referenced above, operate to prevent us from terminating your rights and our obligations under this Agreement as provided herein and under applicable law nor prevent us from obtaining any appropriate court judgment, order or otherwise which enforces and/or is otherwise consistent with such termination.

The foregoing limitations shall not apply to our claims arising from or related to: (1) your under-payment or non-payment of any amounts owed to us or any affiliated or otherwise related entity; (2) indemnification by you; (3) your confidentiality, non-competition or other exclusive relationship obligations; and/or (4) your unauthorized use of the Proprietary Marks.

### **23.8 No Right of Set-Off**

In no event will you make any claim, whether directly, by way of setoff, counter-claim, defense or otherwise, for money damages or otherwise, by reason of any withholding or delaying of any consent or approval by us.

### **23.9 Costs and Attorneys' Fees**

If we are required to enforce this Agreement in a judicial or other proceeding, you shall reimburse us for our costs and expenses, including, without limitation, reasonable accountants', attorneys', attorney assistants', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. If we are required to engage legal counsel in connection with any failure by you to comply with this Agreement, you shall reimburse us for any of the above-listed costs and expenses incurred by us.

## **Article 24**

### **ACKNOWLEDGMENTS**

#### **24.1 Receipt of the Disclosure Document**

YOU REPRESENT AND ACKNOWLEDGE THAT YOU HAVE RECEIVED, READ AND UNDERSTAND THIS AGREEMENT AND OUR DISCLOSURE DOCUMENT; AND THAT WE HAVE ACCORDED YOU AMPLE TIME AND OPPORTUNITY TO CONSULT WITH ADVISORS OF YOUR OWN CHOOSING ABOUT THE POTENTIAL BENEFITS AND RISKS OF ENTERING INTO THIS AGREEMENT. YOU REPRESENT AND ACKNOWLEDGE THAT YOU HAVE RECEIVED, AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED, THE DISCLOSURE DOCUMENT REQUIRED BY THE TRADE REGULATION RULE OF THE FEDERAL TRADE COMMISSION. YOU ACKNOWLEDGE THAT NEITHER WE NOR ANYONE ON OUR BEHALF HAS MADE ANY CLAIM, REPRESENTATION, WARRANTY, PROMISE OR GUARANTEE, WHETHER IN THIS AGREEMENT OR OTHERWISE, ORALLY OR IN WRITING, WITH RESPECT TO THE ACTUAL OR POTENTIAL SALES, COSTS, INCOME OR PROFITS OF ANY FRANCHISE.

## **24.2 Your Representations**

You represent and warrant to us the following, with the knowledge that we are materially relying upon the truth, accuracy and completeness of such representations and warranties in entering into this Agreement:

(a) All information contained in your application or in any document submitted in connection therewith by you or on your behalf is true, accurate and complete in all material respects including, without limitation, all information pertaining to the credit history, employment history, prior business experience, reputation and financial condition of you, your owners and operators.

(b) You are an entity duly organized, validly existing and in good standing under the laws of the state in which you were formed, are duly qualified to do business in the jurisdiction in which the Franchised Business is located, and have the requisite power and authority to execute and deliver this Agreement and to perform your obligations hereunder. The execution and delivery of this Agreement and the other agreements to be executed and delivered by you pursuant hereto have been duly authorized by all necessary action on your part. This Agreement has been duly executed and delivered by you and constitutes your valid and legally binding obligations enforceable against you in accordance with its terms.

(c) The execution, delivery and performance by you of this Agreement and the transactions contemplated hereby do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of or constitute a breach or default, or give rise to any right of acceleration, payment, amendment, cancellation or termination under (a) your organizational documents, (b) any mortgage, indenture, lease, contract or other agreement to which you are a party or by which you or any of your properties or assets are bound or subject, or (c) any law or order to which you are bound or subject.

(d) There are no judgments outstanding against you or any principal of yours or any operator of the Franchised Business, and there are no lawsuits, arbitrations or claims pending or, to your knowledge, threatened against any of the foregoing.

## **24.3 Consultation by You**

You represent that you have been urged to consult with your own advisors with respect to the legal, financial and other aspects of this Agreement, the business franchised hereby and the prospects for that business. You represent that you have either consulted with such advisors or have deliberately declined to do so.

## **24.4 True and Accurate Information**

You represent that all information set forth in any and all applications, financial statements and submissions to us is true, complete and accurate in all material respects, and you acknowledge that we are relying upon the truthfulness, completeness and accuracy of such information.

## **24.5 Risk**

You represent that you have conducted an independent investigation of the business contemplated by this Agreement and acknowledge that, like any other business, an investment in a Franchised Business involves business risks and that the success of the venture is dependent, among other factors, your business abilities and efforts. We make no representations or warranties, express or implied, in this Agreement or otherwise, as to the potential success of the business venture contemplated hereby.

#### **24.6 No Guarantee of Success**

You represent and acknowledge that you have not received or relied on any guarantee, express or implied, as to the revenues, profits or likelihood of success of the Franchised Business. You represent and acknowledge that there have been no representations by our directors, employees or agents that are not contained in, or are inconsistent with, the statements made in the Disclosure Document or this Agreement.

#### **24.7 No Violation of Other Agreements**

You represent that your execution of this Agreement will not violate any other agreement or commitment to which you are or any holder of a legal or beneficial interest in you is a party.

#### **24.8 Release of Prior Claims**

By signing this Agreement, you individually, and on behalf of your heirs, legal representatives, successors and assigns, and each assignee of this Agreement by accepting assignment of the same, hereby forever release and discharge us and our officers, directors, employees, agents and servants, including our parent or subsidiary and affiliated corporations, their respective officers, directors, employees, agents and servants, from any and all claims relating to or arising under any franchise agreement between the parties executed prior to the date of this Agreement including but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, arising under the franchise, securities or antitrust laws of the United States or of any state, territory or commonwealth thereof.

### **Article 25**

#### **OPERATION IN THE EVENT OF ABSENCE OR DISABILITY**

##### **25.1 Operation in the Event of Absence or Disability**

In order to prevent any interruption of the Franchised Business operations which would cause harm to the Franchised Business, thereby depreciating the value thereof, you authorize us, who may, at our option, in the event that you are absent for any reason or are incapacitated by reason of illness and are unable, in our sole and reasonable judgment, to operate the Franchised Business, operate the Franchised Business for so long as we deem necessary and practical, and without waiver of any other rights or remedies we may have under this Agreement. All monies from the operation of the Franchised Business during such period of operation by us shall be kept in a separate account, and the expenses of the Franchised Business, including reasonable compensation and expenses for our representative, shall be charged to said account. If, as herein provided, we temporarily operate the Franchised Business franchised herein for you, you agree to indemnify and hold harmless us and any representative of ours who may act hereunder, from any and all acts which we may perform, as regards the interests of you or third parties.

##### **25.2 Step-In Rights**

If we determine in our sole judgment that the operation of your Franchised Business is in jeopardy, or if a default occurs, then in order to prevent an interruption of the Franchised Business which would cause harm to the System and thereby lessen its value, you authorize us to operate your Franchised Business for as long as we deem necessary and practical, and without waiver of any other rights or remedies which we may have under this Agreement. In our sole judgment, we may deem you incapable of operating the Franchised Business if, without limitation, you are absent or incapacitated by reason of illness or death; you have failed to pay when due or have failed to remove any and all liens or encumbrances of every kind placed upon or against your Franchised Business; or we determine that operational problems require that we operate your Franchised Business for a period of time that we

determine, in our sole discretion, to be necessary to maintain the operation of the Franchised Business as a going concern.

We shall keep in a separate account all monies generated by the operation of your Franchised Business, less the expenses of the Franchised Business, including reasonable compensation and expenses for our representatives. In the event of our exercise of the Step-In Rights, you agree to hold harmless us and our representatives for all actions occurring during the course of such temporary operation. You agree to pay all of our reasonable attorneys' fees and costs incurred as a consequence of our exercise of the Step-In Rights. Nothing contained herein shall prevent us from exercising any other right which we may have under this Agreement, including, without limitation, termination.

## **Article 26**

### **SECURITY INTERESTS**

#### **26.1 Collateral**

You grant to us a security interest ("Security Interest") in all of the furniture, fixtures, equipment, signage, and realty (including your interests under all real property and personal property leases) of the Franchised Business, together with all similar property now owned or hereafter acquired, additions, substitutions, replacements, proceeds, and products thereof, wherever located, used in connection with the Franchised Business. All items in which a security interest is granted are referred to as the "Collateral".

#### **26.2 Indebtedness Secured**

The Security Interest is to secure payment of the following (the "Indebtedness"):

- (a) All amounts due under this Agreement or otherwise by you;
- (b) All sums which we may, at our option, expend or advance for the maintenance, preservation, and protection of the Collateral, including, without limitation, payment of rent, taxes, levies, assessments, insurance premiums, and discharge of liens, together with interest, or any other property given as security for payment of the Indebtedness;
- (c) All expenses, including reasonable attorneys' fees, which we incur in connection with collecting any or all Indebtedness secured hereby or in enforcing or protecting our rights under the Security Interest and this Agreement; and
- (d) All other present or future, direct or indirect, absolute or contingent, liabilities, obligations, and indebtedness of you to us or third parties under this Agreement, however created, and specifically including all or part of any renewal or extension of this Agreement, whether or not you execute any extension agreement or renewal instruments.

Our security interest, as described herein, shall be subordinated to any financing related to your operation of the Franchised Business, including, but not limited to, a real property mortgage and equipment leases.

#### **26.3 Additional Documents**

You will from time to time as required by us join with us in executing any additional documents and one or more financing statements pursuant to the Uniform Commercial Code (and any assignments, extensions, or modifications thereof) in form satisfactory to us.

#### **26.4 Possession of Collateral**

Upon default and termination of your rights under this Agreement, we shall have the immediate right to possession and use of the Collateral.

#### **26.5 Our Remedies in Event of Default**

You agree that, upon the occurrence of any default set forth above, the full amount remaining unpaid on the Indebtedness secured shall, at our option and without notice, become due and payable immediately, and we shall then have the rights, options, duties, and remedies of a secured party under, and you shall have the rights and duties of a debtor under, the Uniform Commercial Code of New Hampshire (or other applicable law), including, without limitation, our right to take possession of the Collateral and without legal process to enter any premises where the Collateral may be found. Any sale of the Collateral may be conducted by us in a commercially reasonable manner. Reasonable notification of the time and place of any sale shall be satisfied by mailing to you pursuant to the notice provisions set forth above.

#### **26.6 Special Filing as Financing Statement**

This Agreement shall be deemed a Security Agreement and a Financing Statement. This Agreement may be filed for record in the real estate records of each county in which the Collateral, or any part thereof, is situated and may also be filed as a Financing Statement in the counties or in the office of the Secretary of State, as appropriate, in respect of those items of Collateral of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code as in effect in the appropriate jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby have duly executed this Agreement as of the day and year first above written.

**FRANCHISOR:**

Key Club Development Corporation

\_\_\_\_\_  
Witness

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

**FRANCHISEE:**

\_\_\_\_\_  
Witness

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

**Exhibit A to the Vanguard Key Clubs Franchise Agreement**

**APPROVED LOCATION AND DESIGNATED TERRITORY**

The Approved Location is: \_\_\_\_\_

The Designated Territory is: \_\_\_\_\_

**FRANCHISOR:**

Key Club Development Corporation

**FRANCHISEE:**

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

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

## **Exhibit B to the Vanguard Key Clubs Franchise Agreement**

### **CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

**(for trained employees, shareholders, officers, directors,  
general partners, members and managers of Franchisee)**

In consideration of my being a \_\_\_\_\_ of \_\_\_\_\_ ("Franchisee"), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby acknowledge and agree that:

1. Pursuant to a Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the "Franchise Agreement"), Franchisee has acquired the right and franchise from Key Club Development Corporation (the "Company") to establish and operate a Vanguard Key Clubs (the "Franchised Business") and the right to use in the operation of the Franchised Business the Company's trade names, service marks, trademarks, logos, emblems, and indicia of origin (the "Proprietary Marks"), as they may be changed, improved and further developed from time to time in the Company's sole discretion, only at the following authorized and approved location: \_\_\_\_\_ (the "Approved Location").

2. The Company, as the result of the expenditure of time, skill, effort and resources has developed and owns a distinctive format and system (the "System") relating to the establishment and operation of Franchised Businesses, which offer a proprietary line of apparel and other related retail products. The Company possesses certain proprietary and confidential information relating to the operation of the System, which includes certain proprietary trade secrets, methods, techniques, formats, specifications, systems, procedures, methods of business practices and management, sales and promotional techniques and knowledge of, and experience in, the operation of the Franchised Business (the "Confidential Information").

3. Any and all information, knowledge, know-how, and techniques which the Company specifically designates as confidential shall be deemed to be Confidential Information for purposes of this Agreement.

4. As \_\_\_\_\_ of the Franchisee, the Company and Franchisee will disclose the Confidential Information to me in furnishing to me training programs, the Company's Confidential Operations Manuals (the "Manuals"), and other general assistance during the term of the Franchise Agreement.

5. I will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Franchised Business during the term of the Franchise Agreement, and the use or duplication of the Confidential Information for any use outside the System would constitute an unfair method of competition.

6. The Confidential Information is proprietary, involves trade secrets of the Company, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I shall hold in strict confidence all Confidential Information and all other information designated by the Company as confidential. Unless the Company otherwise agrees in writing, I will disclose and/or use the Confidential Information only in connection with my duties as \_\_\_\_\_ of the Franchisee, and will continue not to disclose any such information even after I cease to be in that position and will not use any such information even after I cease to be in that position unless I can demonstrate that such information

has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

7. Except as otherwise approved in writing by the Company, I shall not, while in my position with the Franchisee, either directly or indirectly for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, act as a consultant for, perform services for, or have any interest in any retail business or e-commerce business which: (a) is the same as, or substantially similar to, a Franchised Business; or (b) offers to sell or sells any products or services which are the same as, or substantially similar to, any of the products offered by a Franchised Business (a “Competitive Business”); and for a continuous uninterrupted period commencing upon the cessation or termination of my position with Franchisee, regardless of the cause for termination, or upon the expiration, termination, transfer, or assignment of the Franchise Agreement, whichever occurs first, and continuing for two (2) years thereafter, either directly or indirectly, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, act as a consultant for, perform services for, or have any interest in any Competitive Business that is, or is intended to be, located at or within:

7.1 Franchisee’s Designated Territory, as defined in the Franchise Agreement (“Franchisee’s Designated Territory”);

7.2 Twenty-five (25) miles of Franchisee’s Designated Territory; or

7.3 Twenty-five (25) miles of any Franchised Business operating under the System and the Proprietary Marks.

The prohibitions in this Paragraph 7 do not apply to my interests in or activities performed in connection with a Franchised Business. This restriction does not apply to my ownership of less than five percent (5%) beneficial interest in the outstanding securities of any publicly held corporation.

8. I agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Company is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

9. I understand and acknowledge that the Company shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

10. The Company is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause the Company and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisee and/or the Company may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay the Franchisee and the Company all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisee and the Company, any claim I have against the Franchisee or the Company is a separate matter and does not entitle me to violate, or justify any violation of this Agreement.

11. This Agreement shall be construed under the laws of the State of New Hampshire. The only way this Agreement can be changed is in writing signed by both the Franchisee and me.

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Signature

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Name

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Address

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Title

**ACKNOWLEDGED BY FRANCHISEE**

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

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

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

**Exhibit C to the Vanguard Key Clubs Franchise Agreement**

**GUARANTY AND ASSUMPTION OF OBLIGATIONS**

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS is given this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by the undersigned guarantors.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement of even date herewith ("Agreement") by Key Club Development Corporation ("Franchisor"), each of the undersigned hereby personally and unconditionally guarantees to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement. Each of the undersigned shall be personally bound by, and personally liable for, Franchisee's breach of any provision in the Agreement, including those relating to monetary obligations and obligations to take or refrain from taking specific actions or engaging in specific activities, such as those contemplated by Articles 7 and 17 of the Agreement. Each of the undersigned waives: (a) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (b) notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed; (d) any right it may have to require that an action be brought against Franchisee or any other person as a condition of liability; and (e) any and all other notices and legal or equitable defenses to which it may be entitled.

Each of the undersigned consents and agrees that: (a) its direct and immediate liability under this Guaranty shall be joint and several; (b) it shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (c) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (d) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence that Franchisor may from time to time grant to Franchisee or to any other person including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Agreement.

IN WITNESS WHEREOF, this Guaranty has been entered into the day and year first before written.

**PERSONAL GUARANTOR**

---

Personally and Individually (Printed Name)

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Personally and Individually (Signature)

**PERSONAL GUARANTOR**

---

Personally and Individually (Printed Name)

---

Personally and Individually (Signature)

**HOME ADDRESS**

---

TELEPHONE NO.: \_\_\_\_\_

PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_ %

**PERSONAL GUARANTOR**

---

Personally and Individually (Printed Name)

---

Personally and Individually (Signature)

**HOME ADDRESS**

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TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_ %

**PERSONAL GUARANTOR**

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Personally and Individually (Printed Name)

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Personally and Individually (Signature)

**HOME ADDRESS**

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TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_ %

**HOME ADDRESS**

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TELEPHONE NO.: \_\_\_\_\_

PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_ %

**PERSONAL GUARANTOR**

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Personally and Individually (Printed Name)

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Personally and Individually (Signature)

**HOME ADDRESS**

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TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_ %

**PERSONAL GUARANTOR**

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Personally and Individually (Printed Name)

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Personally and Individually (Signature)

**HOME ADDRESS**

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TELEPHONE NO.: \_\_\_\_\_  
PERCENTAGE OF OWNERSHIP  
IN FRANCHISEE: \_\_\_\_\_ %

## Exhibit D to the Vanguard Key Clubs Franchise Agreement

### PRINCIPAL OWNER'S STATEMENT

This form must be completed by the Franchisee ("I," "me," or "my") if I have multiple owners or if I, or my franchised business, is owned by a business organization (like a corporation, partnership or limited liability company). Franchisor is relying on the truth and accuracy of this form in awarding the Franchise to me.

1. **Form of Owner.** I am a (check one):

- (a) General Partnership
- (b) Corporation
- (c) Limited Partnership
- (d) Limited Liability Company
- (e) Other   
Specify: \_\_\_\_\_

I was formed under the laws of \_\_\_\_\_.  
(STATE)

2. **Business Entity.** I was incorporated or formed on \_\_\_\_\_, \_\_\_, under the laws of the State of \_\_\_\_\_. I have not conducted business under any name other than my corporate, limited liability company or partnership name and \_\_\_\_\_. The following is a list of all persons who have management rights and powers (e.g., officers, managers, partners, etc.) and their positions are listed below:

Name of Person

Position(s) Held

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3. **Owners.** The following list includes the full name and mailing address of each person who is one my owners and fully describes the nature of each owner's interest. Attach additional sheets if necessary.

**Owner's Name and Address**

**Description of Interest**

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4. **Governing Documents.** Attached are copies of the documents and contracts governing the ownership, management and other significant aspects of the business organization (e.g., articles of incorporation or organization, partnership or shareholder agreements, etc.).

This Statement of Principal Owners is current and complete as of \_\_\_\_\_.

**OWNER**

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[Signature]

---

[Print Name]

---

[Signature]

---

[Print Name]

**INDIVIDUALS:**

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[Signature]

---

[Print Name]

---

[Signature]

---

[Print Name]

**CORPORATION, LIMITED  
LIABILITY COMPANY OR  
PARTNERSHIP:**

---

[Name]

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

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

## Exhibit E to the Vanguard Key Clubs Franchise Agreement

### COLLATERAL ASSIGNMENT OF LEASE

**FOR VALUE RECEIVED**, the undersigned ("Assignor") assigns, transfers and sets over to Key Club Development Corporation a New Hampshire "C" Corporation ("Assignee"), all of Assignor's right and title to and interest in that certain "Lease" a copy of which is attached as Exhibit A respecting premises commonly known as \_\_\_\_\_. This assignment is for collateral purposes only and except as specified in this document Assignee will have no liability or obligation of any kind whatsoever arising from or in connection with this assignment or the Lease unless and until Assignee takes possession of the premises the Lease demises according to the terms of this document and assumes Assignor's obligations under the Lease.

Assignor represents and warrants to Assignee that it has full power and authority to assign the Lease and that Assignor has not previously assigned or transferred and is not otherwise obligated to assign or transfer any of its interest in the Lease or the premises it demises.

Upon Assignor's default under the Lease or under the "Franchise Agreement" for a Vanguard Key Clubs business between Assignee and Assignor or in the event Assignor defaults under any document or instrument securing the Franchise Agreement Assignee has the right to take possession of the premises the Lease demises and expel Assignor from the premises. In that event Assignor will have no further right and title to or interest in the Lease but will remain liable to Assignee for any past due rental payments or other charges Assignee is required to pay Lessor to effectuate the assignment this document contemplates.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without Assignee's prior written consent. Throughout the term of the Franchise Agreement Assignor agrees that it will elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days before the last day upon which the option must be exercised unless Assignee agrees otherwise in writing. Upon Assignee's failure to agree otherwise in writing and upon Assignor's failure to elect to extend or renew the Lease as required Assignor appoints Assignee as its true and lawful attorney-in-fact with the authority to exercise the extension or renewal options in the name, place and stead of Assignor for the sole purpose of effecting the extension or renewal.

ASSIGNEE:

Key Club Development Corporation

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

ASSIGNOR:

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

## **CONSENT TO COLLATERAL ASSIGNMENT AND AGREEMENT OF LESSOR**

The undersigned Lessor under the Lease:

- (a) Agrees to notify Assignee in writing of and upon Assignor's failure to cure any default by Assignor under the Lease;
- (b) Agrees that Assignee will have the right, but not the obligation, to cure any default by Assignor under the Lease within thirty (30) days after Lessor's delivery of notice of the default under section (a) above;
- (c) Consents to the Collateral Assignment and agrees that if Assignee takes possession of the premises the Lease demises and confirms to Lessor that it has assumed the Lease as tenant, Lessor will recognize Assignee as tenant under the Lease, provided that Assignee cures within the thirty (30) day period noted in section (b) above Assignor's defaults under the Lease; and
- (d) Agrees that Assignee may further assign the Lease to or enter into a sublease with a person, firm or corporation who agrees to assume the tenant's obligations under the Lease and is reasonably acceptable to Lessor and that upon that assignment Assignee will have no further liability or obligation under the Lease as assignee, tenant or otherwise, other than to certify that the additional assignee or sublessee operates the premises the Lease demises as a Franchise Business business.

Dated: \_\_\_\_\_

\_\_\_\_\_, Lessor

**Exhibit F to the Vanguard Key Clubs Franchise Agreement**

**KEY CLUB DEVELOPMENT CORPORATION  
STANDARD LEASE RIDER**

This Key Club Development Corporation Standard Lease Rider (this “Rider”) is made and entered into on \_\_\_\_\_, 20\_\_ by and among \_\_\_\_\_ (the “Landlord”), \_\_\_\_\_ (the “Tenant”), and Key Club Development Corporation, an New Hampshire Corporation whose address is 200 Kensington Rd., Hampton Falls, NH 03844 (“KCDC”).

**RECITALS**

- A. This Rider supplements and forms part of the attached Lease Agreement between Landlord and Tenant dated \_\_\_\_\_, 20\_\_ (the “Lease”) for the premises located at \_\_\_\_\_ (the “Premises”) to be used by the Tenant as a “Vanguard Key Clubs” business.
- B. This Rider is entered into in connection with KCDC’s approval of the location of the Premises as a “KCDC” business and the grant of a franchise to the Tenant pursuant to a Franchise Agreement dated \_\_\_\_\_, 20\_\_ (the “Franchise Agreement”).
- C. As a condition to KCDC granting a franchise to a franchisee, KCDC requires certain provisions to be contained in the leases entered into by its franchisees, and to evidence Landlord and Tenant’s agreement to these terms, the parties hereby enter into this Rider.

**AGREEMENT**

Wherefore, the Parties hereby agree as follows:

1. **KCDC’s Notice and Cure Rights.** Concurrently with giving any Notice of Default to Tenant, Landlord also agrees to send a copy of such Notice to KCDC. In the event Tenant fails to cure any default within the time required in the Lease, Landlord shall promptly give written notice to KCDC specifying the nature of Tenant’s defaults and granting KCDC an additional thirty (30) days from the date KCDC receives such notice to exercise its right, in KCDC’s sole discretion, to either (a) accept an assignment of the Lease upon the same terms (including all renewals) as apply to this Rider; or (b) assign the Lease to another authorized franchisee of KCDC (provided that such franchisee shall be required to execute any such documentation as required by Landlord).
2. **Assignment of Lease.** Notwithstanding anything in the Lease to the contrary, Landlord agrees that the Lease and the right, title and interest (including all renewal rights) of the Tenant and any

subsequent or successor Tenant thereunder, may be assigned to KCDC or its parents, subsidiaries or affiliates (KCDC, its parents, subsidiaries or affiliates are collectively referred to as “KCDC Entities”), or to an authorized franchisee of KCDC (provided that such franchisee shall be required to execute any such documentation as required by the Landlord). In the event of an assignment to a KCDC entity, KCDC shall at all times have the right to reassign the Lease, without charge and without Landlord’s consent being required to an authorized franchisee of KCDC (provided that such franchisee shall be required to execute any such documentation as required by the Landlord) and the KCDC Entity shall thereupon be released from any further liability under the Lease. The Tenant shall be and remain liable to the Landlord for all of its obligations under the Lease, notwithstanding any assignment of the Lease to KCDC or to an authorized franchisee.

**3. Use Clause.** Tenant shall only use the Premises for the purpose of operating a “Vanguard Key Clubs” location that engages in the business of Indoor 24 hour access key club fitness centers, including any incidental merchandising as is customary in a Vanguard Key Clubs location now or in the future. Landlord agrees that throughout the term of the Lease, including any renewals and extensions and provided Tenant has not experienced any condition of default of the Lease, Landlord shall not permit directly or indirectly, another fitness center to be operated in the shopping center. In the event Landlord breaches its covenant not to lease to another fitness center as provided herein, then Tenant shall be entitled to an immediate reduction of its Rent to One Dollar (\$1.00) per month until such time as this breach is cured if possible or for the remainder of the Lease Term and any renewals if such breach cannot be cured.

**4. Signage.** Tenant has the right to install the customary and usual display signs of Vanguard Key Clubs on the building façade as detailed in the signage criteria of the Lease, subject to Landlord’s approval which shall not be unreasonably withheld, and subject to applicable government ordinances and restrictive covenants and the shopping center signage criteria attached as an exhibit to the Lease. Tenant shall have the right to erect and display a sign or banner reading “Coming Soon- Vanguard Key Clubs” (or similar words) during the period between that is sixty (60) days prior to Tenant opening for business and through thirty (30) days after Tenant opens for business. All signage requires Landlord’s prior review and approval before fabrication and installation. Under no conditions shall any temporary signage require holes to be made in the building. Tenant shall be permitted to display signs and promotional items on the inside of the Premises consistent with KCDC’s national standards.

**5. Parking.** Landlord shall provide adequate parking to serve the Premises (including Tenant’s fitness center business) in accordance with applicable local ordinances and required parking ratios.

6. Amendment. The Lease may not be modified or amended without KCDC's advance written consent, which KCDC may not unreasonably withhold. The Landlord will provide KCDC with copies of all proposed modifications or amendments of the Lease at least thirty (30) days prior to their execution and true and correct copies of the executed modifications and amendments.

7. Right of Entry. During the term of the Lease and for a reasonable period after the termination, expiration or transfer of either the Lease or the Franchise Agreement, KCDC (or its authorized representative) shall have the right to enter the subject premises to make any modification or alteration necessary (with prior consent of Landlord for any structural work or work affecting building systems) to protect the Vanguard Key Clubs System and brand or to cure any default under the Franchise Agreement or under the Lease, without being guilty of trespass or any other crime or tort (and neither Tenant nor Landlord shall ever allege otherwise). Landlord shall not be responsible for any expenses or damages arising from any such action by KCDC. Franchisee/Tenant, on behalf of itself, its owners and affiliates, hereby irrevocably waives its rights to any claim against KCDC and Landlord, their respective subsidiaries, affiliates, owners, employees, agents and representatives of each of them, with respect to any and all demands, accounts, actions and causes of action, known or unknown, vested or contingent, which Tenant or its owners or affiliates may have, ever had, now has, or may hereafter have by reason of any event, transaction or circumstance arising out of or relating to the exercise of KCDC's rights pursuant to this Rider.

8. Priority. Landlord acknowledges that KCDC has a prior right, title and interest in and to any such trademarked property, proprietary, software, equipment, furniture and fixtures, notwithstanding any agreement between the Landlord and any lender of the Landlord with respect thereto. Landlord shall also provide KCDC full access to all sales and other information to which Landlord has access and which is requested by KCDC relating to the Vanguard Key Clubs location at the subject premises.

9. Notices. Landlord agrees to return a fully executed original Lease and this Rider within ten (10) days of execution to KCDC. All notices pursuant to this Rider shall be in writing and shall be personally delivered, sent by registered mail or reputable overnight delivery service or by other means which afford the sender evidence of delivery or rejected delivery to the addresses described above or to such other address as any party to this Rider may, by written notice, instruct that notices be given.

**BY EXECUTING THIS RIDER TO LEASE, KCDC DOES NOT ASSUME ANY LIABILITY WITH RESPECT TO THE PREMISES OR ANY OBLIGATION AS TENANT UNDER THE LEASE UNLESS AND UNTIL KCDC EXPRESSLY, AND IN A SEPARATE WRITING, AGREES TO ASSUME SUCH LIABILITY AND/OR OBLIGATION AS DESCRIBED ABOVE.**

LANDLORD:

---

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

Name:

Title:

Date:

TENANT:

---

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

Name:

Title:

Date:

KEY CLUB DEVELOPMENT CORPORATION

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

Name:

Title:

Date:

**Exhibit G to the Vanguard Key Clubs Franchise Agreement**

**INTERNET WEBSITES AND LISTINGS AGREEMENT**

**THIS INTERNET WEB SITES AND LISTINGS AGREEMENT** (the “Internet Listing Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between Key Club Development Corporation a New Hampshire C Corporation (the “Franchisor”), and \_\_\_\_\_, a \_\_\_\_\_ (the “Franchisee”).

**W I T N E S S E T H:**

**WHEREAS**, Franchisee desires to enter into a Franchise Agreement with Franchisor for a Vanguard Key Clubs business (the “Franchise Agreement”); and

**WHEREAS**, Franchisor would not enter into the Franchise Agreement without Franchisee’s agreement to enter into, comply with, and be bound by all the terms and provisions of this Internet Listing Agreement;

**NOW, THEREFORE**, for and in consideration of the foregoing and the mutual promises and covenants contained herein, and in further consideration of the Franchise Agreement and the mutual promises and covenants contained therein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. DEFINITIONS**

All terms used but not otherwise defined in this Internet Listing Agreement shall have the meanings set forth in the Franchise Agreement. “Termination” of the Franchise Agreement shall include, but shall not be limited to, the voluntary termination, involuntary termination, or natural expiration thereof.

**2. TRANSFER; APPOINTMENT**

2.1 Interest in Internet Web Sites and Listings. Franchisee may acquire (whether in accordance with or in violation of the Franchise Agreement) during the term of the Franchise Agreement, certain right, title, and interest in and to certain domain names, hypertext markup language, uniform resource locator addresses, and access to corresponding Internet web sites, and the right to hyperlink to certain websites and listings on various Internet search engines (collectively, the “Internet Web Sites and Listings”) related to the Franchised Business or the Marks (all of which right, title, and interest is referred to herein as “Franchisee’s Interest”).

2.2 Transfer. On Termination of the Franchise Agreement, or on periodic request of Franchisor, Franchisee will immediately direct all Internet Service Providers, domain name registries, Internet search engines, and other listing agencies (collectively, the “Internet Companies”) with which Franchisee has Internet Web Sites and Listings: (i) to transfer all of Franchisee’s Interest in such Internet Web Sites and Listings to Franchisor; and (ii) to execute such documents and take such actions as may be necessary to effectuate such transfer. In the event Franchisor does not desire to accept any or all such Internet Web Sites and Listings, Franchisee will immediately direct the Internet Companies to terminate such Internet Web Sites and Listings or will take such other actions with respect to the Internet Web Sites and Listings as Franchisor directs.

2.3 Appointment; Power of Attorney. Franchisee hereby constitutes and appoints Franchisor and any officer or agent of Franchisor, for Franchisor's benefit under the Franchise Agreement and this Internet Listing Agreement or otherwise, with full power of substitution, as Franchisee's true and lawful attorney-in-fact with full power and authority in Franchisee's place and stead, and in Franchisee's name or the name of any affiliated person or affiliated company of Franchisee, to take any and all appropriate action and to execute and deliver any and all documents that may be necessary or desirable to accomplish the purposes of this Internet Listing Agreement. Franchisee further agrees that this appointment constitutes a power coupled with an interest and is irrevocable until Franchisee has satisfied all of its obligations under the Franchise Agreement and any and all other agreements to which Franchisee and any of its affiliates on the one hand, and Franchisor and any of its affiliates on the other, are parties, including without limitation this Internet Listing Agreement. Without limiting the generality of the foregoing, Franchisee hereby grants to Franchisor the power and right to do the following:

2.3.1 Direct the Internet Companies to transfer all Franchisee's Interest in and to the Internet Web Sites and Listings to Franchisor;

2.3.2 Direct the Internet Companies to terminate any or all of the Internet Web Sites and Listings; and

2.3.3 Execute the Internet Companies' standard assignment forms or other documents in order to affect such transfer or termination of Franchisee's Interest.

2.4 Certification of Termination. Franchisee hereby directs the Internet Companies to accept, as conclusive proof of Termination of the Franchise Agreement, Franchisor's written statement, signed by an officer or agent of Franchisor, that the Franchise Agreement has terminated.

2.5 Cessation of Obligations. After the Internet Companies have duly transferred all Franchisee's Interest in such Internet Web Sites and Listings to Franchisor, as between Franchisee and Franchisor, Franchisee will have no further interest in, or obligations under, such Internet Web Sites and Listings. Notwithstanding the foregoing, Franchisee will remain liable to each and all of the Internet Companies for the sums Franchisee is obligated to pay such Internet Companies for obligations Franchisee incurred before the date Franchisor duly accepted the transfer of such Interest, or for any other obligations not subject to the Franchise Agreement or this Internet Listing Agreement.

### 3. MISCELLANEOUS

3.1 Release. Franchisee hereby releases, remises, acquires, and forever discharges each and all of the Internet Companies and each and all of their parent corporations, subsidiaries, affiliates, directors, officers, stockholders, employees, and agents, and the successors and assigns of any of them, from any and all rights, demands, claims, damage, losses, costs, expenses, actions, and causes of action whatsoever, whether in tort or in contract, at law or in equity, known or unknown, contingent or fixed, suspected or unsuspected, arising out of, asserted in, assertable in, or in any way related to this Internet Listing Agreement.

3.2 Indemnification. Franchisee is solely responsible for all costs and expenses related to its performance, its nonperformance, and Franchisor's enforcement of this Agreement, which costs and expenses Franchisee will pay Franchisor in full, without defense or setoff, on demand. Franchisee agrees that it will indemnify, defend, and hold harmless Franchisor and its affiliates, and its and their directors, officers, shareholders, partners, members, employees, agents, and attorneys, and the successors and assigns of any and all of them, from and against, and will reimburse Franchisor and any and all of them for, any and all loss, losses, damage, damages, claims, debts, claims, demands, or obligations that are related to or are based on this Internet Listing Agreement.

3.3 No Duty. The powers conferred on Franchisor hereunder are solely to protect Franchisor's interests and shall not impose any duty on Franchisor to exercise any such powers. Franchisee expressly agrees that in no event shall Franchisor be obligated to accept the transfer of any or all of Franchisee's Interest in any or all such Internet Web Sites and Listings.

3.4 Further Assurances. Franchisee agrees that at any time after the date of this Internet Listing Agreement, Franchisee will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the purposes of this Internet Listing Agreement.

3.5 Successors, Assigns, and Affiliates. All Franchisor's rights and powers, and all Franchisee's obligations, under this Internet Listing Agreement shall be binding on Franchisee's successors, assigns, and affiliated persons or entities as if they had duly executed this Internet Listing Agreement.

3.6 Effect on Other Agreements. Except as otherwise provided in this Internet Listing Agreement, all provisions of the Franchise Agreement and exhibits and schedules thereto shall remain in effect as set forth therein.

3.7 Survival. This Internet Listing Agreement shall survive the Termination of the Franchise Agreement.

3.8 Joint and Several Obligations. All Franchisee's obligations under this Internet Listing Agreement shall be joint and several.

3.9 Governing Law. This Internet Listing Agreement shall be governed by and construed under the laws of the State of New Hampshire without regard to the application of New Hampshire conflict of law rules.

The undersigned have executed or caused their duly authorized representatives to execute this Agreement as of the Effective Date.

**FRANCHISOR:**

Key Club Development Corporation

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

**FRANCHISEE:**

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

## TELEPHONE LISTINGS AGREEMENT

**THIS TELEPHONE LISTING AGREEMENT** (the “Telephone Listing Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between Key Club Development Corporation, a New Hampshire “C” Corporation (the “Franchisor”), and \_\_\_\_\_, a \_\_\_\_\_ (the “Franchisee”).

### WITNESSETH:

**WHEREAS**, Franchisee desires to enter into a Franchise Agreement with Franchisor for a “Vanguard Key Clubs” business (the “Franchise Agreement”); and

**WHEREAS**, Franchisor would not enter into the Franchise Agreement without Franchisee’s agreement to enter into, comply with, and be bound by all the terms and provisions of this Telephone Listing Agreement;

**NOW, THEREFORE**, for and in consideration of the foregoing and the mutual promises and covenants contained herein, and in further consideration of the Franchise Agreement and the mutual promises and covenants contained therein, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. DEFINITIONS

All terms used but not otherwise defined in this Telephone Listing Agreement shall have the meanings set forth in the Franchise Agreement. “Termination” of the Franchise Agreement shall include, but shall not be limited to, the voluntary termination, involuntary termination, or natural expiration thereof.

#### 2. TRANSFER; APPOINTMENT

2.1 Interest in Telephone Numbers and Listings. Franchisee has, or will acquire during the term of the Franchise Agreement, certain right, title, and interest in and to those certain telephone numbers and regular, classified, yellow-page, and other telephone directory listings (collectively, the “Telephone Numbers and Listings”) related to the Franchised Business or the Marks (all of which right, title, and interest is referred to herein as “Franchisee’s Interest”).

2.2 Transfer. On Termination of the Franchise Agreement, if Franchisor directs Franchisee to do so, Franchisee will immediately direct all telephone companies, telephone directory publishers, and telephone directory listing agencies (collectively, the “Telephone Companies”) with which Franchisee has Telephone Numbers and Listings: (i) to transfer all Franchisee’s Interest in such Telephone Numbers and Listings to Franchisor; and (ii) to execute such documents and take such actions as may be necessary to effectuate such transfer. In the event Franchisor does not desire to accept any or all such Telephone Numbers and Listings, Franchisee will immediately direct the Telephone Companies to terminate such Telephone Numbers and Listings or will take such other actions with respect to the Telephone Numbers and Listings as Franchisor directs.

2.3 Appointment; Power of Attorney. Franchisee hereby constitutes and appoints Franchisor and any officer or agent of Franchisor, for Franchisor's benefit under the Franchise Agreement and this Telephone Listing Agreement or otherwise, with full power of substitution, as Franchisee's true and lawful attorney-in-fact with full power and authority in Franchisee's place and stead, and in Franchisee's name or the name of any affiliated person or affiliated company of Franchisee, on Termination of the Franchise Agreement, to take any and all appropriate action and to execute and deliver any and all documents that may be necessary or desirable to accomplish the purposes of this Telephone Listing Agreement. Franchisee further agrees that this appointment constitutes a power coupled with an interest and is irrevocable until Franchisee has satisfied all of its obligations under the Franchise Agreement and any and all other agreements to which Franchisee and any of its affiliates on the one hand, and Franchisor and any of its affiliates on the other, are parties, including, without limitation, this Telephone Listing Agreement. Without limiting the generality of the foregoing, Franchisee hereby grants to Franchisor the power and right to do the following:

2.3.1 Direct the Telephone Companies to transfer all Franchisee's Interest in and to the Telephone Numbers and Listings to Franchisor;

2.3.2 Direct the Telephone Companies to terminate any or all of the Telephone Numbers and Listings; and

2.3.3 Execute the Telephone Companies' standard assignment forms or other documents in order to affect such transfer or termination of Franchisee's Interest.

2.4 Certification of Termination. Franchisee hereby directs the Telephone Companies that they shall accept, as conclusive proof of Termination of the Franchise Agreement, Franchisor's written statement, signed by an officer or agent of Franchisor, that the Franchise Agreement has terminated.

2.5 Cessation of Obligations. After the Telephone Companies have duly transferred all Franchisee's Interest in such Telephone Numbers and Listings to Franchisor, as between Franchisee and Franchisor, Franchisee will have no further Interest in, or obligations under, such Telephone Numbers and Listings. Notwithstanding the foregoing, Franchisee will remain liable to each and all of the Telephone Companies for the sums Franchisee is obligated to pay such Telephone Companies for obligations Franchisee incurred before the date Franchisor duly accepted the transfer of such Interest, or for any other obligations not subject to the Franchise Agreement or this Telephone Listing Agreement.

### 3. MISCELLANEOUS

3.1 Release. Franchisee hereby releases, remises, acquits, and forever discharges each and all of the Telephone Companies and each and all of their parent corporations, subsidiaries, affiliates, directors, officers, stockholders, employees, and agents, and the successors and assigns of any of them, from any and all rights, demands, claims, damage, losses, costs, expenses, actions, and causes of action whatsoever, whether in tort or in contract, at law or in equity, known or unknown, contingent or fixed, suspected or unsuspected, arising out of, asserted in, assertable in, or in any way related to this Telephone Listing Agreement.

3.2 Indemnification. Franchisee is solely responsible for all costs and expenses related to Franchisee's performance, Franchisee's nonperformance, and Franchisor's enforcement of this Agreement, which costs and expenses Franchisee will pay Franchisor in full, without defense or setoff, on demand. Franchisee agrees that it will indemnify, defend, and hold harmless Franchisor and its affiliates, and the directors, officers, shareholders, partners, members, employees, agents, and attorneys of Franchisor and its affiliates, and the successors and assigns of any and all of them, from and against, and

will reimburse Franchisor and any and all of them for, any and all loss, losses, damage, damages, claims, debts, claims, demands, or obligations that are related to or are based on this Telephone Listing Agreement.

3.3 No Duty. The powers conferred on Franchisor under this Telephone Listing Agreement are solely to protect Franchisor's interests and shall not impose any duty on Franchisor to exercise any such powers. Franchisee expressly agrees that in no event shall Franchisor be obligated to accept the transfer of any or all of Franchisee's Interest in any or all such Telephone Numbers and Listings.

3.4 Further Assurances. Franchisee agrees that at any time after the date hereof, it will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the purposes of this Telephone Listing Agreement.

3.5 Successors, Assigns, and Affiliates. All Franchisor's rights and powers, and all Franchisee's obligations, under this Telephone Listing Agreement shall be binding on Franchisee's successors, assigns, and affiliated persons or entities as if they had duly executed this Telephone Listing Agreement.

3.6 Effect on Other Agreements. Except as otherwise provided in this Telephone Listing Agreement, all provisions of the Franchise Agreement and exhibits and schedules thereto shall remain in effect as set forth therein.

3.7 Survival. This Telephone Listing Agreement shall survive the Termination of the Franchise Agreement.

3.8 Joint and Several Obligations. All Franchisee's obligations under this Telephone Listing Agreement shall be joint and several.

3.9 Governing Law. This Telephone Listing Agreement shall be governed by and construed under the laws of the State of New Hampshire, without regard to the application of New Hampshire conflict of law rules.

The parties hereto have duly executed and delivered this Telephone Listing Agreement as of the Effective Date.

**FRANCHISOR:**

Key Club Development Corporation

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

**FRANCHISEE:**

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

**Exhibit H to the Vanguard Key Clubs Franchise Agreement**

**ELECTRONIC FUNDS TRANSFER AGREEMENT**

**AUTHORIZATION TO HONOR CHARGES DRAWN BY AND  
PAYABLE TO KEY CLUB DEVELOPMENT CORPORATION ("COMPANY")**

Depositor hereby authorizes and requests \_\_\_\_\_ (the "Depository") to initiate debit and credit entries to Depositor's \_\_\_\_\_ checking or \_\_\_\_\_ savings account (select one) indicated below drawn by and payable to the order of Key Club Development Corporation by Electronic Funds Transfer, provided there are sufficient funds in said account to pay the amount upon presentation.

Depositor agrees that the Depository's rights with respect to each such charge shall be the same as if it were a check drawn by the Depository and signed by Depositor. Depositor further agrees that if any such charge is dishonored, whether with or without cause and whether intentionally or inadvertently, the Depository shall be under no liability whatsoever.

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Transit/ABA Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

This authority is to remain in full force and effect until Company has received written notification from me (or either of us) of its termination in such time and in such manner to afford Company and Depository a responsible opportunity to act on such request.

Depositor: (Please Print)

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Date Signed

---

---

Signature(s) of Depositor, as Printed Above

**Please attach a voided blank check, for purposes of setting up Bank and Transit Numbers.**

**Exhibit I to the Vanguard Key Clubs Franchise Agreement**

**MULTI-STATE ADDENDUM**

**CALIFORNIA APPENDIX**

1. California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination or non-renewal of a franchise. If the Franchise Agreement or Multi-Unit Development Agreement contains provisions that are inconsistent with the law, the law will control.
2. The Franchise Agreement and Multi-Unit Development Agreement provide for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C.A. Sec. 101 *et seq.*).
3. The Franchise Agreement and Multi-Unit Development Agreement contain covenants not to compete which extend beyond the termination of the agreements. These provisions may not be enforceable under California law.
4. Section 31125 of the California Corporation Code requires the franchisor to provide you with a disclosure document before asking you to agree to a material modification of an existing franchise.
5. Neither the franchisor, any person or franchise broker in Item 2 of the Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 79a *et seq.*, suspending or expelling such persons from membership in such association or exchange.
6. The Franchise Agreement and Multi-Unit Development Agreement require binding arbitration. The arbitration will occur in New Hampshire with the costs being borne equally by the parties. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of New Hampshire and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.
7. The Franchise Agreement and Multi-Unit Development Agreement require application of the laws of New Hampshire. This provision may not be enforceable under California law.
8. You must sign a general release if you renew or transfer your franchise. California Corporation Code 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code 31000 through 31516). Business and Professions Code 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code 20000 through 20043).
9. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.
10. The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

11. OUR WEBSITE, [WWW.VANGUARDKEYCLUBS.COM](http://WWW.VANGUARDKEYCLUBS.COM) HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT at [www dbo ca gov](http://www dbo ca gov).

## **ADDENDUM REQUIRED BY THE STATE OF ILLINOIS**

1. The following item must be included within the Disclosure Document and shall replace the language that is in the Disclosure Document itself:

Section 4, Jurisdiction and Venue, of the Illinois Franchise Disclosure Act of 1987 (“Act”) states that “any provision in the franchise agreement which designates jurisdiction or venue in a forum outside of this State is void with respect to any cause of action which otherwise is enforceable in this State, provided that a franchise agreement may provide for arbitration in a forum outside of this State.” This Section of the Act replaces any contradictory language contained in the Franchise Agreement and Multi-Unit Development Agreement.

2. Illinois law governs the Franchise Agreement and Multi-Unit Development Agreement.

3. Any releases and/or waivers that we request you to sign must conform with Section 41, Waivers Void, of the Illinois Franchise Disclosure Act of 1987 which states that “any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void. This Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding potential or actual lawsuit filed under any of the provisions of this Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.”

4. Under Illinois law at 200.608, Jurisdiction and Venue, a franchise agreement may not provide for a choice of law of any state other than Illinois. The Summary column of Items 17(v) and (w) of the Disclosure Document are amended to state “Illinois law”. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended accordingly.

5. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to comply with Section 27, Periods of Limitation, of the Act to allow any and all claims and actions arising out of or relating to these Agreements, the relationship of Franchisor and Franchisee and/or Area Developer, or your operation of the Franchise brought by you against us shall be commenced within 3 years from the occurrence of the facts giving rise to such claim or action, within 1 year after you become aware of the facts or circumstances indicating you may have a claim for relief, or 90 days after delivery to you of a written notice disclosing the violation, or such claim or action will be barred.

6. Item 17(g) of the Disclosure Document, Article 16 of the Franchise Agreement and Article 4 of the Multi-Unit Development Agreement are amended by changing the time frame to cure defaults, excluding defaults for safety or security issues, to 30 days.

**ADDENDUM REQUIRED BY THE STATE OF INDIANA**

1. To be added to Item 3 of the Disclosure Document, is the following statement:

There are presently no arbitration proceedings to which the Franchisor is a party.

2. Item 17 of the Disclosure Document is amended to reflect the requirement under Indiana Code 23-2-2.7-1 (9), which states that any post term non-compete covenant must not extend beyond the franchisee's exclusive territory.

3. Item 17 is amended to state that this is subject to Indiana Code 23-2-2.7-1 (10).

4. Under Indiana Code 23-2-2.7-1 (10), jurisdiction and venue must be in Indiana if the franchisee so requests. This amends Articles 22 and 23 of the Franchise Agreement and Articles 7 and 8 of the Multi-Unit Development Agreement.

5. Under Indiana Code 23-2-2.7-1 (10), franchisee may not agree to waive any claims or rights.

## **ADDENDUM REQUIRED BY THE STATE OF MARYLAND**

This will serve as the State Addendum for the State of Maryland for Key Club Development Corporation Franchise Disclosure Document and for its Franchise and Multi-Unit Development Agreements. The amendments to the Franchise and Multi-Unit Development Agreements included in this addendum have been agreed to by the parties.

1. Item 17 of the Disclosure Document is amended to state that the 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.

2. Item 17 of the Disclosure Document is amended to state that a franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

3. Item 17 of the Disclosure Document is amended to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

4. Item 17 of the Disclosure Document is amended to state that the provisions in the Franchise Agreement and Area Development Agreement which provide for termination upon bankruptcy of the franchisee/multi-unit developer may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

5. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to permit a franchisee to bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

6. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

7. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are amended to state that the 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.

8. The Franchise Agreement, Multi-Unit Development Agreement and Franchisee Disclosure Acknowledgment Statement are amended to include the following statement: "All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability 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."

## **DISCLOSURE REQUIRED BY THE STATE OF MICHIGAN**

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

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

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

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

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

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

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000, franchisee has the right to request an escrow arrangement.

Any questions regarding this notice should be directed to:

Consumer Protection Division  
Attn: Marilyn McEwen  
525 W. Ottawa Street, 6<sup>th</sup> Floor  
Lansing, Michigan 48933  
(517) 373-7117

## **ADDENDUM REQUIRED BY THE STATE OF MINNESOTA**

This addendum to the Disclosure Document is agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and effectively amends and revises said Disclosure Document and Franchise Agreement and Multi-Unit Development Agreement as follows:

1. Item 13 of the Disclosure Document and Article 6 of the Franchise Agreement are amended by the addition of the following language to the original language that appears therein:

“In accordance with applicable requirements of Minnesota law, Franchisor shall protect Franchisee’s right to use the trademarks, service marks, trade names, logotypes or other commercial symbols and/or shall indemnify Franchise from any loss, costs or expenses arising out of any claim, suit or demand regarding such use.”

2. Item 17 of the Disclosure Document, Articles 4 and 18 of the Franchise Agreement and Article 6 of the Multi-Unit Development Agreement are amended by the addition of the following language to the original language that appears therein:

“With respect to franchises governed by Minnesota law, the franchisor will comply with Minnesota Statutes Sec. 80C.14, Subds.3, 4 and 5, which require (except in certain specified cases) that a franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the franchise agreement and that consent to the transfer of the franchise will not be unreasonably withheld.”

3. Item 17 of the Disclosure Document, Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement are amended by the addition of the following language to amend the Governing Law, Jurisdiction and Venue, and Choice of Forum sections:

“Minn. Stat. Sec. 80C.21 and Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreements can abrogate or reduce any of the franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.”

4. Item 17 of the Disclosure Document, Articles 4 and 18 of the Franchise Agreement and Article 6 of the Multi-Unit Development Agreement are amended by the addition of the following language to the original language that appears therein:

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

5. Any reference to liquidated damages in the Franchise Agreement is hereby deleted in accordance with Minn. Rule 2860.4400J which prohibits requiring you to consent to liquidated damages.

6. Section 23.4 of the Franchise Agreement and Section 8.4 of the Multi-Unit Development Agreement hereby deleted in accordance with Minn. Rule 2860.4400J which prohibits waiver of a jury trial.

7. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement regarding Limitations of Claims is hereby amended to comply with Minn. Stat. §80C.17, Subd. 5.

8. Item 6, Insufficient Fund Fees: NSF fees are governed by Minnesota Statute 604.113; which puts a cap of \$30 on a NSF check. This applies to everyone in Minnesota who accepts checks except banks.

9. Under Minn. Rule 2860.440J, the franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. A court will determine if a bond is required. The appropriate sections of the Franchise Agreement and Multi-Unit Development Agreement are hereby amended accordingly.

## **ADDENDUM REQUIRED BY THE DEPARTMENT OF LAW OF THE STATE OF NEW YORK**

The following Items are required to be included within the Disclosure Document and shall be deemed to supersede the language in the Disclosure Document itself:

### **3. LITIGATION**

Neither the Franchisor, its Predecessor nor any person listed under Item 2 or an affiliate offering franchises under Franchisor's principal trademark:

- (A) has an administrative, criminal or civil action pending against that person alleging: a felony; a violation of a franchise, antitrust or securities law; fraud; embezzlement; fraudulent conversion; misappropriation of property; unfair or deceptive practices; or comparable civil or misdemeanor allegations.
- (B) has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise; anti-fraud or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; unfair or deceptive practices; or comparable allegations.
- (C) is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

### **4. BANKRUPTCY**

Neither the Franchisor, its affiliate, its predecessor, officers, or general partner during the ten year period immediately before the date of the disclosure document: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code (or any comparable foreign law); (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within one year after the officer or general partner of the Franchisor held this position in the company or partnership.

**DISCLOSURES REQUIRED BY NORTH CAROLINA LAW**

The State of North Carolina has not reviewed and does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the State. If you have any questions about this investment, see an attorney before you sign a contract or agreement.

If the seller fails to deliver the product(s), equipment or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and demand that the contract be cancelled. (N.C.G.S. §66-95)

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

## **ADENDUM REQUIRED BY THE STATE OF NORTH DAKOTA**

This addendum to the Disclosure Document, Franchise Agreement and Multi-Unit Development Agreement effectively amends and revises said documents as follows:

1. Item 17(c) of the Disclosure Document, Articles 4 and 18 of the Franchise Agreement and Article 6 of the Multi-Unit Development Agreement are hereby amended to indicate that a franchisee shall not be required to sign a general release.

2. Covenants not to compete are generally considered unenforceable in the State of North Dakota, in accordance with Section 51-19-09 of the North Dakota Franchise Investment Law. Item 17(r) of the Disclosure Document, Article 17 of the Franchise Agreement and Article 5 of the Multi-Unit Development Agreement are amended accordingly.

3. Item 6 and Item 17(i) of the Disclosure Document and Article 17 of the Franchise Agreement requires the franchisee to consent to termination or liquidated damages. Since the Commissioner has determined this to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law, these provisions are hereby deleted in each place they appear in the Disclosure Document and Franchise Agreement used in North Dakota.

4. Item 17(u) of the Disclosure Document, Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement are amended to provide that arbitration shall be held at a site that is agreeable to all parties.

5. Item 17(v) of the Disclosure Document and the provisions of Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement which require jurisdiction of courts in Rockingham County, New Hampshire are deleted.

6. Item 17(w) of the Disclosure Document, Article 22 of the Franchise Agreement and Article 7 of the Multi-Unit Development Agreement are amended to indicate that the agreements are to be construed according to the laws of the State of New Hampshire.

7. Apart from civil liability as set forth in Section 51-19-12 N.D.C.C., which is limited to violations of the North Dakota Franchise Investment Law (registration and fraud), the liability of the franchisor to a franchisee is based largely on contract law. Despite the fact that those provisions are not contained in the franchise investment law, those provisions contain substantive rights intended to be afforded to North Dakota residents. Therefore, North Dakota franchisees will not be required to waive their rights under North Dakota law.

8. The provisions of Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement which require a franchisee to consent to (1) a waiver of trial by jury and (2) a waiver of exemplary and punitive damages are contrary to Section 51-19-09 of the North Dakota Franchise Investment Law and are hereby deleted.

9. The provisions of Article 23 of the Franchise Agreement and Article 8 of the Multi-Unit Development Agreement which require a franchisee to consent to a limitation of claims are hereby amended to state that the statute of limitations under North Dakota law applies.

**ADDENDUM REQUIRED BY THE STATE OF RHODE ISLAND**

The following amends Item 17 and is required to be included within the Disclosure Document and shall be deemed to supersede the language in the Disclosure Document itself:

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that:

“A provision in a franchise agreement restricting jurisdiction or venue to a forum outside of this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.”

**ADDENDUM REQUIRED BY THE COMMONWEALTH OF VIRGINIA**

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

1. Additional Disclosure: The following statements are added to Item 17.h:

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

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

## **ADDENDUM REQUIRED BY THE STATE OF WASHINGTON**

The State of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST

\_\_\_\_\_  
Witness

Key Club Development Corporation

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

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

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

FRANCHISEE:

\_\_\_\_\_  
Witness

## **Exhibit J to the Vanguard Key Clubs Franchise Agreement**

### **FRANCHISEE DISCLOSURE ACKNOWLEDGMENT STATEMENT**

As you know, Key Club Development Corporation (the “Franchisor”) and you are preparing to enter into a franchise agreement (the “Franchise Agreement”) for the establishment and operation of a Vanguard Key Clubs Business (the “Franchised Business”). The purpose of this Questionnaire is to determine whether any statements or promises were made to you by employees or authorized representatives of the Franchisor, or by employees or authorized representatives of a broker acting on behalf of the Franchisor (“Broker”) that have not been authorized, or that were not disclosed in the Disclosure Document or that may be untrue, inaccurate or misleading. The Franchisor, through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights, fully understands and comprehends that the purchase of a franchise is a business decision, complete with its associated risks, and (b) that you are not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by Franchisor.

In the event that you are intending to purchase an existing Franchised Business from an existing Franchisee, you may have received information from the transferring Franchisee, who is not an employee or representative of the Franchisor. The questions below do not apply to any communications that you had with the transferring Franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Are you seeking to enter into the Franchise Agreement in connection with a purchase or transfer of an existing Franchised Business from an existing Franchisee?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. I had my first face-to-face meeting with a Franchisor representative on \_\_\_\_\_, 20\_\_\_\_.

3. Have you received and personally reviewed the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Do you understand all of the information contained in the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, what parts of the Franchise Agreement, any Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary.)

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5. Have you received and personally reviewed the Franchisor’s Disclosure Document that was provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Did you sign a receipt for the Disclosure Document indicating the date you received it?

Yes \_\_\_\_\_ No \_\_\_\_\_

7. Do you understand all of the information contained in the Disclosure Document and any state-specific Addendum to the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, what parts of the Disclosure Document and/or Addendum do you not understand? (Attach additional pages, if necessary.)

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8. Have you discussed the benefits and risks of establishing and operating a Franchised Business with an attorney, accountant, or other professional advisor?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, do you wish to have more time to do so?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. Do you understand that the success or failure of your Franchised Business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, location, lease terms, your management capabilities and other economic, and business factors?

Yes \_\_\_\_\_ No \_\_\_\_\_

10. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the actual or potential revenues, profits or operating costs of any particular Franchised Business operated by the Franchisor or its franchisees (or of any group of such businesses), that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

11. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn in operating the franchised business that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

12. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the total amount of revenue the Franchised Business will generate, that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

13. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the costs you may incur in operating the Franchised Business that is contrary to or different from the information contained in the Disclosure Document?

Yes \_\_\_\_\_ No \_\_\_\_\_

14. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Franchised Business?

Yes \_\_\_\_\_ No \_\_\_\_\_

15. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the Disclosure Document or franchise agreement?

Yes \_\_\_\_\_ No \_\_\_\_\_

16. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_ No \_\_\_\_\_

17. Have you paid any money to the Franchisor concerning the purchase of this franchise prior to today?

Yes \_\_\_\_\_ No \_\_\_\_\_

18. Have you spoken to any other franchisee(s) of this system before deciding to purchase this franchise? If so, who? \_\_\_\_\_

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If you have answered No to question 9, or Yes to any one of questions 10-17, please provide a full explanation of each answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered Yes to question 9, and No to each of questions 10-17, please leave the following lines blank.

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I signed the Franchise Agreement and Addendum (if any) on \_\_\_\_\_, 20\_\_\_\_\_, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them. By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. In addition, by signing this Questionnaire, you also acknowledge that:

A. You recognize and understand that business risks, which exist in connection with the purchase of any business, make the success or failure of the franchise subject to many variables, including among other things, your skills and abilities, the hours worked by you, competition, interest rates, the economy, inflation, franchise location, operation costs, lease terms and costs and the marketplace. You hereby acknowledge your awareness of and willingness to undertake these business risks.

B. You agree and state that the decision to enter into this business risk is in no manner predicated upon any oral representation, assurances, warranties, guarantees or promises made by Franchisor or any of its officers, employees or agents (including the Broker or any other broker) as to the likelihood of success of the franchise. Except as contained in the Disclosure Document, you acknowledge that you have not received any information from the Franchisor or any of its officers, employees or agents (including the Broker or any other broker) concerning actual, projected or forecasted franchise sales, profits or earnings. If you believe that you have received any information concerning actual, average, projected or forecasted franchise sales, profits or earnings other than those contained in the Disclosure Document, please describe those in the space provided below or write "None".

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C. You further acknowledge that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the "Anti-Terrorism Measures"). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly involved in terrorism. For that reason, you hereby certify that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, is:

- (i) a person or entity listed in the Annex to the Executive Order;
- (ii) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (iii) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (iv) owned or controlled by terrorists or sponsors of terrorism.

You further covenant that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Sign here if you are taking the franchise as an  
INDIVIDUAL

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

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

Sign here if you are taking the franchise as a  
CORPORATION, LIMITED LIABILITY  
COMPANY OR PARTNERSHIP

\_\_\_\_\_  
Print Name of Legal Entity

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

\_\_\_\_\_  
Signature

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

Title\_\_\_\_\_



# VANGUARD KEY CLUBS

**Key Club Development Corporation**

**MULTI-UNIT DEVELOPMENT AGREEMENT**

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**MULTI-UNIT DEVELOPER:**

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**DATE:**

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### EXHIBITS

- A – Development Area
- B – Development Fee and Minimum Development Schedule
- C – Guaranty
- D – Transfer to a Corporation or Limited Liability Company

## **MULTI-UNIT DEVELOPMENT AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Key Club Development Corporation, a New Hampshire "C" Corporation having its principal address at 200 Kensington Rd. Hampton Falls, NH 03844 ("we", "us" or "our"), and \_\_\_\_\_ with a principal address at \_\_\_\_\_ ("you" or "your")

### **W I T N E S S E T H:**

**WHEREAS**, we and our affiliate have developed a System identified by the service mark "Vanguard Key Clubs" (the "Mark" or "Proprietary Mark") and relating to offering a Retail Franchised Indoor 24 hour access key club fitness centers and all necessary support and consultation and related products ("Proprietary Products"); and

**WHEREAS**, in addition to the service mark "Vanguard Key Clubs" and certain other Proprietary Marks, the distinguishing characteristics of the System include, among other things, a proprietary trade dress that incorporates methods, uniform standards, specifications and procedures for operations; procedures for management control; training and assistance; and merchandising, advertising and promotional programs, and may include interior design, layout, décor, color scheme, fixtures and furnishings; materials and supplies; all of which may be changed, improved and further developed; and

**WHEREAS**, you wish to obtain the rights and license from us for the use of our System and Proprietary Marks and, in association therewith, to own and operate multiple Vanguard Key Clubs businesses in the area described in Exhibit "A" attached hereto (hereinafter referred to as the "Development Area") and you understand and accept the terms, conditions and covenants set forth herein as those which are reasonably necessary to maintain our high and uniform standards of quality and service in order to protect the goodwill and enhance the public image of the System and the Proprietary Marks; and

**WHEREAS**, we have the sole and exclusive right to the goodwill associated with the System and the Proprietary Marks and are willing to grant the use and license to you on the terms and conditions herein contained to use the System and the Proprietary Marks; and

**WHEREAS**, you acknowledge that you have read this Agreement and our Disclosure Document and that you understand and accept the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain our high standards of quality and service and the uniformity of those standards at all Vanguard Key Clubs businesses in order to protect and preserve the goodwill of the Marks; and

**WHEREAS**, we expressly disclaim the making of, and you acknowledge that you have not received or relied upon, any warranty or guarantee, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement. You acknowledge that you have not received or relied on any representations, written or oral, about the franchise by us, or our officers, directors, employees or agents, that are contrary to the statements made in our Disclosure Document or to the terms herein, and further represent to us, as an inducement to our entry into this Agreement, that you have made no misrepresentations, written or oral, to us in the application for the development rights granted hereunder.

## Article 1

### DEVELOPMENT RIGHTS AND OBLIGATIONS

1.1 Subject to the provisions contained herein, this Agreement shall be for a term commencing on the date hereof and expiring on the last day of the last development period as defined in Exhibit B, attached hereto and incorporated herein by reference (“Development Period”).

1.2 We retain the right, in our sole discretion and without granting any rights to you: (a) to own and operate, or to grant other persons the right to own and operate, Vanguard Key Clubs businesses at locations outside the Development Area and on such terms and conditions as we deem appropriate in our sole discretion; and (b) to sell anywhere the products (including Proprietary Products) authorized for Vanguard Key Clubs businesses under the Proprietary Marks or other trademarks, service marks and commercial symbols through dissimilar channels of distribution and pursuant to such terms and conditions as we deem appropriate.

1.3 Provided you: (i) are in full compliance with the terms and conditions contained in this Agreement, including, without limitation, the development obligations contained in Section 1.4; and (ii) are in full compliance with all obligations under all Franchise Agreements heretofore or hereafter entered into with us; then during the Development Periods, we: (1) will grant to you, in accordance with the provisions of Article 2 hereof, franchises for the ownership and operation of Vanguard Key Clubs businesses located within the Development Area; and (2) will not operate (directly or through an affiliate), nor grant a franchise for the operation of, any Vanguard Key Clubs business to be located within the Development Area, except such franchises as are granted to you.

1.4 You agree, during the term of this Agreement, that you will at all times faithfully, honestly and diligently perform your obligations hereunder and that you will continuously exert your best efforts to promote and enhance the development of Vanguard Key Clubs businesses within the Development Area. Without limiting the foregoing obligation, you agree to have signed leases, if you choose to lease space, within the Development Area for the cumulative number of Vanguard Key Clubs businesses at the end of each Development Period set forth in Section 2 of Exhibit B hereof (“Minimum Development Schedule”) and to have each such Vanguard Key Clubs business open and operating in accordance with the timeframe set forth in the Franchise Agreement. You further agree that no Vanguard Key Clubs business may be opened for business unless and until a Franchise Agreement for such Vanguard Key Clubs business has been fully executed. If you fail at any time to meet any Minimum Development Schedule, we shall have the right to terminate this Agreement by delivering a notice to you stating that we elect to terminate this Agreement as a result of such failure. Such termination shall be effective upon delivery of such notice of termination. Our right to terminate this Agreement shall be our sole and exclusive remedy for your failure to meet a Minimum Development Schedule.

1.5 You acknowledge and understand that this Agreement does not confer upon you any right to use the System or the Proprietary Marks, which right may only be granted pursuant to a valid Franchise Agreement between you and us.

1.6 You acknowledge and agree that you shall not open any Vanguard Key Clubs business to the public unless and until a fully executed Franchise Agreement is in place for such Vanguard Key Clubs business, all initial fees have been paid to us and we have consented to the Vanguard Key Clubs business' opening for business.

## Article 2

### GRANT OF FRANCHISES TO YOU

2.1 Subject to the provisions of Article 1 hereof, we agree to grant franchises to you for the operation of Vanguard Key Clubs businesses located within the Development Area, subject to the following: You shall submit to us a complete site report (containing such demographic, commercial, and other information and photographs as we may reasonably require) for each site at which you propose to establish and operate a Vanguard Key Clubs business and which you reasonably believe to conform to site selection criteria established by us from time to time. Such proposed site shall be subject to our prior written approval, which will not be unreasonably withheld. In approving or disapproving any proposed site, we will consider such matters as we deem material, including, without limitation, demographic characteristics of the proposed site, traffic patterns, density of population, and other commercial characteristics (including the purchase price or rental obligations and other lease terms for the proposed site) and the size of premises, appearance, and other physical characteristics.

2.2 By delivery of written notice to you, we will approve or disapprove sites proposed by you for the operation of a Vanguard Key Clubs business. We agree to exert our best efforts to deliver such notification to you within thirty (30) days of receipt by us of the complete site reports and other materials requested by us, containing all information reasonably required by us. **If you shall have failed to obtain lawful possession of any approved site (through acquisition, lease, or sublease if not a home office) within thirty (30) days after delivery of our approval thereof, we may, in our sole discretion, withdraw approval of such site.**

2.3 Provided you shall have obtained lawful possession of any approved site, we shall offer to you a franchise to operate a Vanguard Key Clubs business at such approved site by delivering to you a Franchise Agreement in form for execution by you. Such Franchise Agreement shall be executed by you and returned to us within fifteen (15) days of our delivery thereof, with payment of the balance of the initial franchise fee required thereunder. If you fail to execute such Franchise Agreement and tender payment of the balance of the initial franchise fee as above provided, we may, at our sole discretion, terminate our offer to grant to you a franchise to operate a Vanguard Key Clubs business at such approved site and withdraw our approval of such site.

## Article 3

### DEVELOPMENT FEE; INITIAL FRANCHISE FEES

Concurrently with the execution of this Agreement, you will pay to us a development fee (“Development Fee”) equal to one hundred percent (100%) of the initial franchise fee for the first Vanguard Key Clubs business to be developed, plus fifty percent (50%) of the reduced initial franchise fee for each additional Vanguard Key Clubs business to be developed under this Agreement. The Development Fee is fully earned by us when received and is not refundable.

The Franchise Agreement for the first Vanguard Key Clubs business to be developed hereunder shall be executed contemporaneously with the execution of this Agreement. We will apply a portion of the Development Fee to satisfy in full the initial franchise fee for the first Vanguard Key Clubs business to be developed hereunder. The initial franchise fee for the first Vanguard Key Clubs business to be developed hereunder shall be Twenty-Five Thousand Five Hundred Dollars (\$25,000). The initial franchise fee for each additional Vanguard Key Clubs business to be developed hereunder shall be Ten Thousand Dollars (\$10,000). For each additional Vanguard Key Clubs business to be developed hereunder, we will apply a *pro rata* portion of the Development Fee toward the initial franchise fee due

and the balance of the initial franchise fee, or Ten Thousand Dollars (\$10,000), shall be payable to us in a lump sum when you execute the Franchise Agreement for said Vanguard Key Clubs business.

## **Article 4**

### **TERMINATION BY US**

In addition to our right to terminate under Section 1.4 hereof, we shall have the right to terminate this Agreement by delivering a notice to you stating that we elect to terminate this Agreement as a result of any of the breaches set forth below. Such termination shall be effective upon delivery of such notice of termination or, if applicable, upon failure to cure (to our satisfaction) any such breach by the expiration of any period of time within which such breach may be cured in accordance with the provisions set forth below. It shall be a material breach of this Agreement if:

- (a) you, or any of your shareholders, make an unauthorized assignment or transfer of this Agreement, the development rights granted hereunder or an ownership interest in you;
- (b) a general partnership interest in you (if you are a limited partnership) is terminated for whatever reason;
- (c) you, or any of your shareholders, have made any material misrepresentation or omission in your application for the development rights conferred by this Agreement or are convicted of or plead no contest to a felony or other crime or offense that may adversely affect the goodwill associated with the Proprietary Marks;
- (d) you fail to comply with any other provision of this Agreement;
- (e) you fail on three (3) or more separate occasions within any twelve (12) consecutive month period to comply with this Agreement, whether or not such failures to comply are corrected after notice thereof is delivered to you; or
- (f) we have delivered a notice of termination of a Franchise Agreement in accordance with its terms and conditions as defined in such agreement.

You shall have the right to cure a breach under Paragraph (d) within thirty (30) days after delivery of our notice of termination.

## **Article 5**

### **EFFECT OF TERMINATION AND EXPIRATION**

5.1 All of our and your obligations under this Agreement which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement and until they are satisfied in full or by their nature expire.

5.2 Upon termination, transfer, or expiration of this Agreement, you agree that for a period of two (2) years, commencing on the effective date of expiration, transfer, or termination of this Agreement, you (and your shareholders or partners) will not have any interest as an owner, partner, director, officer, employee, consultant, representative or agent, or in any other capacity, in any business that offers

products or services the same as or substantially similar to those offered at the Vanguard Key Clubs business located or operating within the Development Area or within twenty-five (25) miles of any Vanguard Key Clubs business in the System, except for Vanguard Key Clubs businesses operated under Franchise Agreements granted by us to you and the ownership of securities listed on a stock exchange or traded on the over-the-counter market that represent less than five percent (5%) of that class of securities.

## **Article 6**

### **ASSIGNMENT**

6.1 We shall have the right to assign this Agreement and all of our attendant rights and privileges to any person, firm, corporation or other entity provided that, with respect to any assignment resulting in the subsequent performance by the assignee of our functions: (i) the assignee shall, at the time of such assignment, be financially responsible and economically capable of performing our obligations; and (ii) the assignee shall expressly assume and agree to perform such obligations.

You expressly affirm and agree that we may sell our assets, our rights to the Proprietary Marks or to the System outright to a third party; may go public; may engage in a private placement of some or all of our securities; may merge, acquire other corporations, or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and, with regard to any or all of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages arising from or related to the loss of said Proprietary Marks (or any variation thereof) and/or the loss of association with or identification of "Key Club Development Corporation" as Franchisor. Nothing contained in this Agreement shall require us to remain in the same business or to offer the same products and services, whether or not bearing the Proprietary Marks, in the event that we exercise our right to assign our rights in this Agreement.

6.2 You understand and acknowledge that the rights and duties created by this Agreement are personal to you and that we have granted this Agreement in reliance upon the individual or collective character, skill, aptitude, attitude, business ability, and financial capacity of you and your owners. Therefore, neither this Agreement (or any interest therein) nor any part or all of the ownership of you may be voluntarily, involuntarily, directly or indirectly, assigned, sold, subdivided, sub-franchised, or otherwise transferred by you or your owners (including, without limitation, by consolidation or merger, by issuance of securities representing an ownership interest in you, by conversion of a general partnership to a limited partnership, by transfer or creation of an interest as a general partner of a limited partnership, by transfer of an interest in you, or in the event of death of you or an owner of yours, by will, declaration of or transfer in trust or the laws of intestate succession), without our prior written approval, which approval may not be unreasonably withheld or delayed. Any such assignment or transfer without such approval shall constitute a breach hereof and shall convey no rights to or interest in this Agreement to such assignee. Consent to such transfer otherwise permitted or permissible as reasonable may be refused unless:

- (a) All of your obligations created by this Agreement, all other franchise documents, including all Franchise Agreements, and the relationship created hereunder are assumed by the transferee.
- (b) All ascertained or liquidated debts of you to us or our affiliated or subsidiary corporations are paid.
- (c) You are not in default hereunder.

(d) We are reasonably satisfied that the transferee meets all of our requirements for new multi-unit operators, including but not limited to, good reputation and character, business acumen, operational ability, management skills, financial strength and other business considerations.

(e) Transferee executes or, in appropriate circumstances, causes all necessary parties to execute, our standard form of Multi-Unit Development Agreement, Franchise Agreements for all Vanguard Key Clubs businesses open or under construction hereunder, and such other then-current ancillary agreements being required by us of new multi-unit developers on the date of transfer.

(f) You execute a general release, in a form satisfactory to us, of any and all claims against us, our officers, directors, employees and principal stockholders of any and all claims and causes of action that you may have against us or any subsidiary or affiliated corporations in any way relating to this Agreement or the performance or non-performance thereof by us.

(g) You or transferee pay to us a transfer fee in an amount equal to Twenty-Five Thousand Dollars (\$25,000) to cover our reasonable costs in effecting the transfer and in providing training and other initial assistance to transferee.

6.3 Notwithstanding Section 6.2, if you are an individual (or multiple individuals) then this Agreement and the development rights granted herein may be assigned, one (1) time only and without payment of the transfer fee described in Section 6.2(g), to a limited liability entity that you have formed for convenience of ownership of the development rights; provided, however, that all of the individuals who have executed this Agreement as the Multi-Unit Developer shall have the same ownership interests in the limited liability entity referred to herein as such individual held as an individual. All such individuals shall execute our form of Transfer of Franchise to a Corporation or Limited Liability Company, attached hereto as Exhibit D.

6.4 Upon your death or disability, or if you are a corporation, limited liability company, partnership, or other legal entity upon the death or disability of a principal owner of you, all of such person's interest in this Agreement or such interest in you shall be transferred to a transferee approved by us. Such disposition of this Agreement or such interest in you, including, without limitation, transfer by bequest or inheritance, shall be completed within a reasonable time, not to exceed twelve (12) months from the date of death or disability, and shall be subject to terms and conditions substantially similar to those applicable to transfers contained in this Article 6. Failure to so transfer the interest in this Agreement or such interest in you within said period of time shall constitute a breach of this Agreement.

## **Article 7**

### **ENFORCEMENT**

7.1 To the extent that Section 5.2 is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, or length of time, but may be made enforceable by reductions of any or all thereof, you and we agree that same shall be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction in which enforcement is sought.

7.2 If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder, or the taking of some other action not required hereunder, or if under any applicable and binding law or rule of any jurisdiction any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice and/or other action required by such law or rule shall be substituted for the comparable provisions hereof, and we shall have the right, in our sole discretion, to modify such invalid

or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. You agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof as though it were separately articulated in and made a part of this Agreement that may result from striking from any of the provisions hereof, or any specification, standard or operating procedure prescribed by us, any portion or portions which a court may hold to be unenforceable in a final decision to which we are a party, or from reducing the scope of any promise or covenant to the extent required to comply with such court order. Such modifications to this Agreement shall be effective only in such jurisdiction unless we elect to give them greater applicability and this Agreement shall be enforced as originally made and entered into in all other jurisdictions.

7.3 We and you may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice thereof to the other or such other effective date stated in the notice of waiver. Whenever this Agreement requires our prior approval or consent, you shall make a timely written request therefor, and such approval shall be obtained in writing. We and you agree to act reasonably in all dealings with each other pursuant to this Agreement. Whenever the consent or approval of either party is required or contemplated hereunder, the party whose consent is required agrees not to unreasonably withhold the same unless otherwise permitted to do so in this Agreement.

7.4 We make no warranties or guarantees upon which you may rely, and assume no liability or obligation to you by granting any waiver, approval, or consent to you, or by reason of any neglect, delay, or denial of any request therefor. Any waiver granted by us shall be without prejudice to any other rights we may have, will be subject to our continuing review, and may be revoked, in our sole discretion, at any time and for any reason, effective upon delivery to you of ten (10) days' prior written notice.

7.5 We and you shall not be deemed to have waived or impaired any right, power or option reserved by this Agreement (including, without limitation, the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach thereof to be a default and to determine this Agreement prior to the expiration of its term) by virtue of any custom or practice of the parties at variance with the terms hereof; any failure, refusal, or neglect of us or you to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder; any waiver, forbearance, delay, failure, or omission by us to exercise any right, power, or option, whether of the same, similar or different nature, with respect to any Vanguard Key Clubs business or any development or franchise agreements therefor; any grant of a Franchise Agreement to you; or the acceptance by us of any payment from you after any breach of this Agreement.

7.6 Neither we nor you shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (1) compliance with any law, ruling, order, regulation, requirement, or instruction of any federal, state, or municipal government or any department or agency thereof; (2) acts of God; (3) acts or omissions of the other party; (4) fires, strikes, embargoes, war, or riot; (5) build-out delays, including delays by any contractor or subcontractor; or (6) any other similar event or cause. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

7.7 Nothing herein contained shall bar our right to obtain specific performance of the provisions of this Agreement and injunctive relief against threatened conduct that will cause us loss or damages under customary equity rules, including applicable rules for obtaining restraining orders and preliminary injunctions. You agree that we may have such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law.

7.8 Our and your rights hereunder are cumulative and no exercise or enforcement by us or you of any right or remedy hereunder shall preclude the exercise or enforcement by us or you of any other right or remedy hereunder or which we or you are entitled by law or equity to enforce.

7.9 To the extent not inconsistent with applicable law, this Agreement and the offer or sale of this Agreement shall be governed by the substantive laws (and expressly excluding the choice of law) of the State of New Hampshire.

7.10 You and we agree that any action arising out of or relating to this Agreement (including, without limitation, the offer and sale of this Agreement) shall be instituted and maintained only in a state or federal court of general jurisdiction in the State of New Hampshire, and you irrevocably submit to the jurisdiction of such court and waive any objection you may have to either the lack of personal jurisdiction or venue of such court.

7.11 This Agreement is binding upon the parties hereto and their respective executors, administrators, heirs, assigns, and successors in interest. Any and all modifications to this Agreement must be made in writing, and appropriately executed by each party in order to be effective.

7.12 The preambles and exhibit(s) are a part of this Agreement, which constitutes the entire agreement of the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement; provided, however, that nothing in this or any related agreement is intended to disclaim the representations made by us in the Disclosure Document that was furnished to you by us.

7.13 Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

7.14 The headings of the several sections and paragraphs hereof are for convenience only and do not define, limit or construe the contents of such sections or paragraphs.

7.15 The term "Multi-Unit Developer" as used herein is applicable to one (1) or more persons, a corporation or a partnership, as the case may be, and the singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two (2) or more persons are at any time Multi-Unit Developer hereunder, their obligations and liabilities to us shall be joint and several. References to "Multi-Unit Developer" and "assignee" which are applicable to an individual or individuals shall mean the owner(s) of the equity or operating control of Multi-Unit Developer or the assignee, if Multi-Unit Developer or the assignee is a corporation, limited liability company or partnership.

7.16 This Agreement shall be executed in multiple copies, each of which shall be deemed an original. This Agreement will become valid when executed and accepted by us at our headquarters.

7.17 Time is of the essence of this Agreement.

7.18 All references to a corporation or partnership shall be deemed to include a limited liability company, and all references to a shareholder shall be deemed to include a member of a limited liability company.

7.19 Each provision of this Article 7, together with the provisions of Article 8, will be deemed to be self-executing and continue in full force and effect subsequent to and notwithstanding the expiration, termination, setting aside, cancellation, rescission, unenforceability or otherwise of this Agreement (or any part of it) for any reason, will survive and will govern any claim for rescission or

otherwise. Each provision of this Agreement will be construed as independent of, and severable from, every other provision; provided that if any part of this Agreement is deemed unlawful in any way, the parties agree that such provision will be deemed interpreted and/or modified to the minimum extent necessary to make such provision lawful or, if such construction is not permitted or available, the remainder of this Agreement will continue in full force and effect. Each party reserves the right to challenge any law, rule or judicial or other construction which would have the effect of varying or rendering ineffective any provision of this Agreement.

## **Article 8**

### **DISPUTE RESOLUTION**

8.1 Except to the extent we elect to enforce the provisions of this Agreement by judicial process and injunction in our sole discretion, all disputes, claims and controversies between the parties arising under or in connection with this Agreement or the making, performance or interpretation thereof (including claims of fraud in the inducement and other claims of fraud and the arbitrability of any matter) which have not been settled through negotiation or mediation will be settled by binding arbitration in New Hampshire under the authority of New Hampshire Statutes. The arbitrator(s) will have a minimum of five (5) years of experience in franchising or distribution law and will have the right to award specific performance of this Agreement. If the parties cannot agree upon a mutually agreeable arbitrator, then the arbitration shall be conducted as per the selection method set forth in the New Hampshire Statutes. The proceedings will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA), to the extent such rules are not inconsistent with the provisions of this arbitration provision or the New Hampshire Statutes. The decision of the arbitrator(s) will be final and binding on all parties. This Section will survive termination or non-renewal of this Agreement under any circumstances. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction thereof. During the pendency of any arbitration proceeding, you and we shall fully perform our respective obligations under this Agreement.

8.2 Notwithstanding anything to the contrary contained in Section 8.1 above, we and you each have the right, in a proper case, to seek injunctions, restraining orders and orders of specific performance from a court of competent jurisdiction, provided that we agree to contemporaneously submit our dispute for arbitration on the merits as provided herein.

8.3 You agree that we will not be required to post a bond to obtain any injunctive relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction if warranted upon due hearing. All claims for damages by reason of the wrongful issuance of such injunction are hereby expressly waived. If we secure any such injunction or order of specific performance, you agree to pay to us an amount equal to the aggregate of our costs of obtaining such relief including, without limitation, reasonable legal fees, costs and expenses as provided in this Section and any damages incurred by us as a result of the breach of any such provision.

8.4 The parties agree that any litigation between you and us (and/or involving any principal of yours or which could be brought by you or on your behalf and including matters involving any of our related entities or otherwise), whether involving any litigation, dispute, controversy, claim, proceeding or otherwise between or involving you and us or otherwise, will be held exclusively before a court in the most immediate state judicial district and court encompassing our headquarters and having subject matter jurisdiction or (if a basis for Federal jurisdiction is present) the United States District Court for Rockingham County, New Hampshire, the parties consenting to the exclusive jurisdiction of such court(s) and **WAIVING ALL RIGHTS TO TRIAL BY JURY**.

8.5 THE PARTIES AGREE THAT IN ANY LITIGATION BETWEEN US AND YOU (AND/OR ANY PRINCIPAL OF YOURS OR WHICH COULD BE BROUGHT BY YOU OR ON YOUR BEHALF) THE PARTIES KNOWINGLY WAIVE ALL RIGHTS TO TRIAL BY JURY. IN ANY LITIGATION OR OTHERWISE, THE PARTIES WAIVE ALL RIGHTS TO PUNITIVE, EXEMPLARY, MULTIPLE, PAIN-AND-SUFFERING, MENTAL DISTRESS OR SIMILAR DAMAGES AND AGREE THAT THE PARTIES MAY ONLY RECOVER ACTUAL FINANCIAL LOSSES.

8.6 Prior to your taking any legal or other action against us, whether for damages, injunctive, equitable or other relief (including but not limited to rescission) and whether by way of claim, counterclaim, cross-complaint, raised as an affirmative defense or otherwise, based on any alleged act or omission of ours, you will first give us sixty (60) days' prior written notice and opportunity to cure such alleged act or omission.

8.7 The parties agree that, except as provided below, no action or suit (whether by way of claim, counterclaim, cross-complaint, raised as an affirmative defense or otherwise) by either party will lie against the other (nor will any action or suit by you against any person and/or entity affiliated with us), whether for damages, rescission, injunctive or any other legal and/or equitable relief, in respect of any alleged breach of this Agreement, or any other claim of any type, unless such party will have commenced such action or suit before the expiration of the earlier of: (a) one hundred eighty (180) days after the date upon which the state of facts giving rise to the cause of action comes to the attention of, or should reasonably have come to the attention of, such party; or (b) one (1) year after the initial occurrence of any act or omission giving rise to the cause of action, whenever discovered. Notwithstanding the foregoing limitations, where any federal, state or provincial law provides for a shorter limitation period than above described, whether upon notice or otherwise, such shorter period will govern.

The foregoing limitations may, where brought into effect by our failure to commence an action within the time periods specified, operate to exclude our right to sue for damages but will in no case, even upon expiration or lapse of the periods specified or referenced above, operate to prevent us from terminating your rights and our obligations under this Agreement as provided herein and under applicable law nor prevent us from obtaining any appropriate court judgment, order or otherwise which enforces and/or is otherwise consistent with such termination.

The foregoing limitations shall not apply to our claims arising from or related to: (1) your under-payment or non-payment of any amounts owed to us or any affiliated or otherwise related entity; (2) indemnification by you; (3) your confidentiality, non-competition or other exclusive relationship obligations; and/or (4) your unauthorized use of the Proprietary Marks.

8.8 In no event will you make any claim, whether directly, by way of setoff, counter-claim, defense or otherwise, for money damages or otherwise, by reason of any withholding or delaying of any consent or approval by us.

8.9 If we are required to enforce this Agreement in a judicial or other proceeding, you shall reimburse us for our costs and expenses, including, without limitation, reasonable accountants', attorneys', attorney assistants', and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. If we are required to engage legal counsel in connection with any failure by you to comply with this Agreement, you shall reimburse us for any of the above-listed costs and expenses incurred by us.

## Article 9

We and you are independent contractors. Neither we nor you shall be obligated by or have any liability under any agreements, representations, or warranties made by the other that are not expressly authorized hereunder, nor shall we be obligated for any damages to any person or property directly or indirectly arising out of the operation of your business conducted pursuant to this Agreement, whether or not caused by your negligent or willful action or failure to act. We shall have no liability for any sales, use, excise, income, gross receipts, property, or other taxes levied upon you or your assets or upon us in connection with the business conducted by you, or any payments made by you to us pursuant to this Agreement or any Franchise Agreement. You agree to indemnify us and our subsidiaries, affiliates, stockholders, directors, officers, employees, agents and assignees against and to reimburse them for all such obligations, damages, and taxes for which they are held liable and for all costs reasonably incurred by them in the defense of any such claim brought against them or in any action in which they are named as a party, including, without limitation, reasonable attorneys' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses. We shall have the right to defend any such claim against us. The indemnities and assumptions of liabilities and obligations herein shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

## Article 10 NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, dispatched by overnight delivery envelope, or sent by facsimile to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor: Key Club Development Corporation  
200 Kensington Rd. Hampton Falls, NH 03844

Attention: Craig J. Annis  
Email: info@vanguardkeyclubs.com

With a copy to: Joseph R. Russell  
Kalil & LaCount  
681 Wallis Road  
Rye, NH 03870  
Email: [joe@ryelaw.net](mailto:joe@ryelaw.net)

To Multi-Unit Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at any such other address or addresses as the party to whom such notice, consent, approval, statement, authorization, documentation or other communication is to be given may designate by notice in writing so given to the other parties hereto as provided hereinbefore. Any notices, consents, approvals, statements,

authorizations, documents or other communications, if mailed, shall be deemed to have been given on the fifth (5th) business day (except Saturdays and Sundays) following such mailing, or, if delivered personally or transmitted by telex or other form of electronic communication, shall be deemed to have been given on the day of delivery or transmission (as the case may be), if a business day, or if not a business day, on the business day next following the day of delivery or transmission (as the case may be).

## **Article 11**

### **ACKNOWLEDGMENTS**

11.1 YOU ACKNOWLEDGE THAT THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT INVOLVES SUBSTANTIAL BUSINESS RISKS AND WILL BE TOTALLY AND COMPLETELY DEPENDENT UPON YOUR ABILITY AS AN INDEPENDENT BUSINESS PERSON. WE EXPRESSLY DISCLAIM THE MAKING OF, AND YOU ACKNOWLEDGE NOT HAVING RECEIVED, ANY WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS OR SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT.

11.2 YOU ACKNOWLEDGE HAVING RECEIVED, READ AND UNDERSTOOD THIS AGREEMENT, THE EXHIBITS ATTACHED HERETO AND AGREEMENTS RELATING HERETO, IF ANY, AND WE HAVE ACCORDED YOU AMPLE TIME AND OPPORTUNITY TO CONSULT WITH ADVISORS OF YOUR OWN CHOOSING ABOUT THE POTENTIAL RISKS OF ENTERING INTO THIS AGREEMENT.

11.3 YOU ACKNOWLEDGE THAT YOU RECEIVED THE DISCLOSURE DOCUMENT REQUIRED BY THE TRADE REGULATION RULE OF THE FEDERAL TRADE COMMISSION AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED OR ANY PAYMENT WAS MADE TO US OR OUR AFFILIATES.

11.4 YOU AND EACH OF YOUR OWNERS EXPRESSLY ACKNOWLEDGE THAT NEITHER YOU NOR THEY HAVE RELIED UPON ANY EARNINGS CLAIMS, SUCH AS ORAL OR WRITTEN STATEMENTS OR SUGGESTIONS, MADE BY ANY REPRESENTATIVE OF OR ANY OTHER PERSON PURPORTING TO BE ACTING ON OUR BEHALF REGARDING THE POTENTIAL FUTURE SALES, REVENUES OR PROFITS WHICH MAY BE DERIVED FROM OPERATION OF VANGUARD KEYCLUB OR DEVELOPMENT OF THE DEVELOPMENT AREA, EXCEPT AS MAY BE CONTAINED IN ITEM 19 OF THE DISCLOSURE DOCUMENT.

[Signatures appear on the next page]

**IN WITNESS WHEREOF**, the parties hereto have executed, sealed and delivered this Agreement on the day and year first above written.

ATTEST:

\_\_\_\_\_  
Witness

FRANCHISOR:  
Key Club Development Corporation

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

ATTEST:

\_\_\_\_\_  
Witness

MULTI-UNIT DEVELOPER:

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

**Exhibit A to the Vanguard Key Clubs Multi-Unit Development Agreement**

**DEVELOPMENT AREA**

The Development Area referred to in Article 1 of the Multi-Unit Development Agreement shall be:

**FRANCHISOR:**  
Key Club Development Corporation

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

**MULTI-UNIT DEVELOPER:**

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

**Exhibit B to the Vanguard Key Clubs Multi-Unit Development Agreement**

**MINIMUM DEVELOPMENT SCHEDULE**

You agree to develop and open the following cumulative number of Vanguard Key Clubs businesses at the end of each Development Period as follows:

<b>Number of Vanguard Key Clubs businesses</b>	<b>Last Day of Development Period</b>
_____	_____, 20__ (First Development Period)
_____	_____, 20__ (Second Development Period)
_____	_____, 20__ (Third Development Period)
_____	_____, 20__ (Fourth Development Period)
_____	_____, 20__ (Fifth Development Period)
_____	_____, 20__ (Sixth Development Period)

The first Development Period commences on the date of the Multi-Unit Development Agreement and expires on the date shown; each subsequent Development Period commences on the date succeeding the last day on the preceding Development Period and expires on the date shown.

**FRANCHISOR:**  
Key Club Development Corporation

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

**MULTI-UNIT DEVELOPER:**

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

**Exhibit C to the Vanguard Key Clubs Multi-Unit Development Agreement**

**GUARANTY**

(TO BE EXECUTED ONLY IF MULTI-UNIT DEVELOPER  
IS A CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP)

In consideration of the execution by Key Club Development Corporation of the annexed Multi-Unit Development Agreement, and acknowledging that undersigned will benefit directly or indirectly from the execution thereof, the undersigned, being all of the shareholders, directors, and officers of \_\_\_\_\_ (the "Multi-Unit Developer"), agree to be jointly and severally bound by and agree to guarantee the performance of all of the terms and conditions of the Multi-Unit Development Agreement and any amendments thereto or renewals thereof, and do hereby execute this Multi-Unit Development Agreement for the purpose of binding and obligating themselves to the terms and conditions of the aforesaid Multi-Unit Development Agreement and any amendments thereto or renewals thereof.

The guarantors hereunder hereby waive notice of termination or default under the Multi-Unit Development Agreement.

**SIGNATURES OF ALL SHAREHOLDERS, DIRECTORS, OFFICERS,  
MEMBERS AND PARTNERS, AS APPLICABLE**

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WITNESS

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WITNESS

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WITNESS

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Each of the undersigned owns a five percent (5%) or greater beneficial interest in Multi-Unit Developer, each has read this Multi-Unit Development Agreement, and each agrees to be individually bound by all obligations of Multi-Unit Developer hereunder.

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WITNESS

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WITNESS

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WITNESS

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**Exhibit D to the Vanguard Key Clubs Multi-Unit Development Agreement**

**TRANSFER OF A FRANCHISE TO  
A CORPORATION OR LIMITED LIABILITY COMPANY**

This Transfer Agreement shall amend that certain Multi-Unit Development Agreement between \_\_\_\_\_, an individual ("Multi-Unit Developer"), and Key Club Development Corporation ("Franchisor").

The undersigned, an Officer, Director and Owner of a majority of the issued and outstanding voting stock of the Corporation set forth below, or Members of the issued and outstanding Interests of the Limited Liability Company set forth below, and the Multi-Unit Developer of Vanguard Key Clubs under a Multi-Unit Development Agreement executed on the date set forth below, between himself or herself and Franchisor, granting him/her a franchise to operate in the Development Area set forth below, and the other undersigned Directors, Officers and Shareholders of the Corporation, or the Members of the Limited Liability Company, who together with Multi-Unit Developer constitute all of the Shareholders of the Corporation, or the Members of the Limited Liability Company, in order to induce Franchisor to consent to the assignment of the Multi-Unit Development Agreement to the Corporation or Limited Liability Company in accordance with the provisions of Article 6 of the Multi-Unit Development Agreement, agree as follows:

1. The undersigned Multi-Unit Developer shall remain personally liable in all respects under the Multi-Unit Development Agreement and all the other undersigned Officers, Directors and Shareholders of the Corporation, or the Members of the Limited Liability Company, intending to be legally bound hereby, agree jointly and severally to be personally bound by the provisions of the Multi-Unit Development Agreement including the restrictive covenants contained in Article 5 thereof, to the same extent as if each of them were the Multi-Unit Developer set forth in the Multi-Unit Development Agreement and they jointly and severally personally guarantee all of the Multi-Unit Developer's obligations set forth in said Agreement.

2. The undersigned agree not to transfer any stock in the Corporation, or any interest in the Limited Liability Company without the prior written approval of the Franchisor and agree that all stock certificates representing shares in the Corporation, or all certificates representing interests in the Limited Liability Company shall bear the following legend:

"The shares of stock represented by this certificate are subject to the terms and conditions set forth in a Multi-Unit Development Agreement dated \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ and Key Club Development Corporation"

or

"The ownership interests represented by this certificate are subject to the terms and conditions set forth in a Multi-Unit Development Agreement dated \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ and Key Club Development Corporation"

3. \_\_\_\_\_ or his designee shall devote his best efforts to the day-to-day operation and development of Vanguard Key Clubs.

4. \_\_\_\_\_ hereby agrees to become a party to and to be bound by all of the provisions of the Multi-Unit Development Agreement executed on the date set forth below between Multi-Unit Developer and Franchisor, to the same extent as if it were named as the Multi-Unit Developer therein.

Date of Multi-Unit Development Agreement: \_\_\_\_\_

Development Area: \_\_\_\_\_

WITNESS: \_\_\_\_\_ As to Paragraph 3:

\_\_\_\_\_ [Name]

As to Paragraph 4:

\_\_\_\_\_ [Name]

ATTEST: \_\_\_\_\_ Name of Corp. or Limited Liability Company

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

In consideration of the execution of the above Agreement, Key Club Development Corporation hereby consents to the above referred to assignment on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Key Club Development Corporation

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

## STATE EFFECTIVE DATES

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

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

California	N/A
Connecticut	N/A
Florida	N/A
Hawaii	N/A
Georgia	N/A
Illinois	N/A
Indiana	N/A
Kentucky	N/A
Louisiana	N/A
Maine	N/A
Maryland	N/A
Michigan	N/A
Minnesota	N/A
Nebraska	N/A
New York	_____
North Carolina	N/A
North Dakota	N/A
Rhode Island	N/A
South Carolina	N/A
South Dakota	N/A
Texas	N/A
Utah	N/A
Virginia	N/A
Washington	N/A
Wisconsin	N/A

**RECEIPT**  
**(Our Copy)**

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

If Key Club Development Corporation offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to the franchisor or an affiliate in connection with the proposed franchise sale. Iowa, New York, Oklahoma and Rhode Island require that we give you this 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. Michigan and Oregon require that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Key Club Development Corporation does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580 and the appropriate state agency listed on Exhibit A.

The franchisor is Key Club Development Corporation, located at 200 Kensington Rd. Hampton Falls, NH 03844. Its telephone number is 603-758-1320

Issuance date: April 28, 2025 See the State Effective Dates page for state related information.

The name, principal business address and telephone number of the franchise seller for this offering is: \_\_\_\_\_.

Key Club Development Corporation authorizes the agents listed in Exhibit A to receive service of process for it.

I have received a disclosure document dated April 28, 2025 that included the following Exhibits:

A – List of State Agencies/Agents for Service of Process	F – Financial Statements
B – Franchise Agreement	G – Brand Standards Manual Table of Contents
C – Multi-Unit Development Agreement	H – Multi-State Addendum
D – List of Franchisees and Multi-Unit Developers	I – Form of General Release
E – List of Franchisees and Multi-Unit Developers Who Have Left The System	J – Franchisee Disclosure Acknowledgment Statement

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

You may return the signed receipt either by signing, dating and mailing it to Key Club Development Corporation, 200 Kensington Rd. Hampton Falls, NH 03844, or by emailing a copy of the signed and dated receipt to Key Club Development Corporation, [info@vanguardkeyclubs.com](mailto:info@vanguardkeyclubs.com)

**RECEIPT**  
**(Your Copy)**

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Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

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