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20 *Attorneys for Apex Fun Run, LLC*

21 **UNITED STATES BANKRUPTCY COURT**

22 **DISTRICT OF ARIZONA**

23 In re:  
24 ARIZONA FUNDRAISING SOLUTIONS,  
25 INC.,  
26 Debtor.

27 CHAPTER 11  
28 Case No. 17-10016-MCW  
**JOINT DISCLOSURE STATEMENT  
DATED SEPTEMBER 22, 2017**

1 Arizona Fundraising Solutions, Inc., debtor-in-possession (“Debtor”) in the above-  
2 captioned Chapter 11 case (“Case”), and Apex Fun Run, LLC (“Apex, and together with the  
3 Debtor, the “Proponents”), franchisor and secured creditor in the Case hereby submit this *Joint*  
4 *Disclosure Statement Dated September 22, 2017* to assist Creditors in making informed  
5 decisions when voting on the Proponents’ *Joint Plan of Reorganization Dated September 22,*  
6 *2017* (“Plan”), which is attached hereto as **Exhibit A**.

7 **ARTICLE 1**

8 **INTRODUCTION TO THE DISCLOSURE STATEMENT AND VOTING**

9 **1.1 Purpose of the Disclosure Statement.**

10 This Disclosure Statement sets forth the following information regarding the Debtor’s pre-  
11 petition history: its Property; significant events that lead to the filing of this Case; a summary of the  
12 Plan, including when and how Creditors will be paid; and a brief discussion of the confirmation  
13 process and the voting procedures that must be followed to enable Creditors’ votes to be counted.  
14 The information provided herein is true and accurate to the best of the Debtor’s knowledge.

15 {00040231}

1 The primary purpose of this Disclosure Statement is to provide adequate information to  
2 those Creditors voting on the Plan so that they may make a reasonably informed decision with  
3 respect to exercising their rights to accept or reject the Plan. This Disclosure Statement is not  
4 intended to be relied upon for any purpose other than to determine how to vote on the Plan.  
5 Nothing contained herein shall be deemed conclusive advice on the tax or other legal effects of the  
6 reorganization on holders of Claims or interests. **Consult your personal counsel or tax advisor**  
7 **regarding any questions or concerns respecting tax, securities, or other legal consequences of**  
8 **the Plan.**

9 **1.2 Definitions.**

10 Unless otherwise defined herein, terms defined in the Plan (which are capitalized) shall  
11 have the same meanings when used in this Disclosure Statement. In addition, unless otherwise  
12 defined herein or in the Plan, terms used in this Disclosure Statement shall have the same meanings  
13 as in the Bankruptcy Code (“Code”) or the Federal Rules of Bankruptcy Procedure (“Rules”), or, if  
14 not defined, their ordinary meanings.

15 **1.3 Authorized Representations.**

16 This Disclosure Statement is the only document authorized by the Bankruptcy Court to be  
17 used in connection with soliciting votes on the Plan. You should not rely upon any representations  
18 or inducements made to secure your acceptance of the Plan other than those set forth herein or in  
19 the Plan. **The Bankruptcy Court’s approval of this Disclosure Statement does not constitute a**  
20 **certification or ruling by the Court regarding the completeness or accuracy of any statements**  
21 **contained herein. The information contained in this Disclosure Statement came from the**  
22 **Debtor’s records and information.**

23 This Disclosure Statement is not the Plan. This Disclosure Statement and the Plan (Exhibit  
24 A hereto) should be read together in their entireties before you vote on the Plan. For the  
25 convenience of Creditors and holders of interests, the Plan is summarized in this Disclosure  
26 Statement, but in the event of any inconsistency, the Plan controls. The financial information  
27 contained herein has been provided in good faith, but has not been audited by a certified public  
28 accountant and has not been prepared in accordance with generally accepted accounting principles.

1           **1.4     Voting Procedures.**

2           To be entitled to vote, a Creditor must have an Allowed Claim that is Impaired under the  
3 Plan. Code § 1124 defines whether a Claim is Impaired. However, to summarize, a Claim is  
4 Impaired if the Plan modifies the legal or contractual rights of the Claimant, or if the Plan does not  
5 cure and reinstate the legal or contractual rights of the Claimant. A Creditor in a Class that will not  
6 receive any distribution under the Plan, under any circumstances, is not entitled to vote in the Class  
7 of which it is a member and is deemed to have rejected the Plan. If a Creditor holds more than one  
8 Claim in one Class, all of the Claims in such Class will be aggregated, and the Creditor will be  
9 entitled to one vote in the amount of all aggregated Claims.

10           All Creditors or parties in interest entitled to vote on the Plan may cast their votes for or  
11 against the Plan by completing, dating, signing the Ballot that accompanies this Disclosure  
12 Statement, and timely mailing the original Ballot to Debtor’s counsel as directed below.

13           **The Court issued an order requiring that all Ballots accepting or rejecting the Plan be**  
14 **received by close of business on \_\_\_\_\_ (“Ballot Deadline”).** The Ballots should be  
15 sent to:

16                                   Randy Nussbaum  
17                                   Wesley D. Ray  
18                                   SACKS TIERNEY P.A.  
19                                   4250 N. Drinkwater Blvd., 4th Floor  
20                                   Scottsdale, AZ 85251  
21                                   [Randy.Nussbaum@sackstierney.com](mailto:Randy.Nussbaum@sackstierney.com)  
22                                   [Wesley.Ray@sackstierney.com](mailto:Wesley.Ray@sackstierney.com)  
23                                   *Attorneys for Debtor*

24                                   Thomas H. Allen  
25                                   Khaled Tarazi  
26                                   ALLEN BARNES & JONES, PLC  
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29                                   Fax: (602) 252-4712  
30                                   [tallen@allenbarneslaw.com](mailto:tallen@allenbarneslaw.com)  
31                                   [ktarazi@allenbarneslaw.com](mailto:ktarazi@allenbarneslaw.com)  
32                                   *Attorneys for Apex Fun Run, LLC*

33           **Your ballot will not be counted if Debtor’s counsel receives it after the Ballot**  
34 **Deadline.** You may not change your vote after casting it unless the Court permits such change  
35 after notice and a hearing to determine whether sufficient cause exists to permit the change.

1           **1.5      Confirmation of the Plan.**

2           For the Plan to be effective, it must be confirmed, which means that the Court has approved  
3 the Plan. For the Plan to be confirmed, votes by each Impaired Class representing at least two-  
4 thirds (2/3) in amount of the Allowed Claims voting in each Class and greater than one-half (1/2)  
5 in number of individual Creditors for such Class (of those casting votes) must be submitted in favor  
6 of acceptance of the Plan. If the requisite acceptances are not obtained from one or more Impaired  
7 Classes, pursuant to Code § 1129(b), the Court may nonetheless confirm the Plan if one Impaired  
8 Class accepts the Plan and the Court finds that the Plan provides, among other things, fair and  
9 equitable treatment of the Classes rejecting the Plan, and that Creditors receive as much or more  
10 under the Plan than they would receive in a Chapter 7 liquidation (discussed more fully below).

11           When confirmed by the Bankruptcy Court, this Plan will bind all holders of Claims and  
12 interests, whether or not they are entitled to vote or did vote on the Plan, and whether or not they  
13 received or retained any distributions or Property under the Plan.

14           **1.6      Proponents’ Recommendation to Vote in Favor of the Plan.**

15           The Proponents strongly urge each Creditor to vote to accept the Plan. The Proponents  
16 believe that each person or entity entitled to vote will conclude that the Plan is fair, reasonable, and  
17 provides the greatest return to the greatest number of Creditors.

18                           **ARTICLE 2**

19                           **Arizona Fundraising Solutions, Inc.**

20           **2.1      History of the Debtor and Incidents Leading to Bankruptcy Filing.**

21           The Debtor was created in in 2015 for the purpose of owning and operating a fundraising  
22 franchise. The Debtor is engaged, generally, in organizing and managing fund-raising events for  
23 elementary schools. The funds that are raised at such events are divided between the Debtor and  
24 the respective school, in accordance with an agreed upon formula. The Debtor operates its  
25 business under the auspices of that certain Franchise Agreement, dated as of February 26, 2015  
26 (the “Franchise Agreement,” a copy of which is attached hereto as **Exhibit C**), between the Debtor  
27 and Apex.  
28

1 Almost since its inception, the Debtor has had financial struggles. These difficulties arose  
2 from myriad factors, including, but not limited to an excessive number of salaried employees,  
3 changes in the testing calendars for schools that created interference with scheduled fundraising  
4 events, an unmanageable debt load, and the Debtor's principal Christopher Stewart's ongoing  
5 battle with cancer.

6 In the summer of 2017, the Debtor's financial difficulties became grave. The Debtor fell  
7 into default of the Franchise Agreement and was notified by Apex that the default provided Apex  
8 with the option of terminating the Franchise Agreement. A termination of the Franchise  
9 Agreement would have created an immediate cessation of the Debtor's operations, and eliminated  
10 the possibility of any significant value being made available to the Debtor's creditors.

11 Thereafter, the Debtor entered into a series of negotiations with Apex. Ultimately, the  
12 Debtor and Apex concluded that a termination of the Franchise Agreement would not best serve  
13 either of their interests, and that a managed return of the franchise to Apex would be to the benefit  
14 of all involved. To that end, the Debtor, Mr. Stewart and Apex entered into the Management  
15 Agreement, pursuant to which Apex agreed to assume responsibility of the Debtor's day-to-day  
16 management, provide the Debtor a revolving line of credit to eliminate cash-flow shortfalls, and,  
17 upon confirmation of a plan of reorganization or liquidation, to pay Mr. Stewart \$85,000 in  
18 exchange for his continuing efforts and a release of certain claims. With the cooperation of Apex,  
19 through these bankruptcy proceedings, the Debtor believes that a plan of reorganization or  
20 liquidation that will maximize the value of the Debtor's estate for the benefit of all parties-in-  
21 interest can be confirmed. A copy of the Management Agreement is attached hereto as **Exhibit B**.

## 22 **2.2 Debtor's Future.**

23 Through the sale to Apex as outlined herein and in the Plan, the Debtor will liquidate its  
24 Property and provide a meaningful return to its Creditors in excess of what they would receive  
25 in a chapter 7 liquidation.

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**ARTICLE 3**

**SUMMARY OF THE DEBTOR’S CURRENT FINANCIAL CONDITION**

The Debtor’s current financial condition is detailed in the Schedules and Statements of Financial Affairs and will continue to be documented in the monthly operating reports to be filed with the Bankruptcy Court. Interested parties are encouraged to review the Schedules, Statements of Financial Affairs, and monthly operating reports as they are filed.

**ARTICLE 4**

**DESCRIPTION OF PROPERTY**

The Debtor’s Property and liabilities are listed on its Schedules and Statement of Financial Affairs filed in this case, located at Docket No. 36. The total value of the Debtor’s Property is estimated to be approximately \$30,469.76. The Debtor has created a Liquidation Analysis that describes the liquidation value of the Debtor’s Property. See Article 9, below.

**ARTICLE 5**

**POST-CONFIRMATION CONTROL**

Upon the Effective Date, the Debtor’s Property will transfer to Apex and Apex will continue to operate the business. The Debtor will retain control of the Proceeds to administer in accordance with the terms of the Plan. The Debtor will prepare and file quarterly post confirmation financial reports until the case is closed. Copies of those reports shall be provided to the United States Trustee’s Office. After confirmation and prior to the Case being closed, the Debtor will pay, in cash, or other certified funds, quarterly fees to the United States Trustee’s Office.

**ARTICLE 6**

**SUMMARY OF THE PLAN**

This section contains a brief summary of the Plan, and it is qualified in its entirety by reference to the Plan, which accompanies this Disclosure Statement. **THE PLAN ITSELF CONTROLS THE RELATIONSHIP BETWEEN THE DEBTOR AND CREDITORS. YOU SHOULD READ THE PLAN IN ITS ENTIRETY PRIOR TO CASTING YOUR BALLOT.**

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**ARTICLE 7**

**CLASSIFICATION AND TREATMENT OF CLAIMS**

**7.1 Unclassified Claims.**

Pursuant to Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax Claims are not classified for purposes of voting on, or receiving distributions under, the Plan. Holders of Administrative Claims and Priority Tax Claims are not entitled to vote on the Plan, but rather, are treated separately as set forth in Sections 3.1.1 and 3.1.2 of the Plan and summarized herein.

**7.1.1 Allowed Administrative Claims.**

This Class includes, without limitation, post-petition tax Claims, Professional Fees, approved accounting fees, and any fees due and payable to the United States Trustee. Applications for approval of Administrative Claims must be filed with the Court, and copies must be served upon Debtor’s counsel. Any holder of an Administrative Claim that fails to timely file a final application for approval of such Administrative Claim shall be deemed to have waived its Claim, and the Claim will be disallowed. See Sections 2.1 and 2.2 of the Plan. The holders of Allowed Administrative Claims shall be paid (i) in full from the Proceeds on the Effective Date, or within 30 days after approval, after payment of the Class 1 Claim and after the reservation of \$15,000.00 from the Proceeds for General Unsecured Creditors as set forth in Section 7.5 below; or (ii) as otherwise agreed.

**7.1.2 Priority Tax Claims.**

As of the Petition Date, the Debtor is current on its obligations to Governmental Units and is not aware that any such Claims exist in this Case. In the event a Governmental Unit holds a Claim, such Claim will be paid in accordance with Code § 1129(a)(9)(C).

**7.2 Class 1 – Secured Claim of Wells Fargo.**

Class 1 consists of the Allowed Secured Claim of Wells Fargo relating to its UCC Financing Statements filed on February 27, 2015 and March 4, 2015 in connection with an SBA loan. The Class 1 Claim is alleged to be secured by a first-position lien against most of the Debtor’s Property. Based upon the information included in the Debtor’s Schedules, the

1 Proponents estimate that the value of Wells Fargo's collateral is approximately \$23,969.76.  
2 The amount of Wells Fargo's secured claim will be determined by the Court or through  
3 agreement of Wells Fargo and the Proponents. The holder of the Class 1 Claim shall be paid in  
4 full on the Effective Date. Any deficiency Claim will be paid as a Class 4 General Unsecured  
5 Claim. Class 1 is Impaired.

6 **7.3 Class 2 – Secured Claim of Apex.**

7 Class 2 consists of the Allowed Secured Claim of Apex relating to its UCC  
8 Financing Statement filed on March 6, 2015 in connection with a second position lien on the  
9 Debtor's Property. The Class 2 Claim is fully unsecured. Pursuant to the terms of the  
10 Franchise Agreement and its Addenda, copies of which are attached hereto as **Exhibit C**, as the  
11 Franchisor, Apex holds the right of first refusal in connection with the sale of the Debtor's  
12 franchise, and must approve any sales, assignments transfers, or encumbrances of the franchise.  
13 See Article 13 of the Franchise Agreement. The Proceeds are currently held in escrow with  
14 Arizona Escrow & Financial Corporation. Upon the Transfer Date, the Proceeds shall be  
15 released to the Debtor and all of the Debtor's Property will transfer to Apex free and clear of all  
16 liens and encumbrances. Upon receipt of the Property, Apex's Class 2 Claim will be deemed  
17 satisfied in full. Class 2 is Impaired.

18 **7.4 Class 3 – Secured Claim of Michael Bennett.**

19 Class 3 consists of the Allowed Secured Claim of Michael Bennett in the amount  
20 of \$6,500 relating to a first-position Secured Claim encumbering the Debtor's 2001 Ford F150.  
21 The 2001 Ford F150 will be transferred to Apex through the sale of the Debtor's Property upon  
22 the Transfer Date and Apex will assume liability for the Class 3 Claim. The holder of the  
23 Allowed Class 3 Claim shall receive payment of the Claim from Apex in full, in 60 equal  
24 payments of \$122.66 per month, representing principal and interest at the rate of 5% per annum.  
25 The payments to the Allowed Class 3 Claimant shall begin on the Effective Date. No  
26 prepayment penalty shall apply to the Class 3 claim. The Class 3 Claim is Impaired.

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1           **7.5 Class 4 General Unsecured Creditors.**

2           Class 4 consists of (i) all Allowed Unsecured Claims that are not entitled to  
3 classification in any other Class of Claims; and (ii) any and all deficiency claims. This Class  
4 shall not include any claim arising from a deposit received from a school in connection with any  
5 contract assigned to Apex, which deposit claims will be honored and paid by Apex in  
6 accordance with the applicable agreement. Holders of Allowed Class 4 Claims will receive a  
7 pro rata share of \$15,000.00 of the Proceeds after the payment of Administrative Claims and the  
8 Class 1 Claim, as set forth in Section 7.1.1 above. To allow time for Claims administration,  
9 distributions on Class 4 Claims will be made 120 days after the Effective Date. Class 4 is  
10 Impaired.

11           **7.6 Class 5 Equity Interests.**

12           Upon the Effective Date, the equity interests in the Debtor will be cancelled.

13   **ARTICLE 8**

14   **MEANS TO IMPLEMENT PLAN**

15           The Plan will be funded from the sale of the Debtor's Property to Apex. Apex will  
16 continue managing the Debtor's operations pursuant to the Management Agreement until the  
17 Transfer Date. Upon the Transfer Date, all of the Debtor's Property will be transferred to Apex,  
18 free and clear of all liens and encumbrances. Also upon the Effective Date, the Proceeds will be  
19 transferred to the Debtor, which will then make distributions to Creditors on the Effective Date  
20 as set forth in Article 7 herein.

21   **ARTICLE 9**

22   **LIQUIDATION ANALYSIS**

23           As a condition to confirmation, Code § 1129(a)(7) requires the Plan to provide that each  
24 Creditor either accept the Plan or receive from the Debtor's estate as much under the Plan as  
25 each Creditor would receive in a Chapter 7 liquidation. The Debtor's Property and liabilities  
26 are listed in its Schedules and Statement of Financial Affairs. According to the Schedules and  
27 Statement of Financial Affairs, the value of all of the Debtor's Property is approximately  
28 \$30,469.76. All of the Debtor's assets are encumbered by liens that equal, or exceed, the value

1 of the underlying collateral. As such, in the event of a liquidation under Chapter 7 of the  
2 Bankruptcy Code, secured creditors would receive the value of their collateral while creditors  
3 holding priority or unsecured claims would receive nothing. Moreover, the available value from  
4 any asset that was not encumbered would be reduced, if not consumed completely, by  
5 administrative expenses incurred by a Chapter 7 Trustee and his or her counsel. In sum, a  
6 liquidation of the Debtor's Property would yield no return to Priority or General Unsecured  
7 Creditors. Pursuant to the Plan, General Unsecured Creditors will receive \$15,000.00.  
8 Therefore, the Proponents believe the Plan will provide a significantly greater return to  
9 Unsecured Creditors than in a Chapter 7 liquidation, and the Plan satisfies Code § 1129(a)(7).

## 10 **ARTICLE 10**

### 11 **TAX ISSUES**

12 Pursuant to Code § 1125(a)(1), the Debtor must provide a discussion of the potential  
13 material tax consequences of the Plan to the Debtor and any successor to the Debtor, and a  
14 hypothetical investor typical of the holders of Claims or interests in the Case, that would enable  
15 such a hypothetical investor of the relevant Class to make an informed judgment about the Plan.  
16 However, the Debtor need not include such information about any other possible or proposed plan.  
17 In determining whether the Disclosure Statement provides "adequate information" as required by  
18 Code § 1125, the Court must consider the complexity of the Case, the benefit of additional  
19 information to Creditors and other parties in interest, and the cost of providing additional  
20 information.

21 The following discussion summarizes certain considerations that may affect the anticipated  
22 federal income tax consequences of the Plan's implementation to Creditors and to the Debtor. It  
23 does not address all federal income tax consequences of the Plan nor does it address the state or  
24 local income tax or other state or local tax consequences of the Plan's implementation to Creditors  
25 or to the Debtor.

26 This description of the federal income tax consequences of implementing the Plan is based  
27 on the Debtor's interpretation of the applicable provisions of the Internal Revenue Code of 1986, as  
28 amended, the regulations promulgated thereunder, and other relevant authority. The Debtor's

1 interpretation, however, is not binding on the IRS or any court. The Debtor has not obtained, nor  
2 does it intend to obtain, a private letter ruling from the IRS, nor has the Debtor obtained an opinion  
3 of counsel with respect to any of these matters. The discussion below is general in nature and is  
4 not directed to the specific tax situation of any particular interested taxpayer. **For these reasons,**  
5 **all Creditors should consult with their own tax advisors as to the tax consequences of**  
6 **implementation of the Plan to them under applicable federal, state, and local tax laws.**

7 **10.1 Tax Consequences to the Debtor.**

8 In general, the amount of any debt that is partially or totally discharged pursuant to a  
9 bankruptcy case is excluded from gross income. Generally, the amount of discharged debt income  
10 that is excluded from gross income must be applied to reduce the tax attributes of the Debtor. The  
11 Debtor's tax attributes are reduced in the following order: (1) net operating losses; (2) general  
12 business credits; (3) minimum tax credit; (4) net capital loss and net capital loss carryovers; (5)  
13 reduction in tax basis of the Debtor's property (both depreciable and non-depreciable); (6) any  
14 passive activity loss and credit carryovers from the taxable year of the discharge; and (7) foreign  
15 tax credit carryovers. The Debtor may elect to apply the debt discharge exclusion first to  
16 depreciable property and thereafter to the tax attributes in the above-prescribed order.

17 **10.2 Tax Consequences to Unsecured Creditors.**

18 Unsecured Creditors may be required to report income or be entitled to a deduction as a  
19 result of the implementation of the Plan. The exact tax treatment depends on, among other things,  
20 each Claimant's method of accounting, the nature of each Claimant's Claim, and whether and to  
21 what extent such Claimant has taken a bad debt deduction in prior taxable years with respect to the  
22 particular debt owed to it by the Debtor. **Each Claim holder is urged to consult with his, her, or**  
23 **its own tax advisor regarding the particular tax consequences of the treatment of his, her, or**  
24 **its Claim under the Plan.**

25 **ARTICLE 11**

26 **BALLOTING INSTRUCTIONS**

27 Creditors will vote to accept or reject the Plan. **THE PLAN CANNOT BE CONFIRMED**  
28 **IF THE PLAN DOES NOT RECEIVE AT LEAST TWO-THIRDS (2/3) IN AMOUNT AND**

1 MORE THAN ONE-HALF (1/2) IN NUMBER OF ALLOWED CLAIMS VOTING IN EACH  
2 IMPAIRED CLASS, provided, however, if the requisite acceptances are not obtained from one or  
3 more Impaired Classes, the Court may nonetheless confirm the Plan pursuant to Code § 1129(b) if  
4 one Impaired Class accepts the Plan and the Court finds that the Plan provides, among other things,  
5 fair and equitable treatment of the Classes rejecting the Plan and that Creditors receive as much or  
6 more under the Plan than they would receive in a Chapter 7 liquidation.

## 7 ARTICLE 12

### 8 MODIFICATION OF PLAN

9 The Debtor reserves the right to modify the Plan in accordance with the provisions of the  
10 Code and Chapter 11 as follows:

#### 11 12.1 Pre-Confirmation.

12 In accordance with Code § 1127(a), the modification of the Plan may be proposed in  
13 writing by the Debtor at any time before its confirmation, provided that the Plan, as thus modified,  
14 meets the requirements of Code §§ 1122 and 1123, and the Debtor complies with Code § 1125.

#### 15 12.2 Post-Confirmation.

16 In accordance with Code § 1127(b), the Plan also may be modified at any time after its  
17 confirmation and before its substantial consummation, provided that the Plan as thus modified  
18 meets the requirements of Code §§ 1122 and 1123, provided further that the circumstances then  
19 existing justify such modification, and the Court confirms the Plan as thus modified under  
20 Code § 1129.

#### 21 12.3 Objections.

22 Any holder of a Claim or equity interest that has accepted or rejected the Plan will be  
23 deemed to have accepted or rejected, as the case may be, the Plan as modified unless, within the  
24 time fixed by the Court for doing so, such holder changes its previous acceptance or rejection.

#### 25 12.4 Effect.

26 Every modification of the Plan will supersede the previous version of the Plan as and  
27 whenever each modification is effective. When superseded, the previous version of the Plan will  
28 be in the nature of a withdrawn or rejected settlement proposal, and will be null, void, and unusable

1 by the Debtor or any other party for any purpose whatsoever with respect to any of the contents of  
2 such version of the Plan.

3 **12.5 Default.**

4 If the Debtor is unable to perform the terms and conditions of the Plan, then it will be in  
5 default. Any Creditor may seek to enforce the Plan. **Before doing so, the Creditor must provide**  
6 **notice to the Debtor specifying the nature of the alleged default and a 30-day period to cure**  
7 **the default.** Any notice must be in writing and sent via certified mail to the Debtor at the address  
8 on file with the Clerk of this Court and with a copy sent via certified mail to:

9 Randy Nussbaum  
10 Wesley D. Ray  
11 SACKS TIERNEY P.A.  
12 4250 N. Drinkwater Blvd., 4th Floor  
13 Scottsdale, AZ 85251  
14 [Randy.Nussbaum@sackstierney.com](mailto:Randy.Nussbaum@sackstierney.com)  
15 [Wesley.Ray@sackstierney.com](mailto:Wesley.Ray@sackstierney.com)  
16 *Attorneys for Debtor*

17 Thomas H. Allen  
18 Khaled Tarazi  
19 ALLEN BARNES & JONES, PLC  
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21 Phoenix, AZ 85004  
22 Fax: (602) 252-4712  
23 [tallen@allenbarneslaw.com](mailto:tallen@allenbarneslaw.com)  
24 [ktarazi@allenbarneslaw.com](mailto:ktarazi@allenbarneslaw.com)  
25 *Attorneys for Apex Fun Run, LLC*

26 **ARTICLE 13**

27 **CONFIRMATION, RISKS & RECOMMENDATION**

28 **13.1 Best Interests Test.**

The Debtor believes that the “best interests test” imposed by Code § 1129(a)(7) is satisfied  
by the Plan because each holder of a Claim not accepting the Plan will receive at least as much as  
such holder would receive in a Chapter 7 liquidation as discussed in detail in Article 9 above.

**13.2 Fair and Equitable Test (Absolute Priority Rule).**

To the extent such requirements are applicable based upon the votes of Creditors on the  
Plan, the Debtor believes that the Plan satisfies the fair and equitable requirements of the Code  
because Secured Creditors will retain their liens and be paid the full value of their Secured Claims,

1 and those holding equity in the Debtor will not retain any interest in the Debtor post-confirmation  
2 at the expense of Unsecured Creditors.

3 **13.3 Recommendation of the Proponents.**

4 The Proponents respectfully recommend that Creditors vote in favor of the Plan.

5 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of September, 2017.

6 **APPROVED AS TO FORM AND CONTENT:**

7 **SACKS TIERNEY P.A.**

8  
9 By: /s/ Wesley D. Ray (with permission)  
10 Randy Nussbaum  
11 Wesley D. Ray  
12 4250 N. Drinkwater Blvd., 4th Floor  
13 Scottsdale, AZ 85251  
14 *Attorneys for Debtor*

15 **ALLEN BARNES & JONES, PLC**

16 By: /s/ Thomas H. Allen, #11160  
17 Thomas H. Allen  
18 Khaled Tarazi  
19 1850 N. Central Ave., Suite 1150  
20 Phoenix, Arizona 85004  
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# Exhibit “A”

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21 **UNITED STATES BANKRUPTCY COURT**

22 **DISTRICT OF ARIZONA**

23 In re:  
24 ARIZONA FUNDRAISING SOLUTIONS,  
25 INC.,  
26 Debtor.

27 CHAPTER 11

28 Case No. 17-10016-MCW

**JOINT PLAN OF REORGANIZATION  
DATED SEPTEMBER 22, 2017**

29 **INTRODUCTION**

30 Arizona Fundraising Solutions, Inc., debtor in possession in the above-captioned  
31 Chapter 11 Case, and Apex Fun Run, LLC (“Apex, and together with the Debtor, the  
32 “Proponents”), franchisor and secured creditor in the Case hereby file this *Joint Plan of*  
33 *Reorganization Dated September 22, 2017*. In addition to reviewing this Plan, all creditors and  
34 parties in interest are encouraged to consult the Disclosure Statement before voting to accept or  
35 reject this Plan. **NO SOLICITATION MATERIALS OTHER THAN THE DISCLOSURE**  
36 **STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH HAVE**  
37 **BEEN APPROVED OR AUTHORIZED BY THE BANKRUPTCY COURT IN**  
38 **SOLICITING ACCEPTANCES OR REJECTIONS OF THIS PLAN.**

39 {00040248}



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1 **ARTICLE 1 – DEFINITIONS**

2 **Rules of Construction.** The following terms shall have the meanings specified below  
3 when used in this Plan. Wherever from the context it appears appropriate, each term stated in  
4 either the singular or the plural shall include the singular and the plural, and pronouns stated in  
5 the masculine, feminine, or neutral gender shall include the masculine, the feminine, and the  
6 neutral. The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer  
7 to the Plan as a whole and not to any particular section, subsection, or clause contained in the  
8 Plan. Unless otherwise specified, all section, schedule, or exhibit references in the Plan are to  
9 the respective section in, schedule to, or exhibit to the Plan. The headings in the Plan are for  
10 convenience only and shall not limit or otherwise affect the provisions of the Plan. The rules of  
11 construction contained in Bankruptcy Code § 102 shall apply to the construction of the Plan,  
12 and unless specifically modified herein, terms that are defined by the Bankruptcy Code shall  
13 have the same meanings defined by the Code. All terms not specifically defined by this Plan  
14 shall have the meanings designated in the Bankruptcy Code, or, if not defined therein, their  
15 ordinary meanings. These definitions are a substantial and operative part of the Plan.

16 **1.1 Administrative Claim.**

17 This term means every cost or expense of administration of this Case allowed under  
18 Code § 503(b) and referred to in Code § 507(a)(1), including, without limitation: a) any actual  
19 and necessary expense of preserving the estate as approved by the Bankruptcy Court; b) all  
20 Professional Fees; and c) all fees and charges assessed against the Debtor’s estate under 28  
21 U.S.C. § 1930.

22 **1.2 Allowed Claim.**

23 This term means every Claim: (a) (i) as to which a proof of such Claim has been timely  
24 filed pursuant to Sections 2.1 or 2.2 below, or (ii) which the Debtor has scheduled in its  
25 Schedules (including any amendments thereto) as liquidated in amount, not contingent, and  
26 undisputed; and in either event: (b) (i) as to which no objection to the allowance of such Claim  
27 has been filed within any applicable time period fixed by the Bankruptcy Court, or (ii) as to  
28 which the order allowing such Claim has become a Final Order. The term “Allowed Claim”

1 may be used throughout the Plan with each of the various Creditors' Claims or Classes of those  
2 Claims (e.g., "Allowed Administrative Claims" or "Allowed Secured Claims") to signify that  
3 such Claims are, will be, or must be Allowed Claims to qualify for certain treatment under the  
4 Plan.

5 **1.3 ADOR.**

6 This term means the Arizona Department of Revenue.

7 **1.4 Apex.**

8 This terms means Apex Fun Run, LLC, Secured Creditor in this Case.

9 **1.5 Ballot.**

10 This term means the Ballot for accepting or rejecting the Plan, which will be distributed  
11 to holders of Claims in Classes that are Impaired and entitled to vote on this Plan.

12 **1.6 Bankruptcy Code or Code.**

13 These terms mean Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as now  
14 existing or hereafter amended during this Case.

15 **1.7 Bankruptcy Court or Court.**

16 These terms mean the United States Bankruptcy Court for the District of Arizona,  
17 Phoenix Division, or any other court that exercises jurisdiction over all or part of the Case,  
18 including the United States District for the District of Arizona to the extent that the reference of  
19 all or part of the Case is withdrawn.

20 **1.8 Bankruptcy Rules or Rules.**

21 This term means the Federal Rules of Bankruptcy Procedure promulgated under 28  
22 U.S.C. § 2075 and the local rules of Court, as applicable during the term of the Case.

23 **1.9 Business Day.**

24 This term means every day except Saturdays, Sundays, and holidays observed by the  
25 Bankruptcy Court.

26 **1.10 Chapter 11 Case or Case.**

27 This term means Case No. 17-10016-MCW.

28 ///

1           **1.11    Chapter 11 Professionals.**

2           This term means all professionals employed by the Estate under Bankruptcy Code § 327.

3           **1.12    Claim.**

4           This term means “claim” as defined in Bankruptcy Code § 101(5).

5           **1.13    Claimant.**

6           This term means the holder of a Claim.

7           **1.14    Class.**

8           This term means each of the categories of classified claims described in Article 3 of the  
9 Plan.

10           **1.15   Confirmation Date.**

11           This term means the date on which the Bankruptcy Court enters the Confirmation Order.

12           **1.16   Confirmation Hearing.**

13           This term means the hearing regarding confirmation of the Plan conducted by the  
14 Bankruptcy Court pursuant to Bankruptcy Code § 1128, including any adjournment or  
15 continuation of that hearing from time to time.

16           **1.17   Confirmation Order.**

17           This term means the order of the Bankruptcy Court confirming the Plan pursuant to  
18 Bankruptcy Code § 1129.

19           **1.18   Creditor.**

20           This term means “creditor” as defined in Bankruptcy Code § 101(10).

21           **1.19   Debtor.**

22           This term means Arizona Fundraising Solutions, Inc.

23           **1.20   Disclosure Statement.**

24           This term means the *Joint Disclosure Statement Dated September 22, 2017*, presented  
25 by the Debtor and Apex with respect to the Plan, in its present form or as it may be altered,  
26 amended, or modified.

27           **1.21   Disputed Claim.**

28           This term means every Claim: a) that is scheduled by the Debtor as disputed, contingent,

1 or unliquidated; or b) that is not an Allowed Claim. Where performance is to be rendered under  
2 the Plan to any Creditor in respect to a Disputed Claim, such performance shall not be due  
3 (notwithstanding the occurrence of the Effective Date for all other purposes and legal effects)  
4 unless and until such Disputed Claim becomes, wholly or in part, an Allowed Claim.

5 **1.22 Effective Date.**

6 This term means the thirtieth day that occurs after the Confirmation Date.

7 **1.23 Estate.**

8 This term means the Debtor's bankruptcy estate created under Bankruptcy Code § 541.

9 **1.24 Executory Contract.**

10 This term means every unexpired lease and other contract that is subject to being  
11 assumed or rejected under Bankruptcy Code § 365.

12 **1.25 Final Bar Date.**

13 This term means the thirtieth day that occurs after the Effective Date.

14 **1.26 Final Decree.**

15 This term means a Final Order showing that the Plan has been fully administered.

16 **1.27 Final Order.**

17 This term means an order or judgment of the Court that a) shall not have been reversed,  
18 stayed, modified or amended and the time to appeal from, or to seek review or rehearing of,  
19 shall have expired and as to which no appeal or petition for review, or hearing for *certiorari* is  
20 pending, or b) if appealed from, shall have been affirmed and no further hearing, appeal, or  
21 petition for *certiorari* can be taken or granted.

22 **1.28 General Unsecured Claim.**

23 This term means every Unsecured Claim against the Debtor (including, but not limited  
24 to, every such Claim arising from the rejection of an Executory Contract, and Unsecured Claims  
25 of Creditors with Claims solely against the Debtor) that will be classified and paid under the  
26 Plan as the Plan provides for Class 4 Claims.

27 **1.29 Impaired.**

28 This term means "impaired" as defined in Bankruptcy Code § 1124.



1           **1.30    Initial Bar Date.**

2           This term means the day prior to the date of the first hearing on the Disclosure Statement.

3           **1.31    Management Agreement.**

4           This term means that certain Management Agreement entered into between the Debtor,  
5 Christopher Stewart and Apex as of July 26, 2017 whereby, among other things, the Debtor and  
6 Apex agreed to Apex assuming management of the Debtor’s operations.

7           **1.32    Person.**

8           This term means “person” as defined in Bankruptcy Code § 101(41).

9           **1.33    Petition Date.**

10          This term means August 25, 2017, the filing date of the Debtor’s voluntary Chapter 11  
11 petition.

12          **1.34    Plan.**

13          This term means this *Joint Plan of Reorganization Dated September 22, 2017* and every  
14 amendment to or modification thereof, if any.

15          **1.35    Priority Tax Claim.**

16          Any Claim of a Governmental Unit entitled to priority under Bankruptcy Code  
17 § 507(a)(8).

18          **1.36    Proceeds.**

19          This term means the sum of \$90,000.00 paid by Apex in exchange for the Property of the  
20 Debtor. The Proceeds will be held in escrow with Arizona Escrow & Financial Corporation until  
21 the Transfer Date.

22          **1.37    Professional Fees.**

23          This term means any of the interim and final professional fees, costs, and expenses  
24 charged by the Chapter 11 Professionals.

25          **1.38    Property.**

26          This term means, with respect to the Debtor, all rights, causes of action, all of the right,  
27 title and interest in and to Property (real or personal, tangible or intangible, legal or equitable,  
28 liquidated or unliquidated) of whatever type or nature, owned by the Debtor as of the Effective

1 Date, and including, but not limited to, Property as defined in Bankruptcy Code § 541.  
2 Notwithstanding anything to the contrary herein, this term shall not include actions arising under  
3 Chapter 5 of the Bankruptcy Code.

4 **1.39 Secured Claim.**

5 This term means every Claim or portion thereof that is asserted by a Creditor holding  
6 such Claim to be secured by a lien, security interest, or assignment encumbering Property in  
7 which the Debtor has an interest; provided, however, that such Claim shall be a Secured Claim  
8 only to the extent of the validity, perfection, and enforceability of the claimed lien, security  
9 interest, or assignment and only to the extent of the value of the interest of the Creditor holding  
10 such Claim against such Property.

11 **1.40 Secured Creditor.**

12 This term means every Creditor that asserts a Secured Claim in the Bankruptcy Case.

13 **1.41 Transfer Date.**

14 This term means the day upon which the Confirmation Order becomes a Final Order.

15 **1.42 Unsecured Claim.**

16 This term means all Claims asserted by Creditors of the Debtor, including deficiency  
17 Claims, dissolution Claims and Claims arising out of the rejection of Executory Contracts, other  
18 than Secured Claims, Administrative Claims, and Priority Tax Claims.

19 **1.43 Unsecured Creditor.**

20 This term means the owner or holder of an Unsecured Claim.

21 **ARTICLE 2 – IMPORTANT DATES & DEADLINES**

22 **2.1 Initial Bar Date.**

23 The Court originally set a hearing for \_\_\_\_\_ at 230 N. First Avenue,  
24 Sixth Floor, Courtroom \_\_\_\_, Phoenix, Arizona, to consider the adequacy of the Disclosure  
25 Statement and set the day prior to such hearing as the Initial Bar Date for filing proofs of Claim.  
26 For eligibility as Allowed Claims, proofs of Claim must be filed for:

- 27 a) Claims not listed in the Schedules of Assets and Liabilities, as may be amended  
28 from time to time;

- 1           b) Claims that are listed in the Schedules of Assets and Liabilities as disputed,  
2           contingent, or unliquidated;
- 3           c) Claims that differ in any respect from those listed in the Schedules of Assets and  
4           Liabilities (including, without limitation, the assertion of any right to a setoff under  
5           Code § 553 or otherwise);
- 6           d) Administrative Claims arising prior to the Initial Bar Date, except for Professional  
7           Fees; and
- 8           e) Claims arising from the Debtor's rejection of an Executory Contract that occurs  
9           prior to the Bar Date.

10           Any Person or entity asserting one of the foregoing types of Claims that fails to timely  
11           file a proof of Claim or application for payment thereof prior to Initial Bar Date shall be deemed  
12           to have waived its Claim, and the Claim will be disallowed and forever barred.

13           **2.2     Final Bar Date.**

14           Applications for allowance and payment of a) Administrative Claims that arise after the  
15           Initial Bar Date b) Professional Fees incurred prior to the Confirmation Date, or c) Claims  
16           resulting from the Debtor's rejection of Executory Contracts after the Initial Bar Date must be  
17           filed no later than the Final Bar Date. Any Person asserting one of the foregoing types of  
18           Claims that fails to timely file a proof of Claim or application for allowance and payment  
19           thereof shall be deemed to have waived its Claim, and the Claim will be disallowed. Any  
20           Professional Fees incurred after the Confirmation Date shall be payable in the normal course of  
21           the Debtor's affairs without the need to seek or obtain Bankruptcy Court approval.

22           **2.3     Claims Objection Deadline.**

23           On or before the sixtieth day after the Effective Date, the Debtor or any party in interest  
24           may file with the Bankruptcy Court, serving a copy upon Debtor's counsel, if necessary, an  
25           objection to any application for approval of an Administrative Claim or proof of Claim filed, or  
26           deemed filed herein.

27           **2.4     Assumption and Rejection of Executory Contracts.**

28           All of the executory contracts identified in Schedule "G" of the Debtor's Schedules shall  
          be assumed and assigned to Apex as of the Effective Date.

1 **ARTICLE 3 - CLASSIFICATION AND TREATMENT OF CLAIMS**

2 This Plan defines various Classes of Claims and provides for their treatment. This Plan  
3 deals with all Claims against the Debtor of whatever character. Only Allowed Claims are  
4 entitled to receive payments under the Plan. In accordance with Bankruptcy Code §§ 1122 and  
5 1123, all Claims against the Debtor or the Estate are classified and will receive treatment as  
6 follows:

7 **3.1 Unclassified Claims.**

8 Pursuant to Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax  
9 Claims are not classified for purposes of voting on, or receiving distributions under, the Plan.  
10 Holders of Administrative Claims and Priority Tax Claims are not entitled to vote on the Plan,  
11 but rather, are treated separately as set forth in Sections 3.1.2 and 3.1.3 and under Code § 1129  
12 (a)(9).

13 **3.1.1 Allowed Administrative Claims.**

14 This Class includes, without limitation, post-petition tax Claims, Professional  
15 Fees, approved accounting fees, and any fees due and payable to the United States Trustee.  
16 Applications for approval of Administrative Claims must be filed with the Court, and copies  
17 must be served upon Debtor's counsel. Any holder of an Administrative Claim that fails to  
18 timely file a final application for approval of such Administrative Claim shall be deemed to have  
19 waived its Claim, and the Claim will be disallowed. See Sections 2.1 and 2.2 of the Plan. The  
20 holders of Allowed Administrative Claims shall be paid (i) in full from the Proceeds on the  
21 Effective Date, or within 30 days of approval, after payment of the Class 1 Claim and after the  
22 reservation of \$15,000.00 from the Proceeds for General Unsecured Creditors as set forth in  
23 Section 7.5 below; or (ii) as otherwise agreed.

24 **3.1.2 Priority Tax Claims.**

25 As of the Petition Date, the Debtor is current on its obligations to Governmental  
26 Units and is not aware that any such Claims exist in this Case. In the event a Governmental Unit  
27 holds a Claim, such Claim will be paid in accordance with Code § 1129(a)(9)(C).

28 ///

1           **3.2    Class 1 – Secured Claim of Wells Fargo.**

2           Class 1 consists of the Allowed Secured Claim of Wells Fargo relating to its  
3 UCC Financing Statements filed on February 27, 2015 and March 4, 2015 in connection with an  
4 SBA loan. The Class 1 Claim is alleged to be secured by a first-position lien against most of the  
5 Debtor's Property. Based upon the information included in the Debtor's Schedules, the  
6 Proponents estimate that the value of Wells Fargo's collateral is approximately \$23,969.76.  
7 The amount of Wells Fargo's secured claim will be determined by the Court or through  
8 agreement of Wells Fargo and the Proponents. The holder of the Class 1 Claim shall be paid in  
9 full on the Effective Date. Any deficiency Claim will be paid as a Class 4 General Unsecured  
10 Claim. Class 1 is Impaired.

11           **3.3    Class 2 – Secured Claim of Apex.**

12           Class 2 consists of the Allowed Secured Claim of Apex relating to its UCC  
13 Financing Statement filed on March 6, 2015 in connection with a second position lien on the  
14 Debtor's Property. The Class 2 Claim is fully unsecured. Pursuant to the terms of the  
15 Franchise Agreement and its Addenda, copies of which are attached to the Disclosure Statement  
16 as **Exhibit C**, as the Franchisor, Apex holds the right of first refusal in connection with the sale  
17 of the Debtor's franchise, and must approve any sales, assignments transfers, or encumbrances  
18 of the franchise. See Article 13 of the Franchise Agreement. The Proceeds are currently held in  
19 escrow with Arizona Escrow & Financial Corporation. Upon the Transfer Date, the Proceeds  
20 shall be released to the Debtor and all of the Debtor's Property will transfer to Apex free and  
21 clear of all liens and encumbrances. Upon receipt of the Property, Apex's Class 2 Claim will be  
22 deemed satisfied in full. Class 2 is Impaired.

23           **3.4    Class 3 – Secured Claim of Michael Bennett.**

24           Class 3 consists of the Allowed Secured Claim of Michael Bennett in the amount  
25 of \$6,500 relating to a first-position Secured Claim encumbering the Debtor's 2001 Ford F150.  
26 The 2001 Ford F150 will be transferred to Apex through the sale of the Debtor's Property upon  
27 the Transfer Date and Apex will assume liability for the Class 3 Claim. The holder of the  
28 Allowed Class 3 Claim shall receive payment of the Claim from Apex in full, in 60 equal

1 payments of \$122.66 per month, representing principal and interest at the rate of 5% per annum.  
2 The payments to the Allowed Class 3 Claimant shall begin on the Effective Date. No  
3 prepayment penalty shall apply to the Class 3 claim. The Class 3 Claim is Impaired.

4 **3.5 Class 4 General Unsecured Creditors.**

5 Class 4 consists of (i) all Allowed Unsecured Claims that are not entitled to  
6 classification in any other Class of Claims; and (ii) any and all deficiency claims. This Class  
7 shall not include any claim arising from a deposit received from a school in connection with any  
8 contract assigned to Apex, which deposit claims will be honored and paid by Apex in  
9 accordance with the applicable agreement. Holders of Allowed Class 4 Claims will receive a  
10 pro rata share of \$15,000.00 of the Proceeds after the payment of Administrative Claims and the  
11 Class 1 Claim, as set forth in Section 3.1.1 above. To allow time for Claims administration,  
12 distributions on Class 4 Claims will be made 120 days after the Effective Date. Class 4 is  
13 Impaired.

14 **3.6 Class 5 Equity Interests.**

15 Upon the Effective Date, the equity interests in the Debtor will be cancelled.

16 **ARTICLE 4 - PLAN IMPLEMENTATION**

17 The Debtor will implement the Plan upon entry of the Confirmation Order. Upon the  
18 Effective Date, or at such other time as specifically provided for in the Plan, Creditors holding  
19 Allowed Claims will receive the treatment provided for in the Plan. Creditors must hold  
20 Allowed Claims before they will be entitled to their respective treatment.

21 The Plan will be funded from the Proceeds. Unless a party in interest objects to the  
22 Debtor's estimate of the value of the Property prior to the Confirmation Date, the value of the  
23 Property set forth in the Plan, as amended, shall be determinative.

24 **ARTICLE 5 - VOTING PROCEDURE**

25 Creditors will vote to accept or reject the Plan. THE PLAN CANNOT BE CONFIRMED  
26 IF THE PLAN DOES NOT RECEIVE AT LEAST TWO-THIRDS (2/3) IN AMOUNT AND  
27 MORE THAN ONE-HALF (1/2) IN NUMBER OF ALLOWED CLAIMS VOTING IN EACH  
28 IMPAIRED CLASS; provided, however, if the requisite acceptances are not obtained from one or

1 more Impaired Classes, the Court may nonetheless confirm the Plan pursuant to Code § 1129(b) if  
2 one Impaired Class accepts the Plan and the Court finds that the Plan provides, among other things,  
3 fair and equitable treatment of the Classes rejecting the Plan and that Creditors receive as much or  
4 more under the Plan than they would receive in a Chapter 7 liquidation.

5 **ARTICLE 6 - BINDING EFFECT OF PLAN**

6 The provisions of this Plan shall bind the Debtor and any Person or entity holding a  
7 Claim against the Debtor or its Estate, whether asserted or not asserted, whether such Person or  
8 entity's Claim arose before or after the respective Petition Date or the Effective Date, whether  
9 or not the Claim is Impaired under the Plan, and whether or not such Person or entity has  
10 accepted or rejected the Plan.

11 **ARTICLE 7 - EFFECT OF CONFIRMATION**

12 Except as otherwise provided herein, the rights afforded in this Plan shall be in exchange  
13 for, and in complete satisfaction, discharge, and release of, all Claims against the Debtor of any  
14 nature whatsoever. All holders of Claims against the Debtor shall be precluded from asserting  
15 against the Debtor, the Estate, or the Properties of the Debtor or the Estate any other or further  
16 Claim based upon any omission, transaction or other activity of any kind or nature that occurred  
17 prior to the Effective Date. This release shall be effective as to each Claim, regardless of  
18 whether the Claim is listed on the Debtor's Statements or Schedules filed in this Case, whether  
19 a proof of Claim was filed, whether such proof of Claim was withdrawn, whether the Claim is  
20 an Allowed Claim, in whole or in part, or whether the holder of the Claim votes to accept or  
21 reject this Plan. Upon the Effective Date, all Property of the Estate will vest in the Debtor, who,  
22 subject to the obligations set forth in the Plan, may utilize the Property free of any burdens of  
23 the Bankruptcy Code and without need to obtain Court approval of its actions.

24 **ARTICLE 8 - MODIFICATION OF PLAN**

25 This Plan may be modified in accordance with the provisions of the Bankruptcy Code  
26 and Chapter 11 as follows:

27 **8.1 Pre-Confirmation.**

28 In accordance with Code § 1127(a), the Proponents may propose the modification of the

1 Plan in writing at any time before confirmation, provided that the Plan, as thus modified, meets  
2 the requirements of Code §§ 1122 and 1123, and the Debtor complies with Code § 1125.

3 **8.2 Post-Confirmation.**

4 In accordance with Code § 1127(b), the Plan also may be modified at any time after  
5 confirmation and before its substantial consummation, provided that a) the Plan as modified  
6 meets the requirements of Code §§ 1122 and 1123, b) the circumstances then existing justify  
7 such modification, and c) the Court confirms the Plan as thus modified under Code § 1129.

8 **8.3 Effect of Modification.**

9 Every modification of the Plan will supersede the previous version of the Plan as and  
10 when each modification is effective. When superseded, the previous version of the Plan will be  
11 in the nature of a withdrawn or rejected settlement proposal, and will be null, void, and  
12 unusable by the Debtor or any other party for any purposes whatsoever with respect to any of  
13 the contents of such version of the Plan.

14 Notwithstanding anything to the contrary contained herein, the Debtor shall not be  
15 bound by estoppel, or the principles of *res judicata* or collateral estoppel, with respect to any  
16 term or provision contained herein in the event the Plan is not confirmed upon the terms and  
17 provisions set forth herein.

18 **ARTICLE 9 - RETENTION OF JURISDICTION**

19 Notwithstanding the confirmation of this Plan, the Bankruptcy Court shall retain  
20 jurisdiction for all matters arising out of, or related to, the Case and this Plan, including, but not  
21 limited to all of the following matters:

- 22 a) Allowance and payment of any Claims upon any objection thereto (or other  
23 appropriate proceedings) by any party in interest entitled to proceed in that  
24 manner;
- 25 b) Determination and adjudication of any issues that arise out of or relate to a sale of  
26 any Property;
- 27 c) Determination and adjudication of any disputes that arise regarding the  
28 interpretation of any provisions of this Plan;
- d) Facilitation of the consummation of this Plan by entering, consistent with the  
provisions of this Plan, any further necessary or appropriate orders regarding this  
Plan and any provisions thereof;



- 1
- 2 e) Adjudication of any causes of action or other proceedings presently pending or
- 3 otherwise referenced in the Plan, including but not limited to any action regarding
- 4 the initiation, prosecution, enforcement, compromise or settlement of the causes
- 5 of action in the Estate, and the adjudication of any and all “core proceedings”
- 6 under 28 U.S.C. § 157(b) that may be pertinent to the Case;
- 7
- 8 f) Enforcement of any provisions of the Plan and any and all documents relating to
- 9 the Plan;
- 10
- 11 g) Determination and adjudication of any issues that relate to the Bankruptcy Case,
- 12 and any governmental unit’s Claim with respect to any tax, or any fine, interest or
- 13 penalty relating to a tax; and
- 14
- 15 h) Determination of any dispute that may arise regarding the enforcement of any
- 16 settlement or compromise related to the Case.

17

18 **ARTICLE 10 - RETENTION AND PROSECUTION OF CLAIMS**

19

20 **10.1 Preservation of Debtor’s Claims, Demands, and Causes of Action.**

21 In accordance with Code § 1123(b)(3), all of the Debtor’s claims and causes of action

22 will a) survive the entry of the Confirmation Order and the Effective Date, b) not be discharged

23 by the Plan, and c) become and remain part of the Debtor’s Property after the Effective Date.

24

25 **10.2 Procedure for Determination of Claims.**

26

27 **10.2.1 Disputed Claims.**

28 Except as to any Claim that has been Allowed prior to the Effective Date, on or

before the sixtieth day after the Effective Date, the Debtor or any party in interest may object to

the allowance of a Claim or seek estimation thereof. See Section 2.3 above. No payments or

other distributions will be made to holders of Claims unless and until such Claims are Allowed

Claims pursuant to a Final Order. If a Claim is not an Allowed Claim as of the Effective Date

or when payment is otherwise due under the Plan, payment of the Allowed Claim will be made

when a Claim becomes an Allowed Claim after the Effective Date or as otherwise specifically

provided in the Plan.

No Claim will be an Allowed Claim until timely filed objections to its allowance are

resolved. The Court shall resolve all objections at a separate hearing or hearings. **Any Claims**

**not timely filed or Allowed shall be discharged by the Confirmation Order.** Only Allowed

Claims and interests will receive distributions from the Estate. The Debtor has the right to

1 object to any Claim where it appears that there is some dispute with regard to the Claim as filed.  
2 Unless deemed filed pursuant to Rule 3003(b), the failure to timely file a proof of Claim will  
3 result in disallowance of the Claim.

4 **10.2.2 Treatment of Contingent Claims.**

5 Until such time as a contingent Claim or a contingent portion of an Allowed  
6 Claim becomes fixed or absolute or is disallowed, such Claim will be treated as a Disputed  
7 Claim for all purposes related to distributions under the Plan. The holder of a contingent Claim  
8 will only be entitled to a distribution under the Plan when and if such contingent Claim becomes  
9 an Allowed Claim.

10 **ARTICLE 11 - PROVISIONS GOVERNING DISTRIBUTIONS**

11 **11.1 Distributions by the Debtor.**

12 The Debtor will pay all Allowed Claims according to the Plan.

13 **11.2 Date of Distributions.**

14 Except as otherwise provided in the Plan, or as may be ordered by the Bankruptcy  
15 Court, distributions of cash on account of Allowed Claims as of the Effective Date will be made  
16 as of the Effective Date or as otherwise agreed by the respective parties. Authorized  
17 distributions to be made in accordance with the Plan will be deemed made as of the Effective  
18 Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no  
19 later than thirty (30) days after the Effective Date. Distributions on account of Disputed Claims  
20 that are Allowed after the Effective Date will be made as provided in the Plan and if not so  
21 provided no later than thirty (30) days after entry of a Final Order allowing the Claim.

22 **11.3 Delivery of Distributions.**

23 Subject to Rule 9010, distributions and deliveries to each holder of an Allowed Claim  
24 will be made at the address of such holder as set forth on the respective proof of Claim as of the  
25 Effective Date (or at the last known address of such holder if no proof of Claim is filed or if the  
26 Debtor has been notified of a change of address). If any holder's distribution is returned as  
27 undeliverable, no further distribution to such holder will be made unless and until the Debtor is  
28 notified of such holder's then-current address, at which time all missed distributions will be

1 made to such holder without interest. The Debtor will be under no obligation to attempt to  
2 locate the holder of any Allowed Claim or to recognize any purported transfer or encumbrance  
3 on the rights of holders of Allowed Claims after the Confirmation Date. Amounts of  
4 undeliverable distributions will be retained by the Debtor until such distributions are claimed.  
5 Any Claimant that does not receive a distribution due to it being undeliverable must request  
6 payment on or before the first anniversary of the initial date of such payment. After such date,  
7 all unclaimed Property will be paid *pro rata* to the Class 1 General Unsecured Creditors.

8 **11.4 Means of Payment.**

9 Payments made to holders of Allowed Claims pursuant to this Plan will be in United  
10 States dollars by checks drawn on the domestic bank selected by the Debtor.

11 **11.5 De Minimis Cash Distributions.**

12 No cash payment of less than ten dollars (\$10.00) will be made to any holder of an  
13 Allowed Claim unless a request therefore is made in writing to the Debtor.

14 **11.6 Setoff.**

15 Pursuant to Code § 553 or common law rights of setoff or recoupment, the Debtor will,  
16 in the ordinary course of its affairs, set off or assert recoupment against any Allowed Claim, the  
17 Claims, rights, and causes of action of any nature that the Debtor may hold against the holder of  
18 such Claim; provided, however, that neither the failure to effect such a setoff nor the allowance  
19 of any Claim hereunder will constitute a waiver or release by the Debtor of any such Claims,  
20 rights, and causes of action that the Debtor may possess against such holder.

21 **ARTICLE 12 - GENERAL PROVISIONS**

22 **12.1 Extension of Dates.**

23 If any date set forth in this Plan, including a payment due date, falls on a day that is not a  
24 Business Day, then such date will be the next Business Day.

25 **12.2 Notices.**

26 Any notice required or permitted to be provided under the Plan will be in writing and  
27 served by regular postage prepaid first-class mail, hand-delivery, facsimile, or e-mail.

28 **12.3 Default.**

1 If the Debtor is unable to perform in accordance with the Plan, then it will be in default.  
2 Any Creditor may seek to enforce the Plan. Before doing so, the Creditor must provide notice to  
3 the Debtor specifying the nature of the alleged default and a 30-day period to cure the default. Any  
4 notice must be in writing and sent via certified mail to the Debtor at the address on file with the  
5 Clerk of this Court and with a copy sent via certified mail to:

6 Randy Nussbaum  
7 Wesley D. Ray  
8 SACKS TIERNEY P.A.  
9 4250 N. Drinkwater Blvd., 4th Floor  
10 Scottsdale, AZ 85251  
11 [Randy.Nussbaum@sackstierney.com](mailto:Randy.Nussbaum@sackstierney.com)  
12 [Wesley.Ray@sackstierney.com](mailto:Wesley.Ray@sackstierney.com)  
13 *Attorneys for Debtor*

14 Thomas H. Allen  
15 Khaled Tarazi  
16 ALLEN BARNES & JONES, PLC  
17 1850 N. Central Ave., Suite 1150  
18 Phoenix, AZ 85004  
19 Fax: (602) 252-4712  
20 [tallen@allenbarneslaw.com](mailto:tallen@allenbarneslaw.com)  
21 [ktarazi@allenbarneslaw.com](mailto:ktarazi@allenbarneslaw.com)  
22 *Attorneys for Apex Fun Run, LLC*

#### 23 **12.4 Closure of the Case.**

24 At such time as the Plan has been fully administered (*i.e.*, when the Plan has been  
25 substantially consummated), the Debtor will file an application for entry of a Final Decree, upon  
26 the entry of which the Case shall be deemed closed.

#### 27 **12.5 Effect of Appeal.**

28 In the event of any appeal of the Confirmation Order, and provided that no stay of the  
effectiveness of such Confirmation Order has been entered, the implementation and  
enforcement of the Confirmation Order and the Plan according to their terms shall remain  
unaffected.

#### **12.6 Exculpation and Limitation of Liability.**

Neither the Debtor, nor any of its respective present or former employees, advisors,  
attorneys, or agents, will have or incur any liability to any holder of a Claim, or any other party  
in interest, or any of their respective agents, employees, representatives, financial advisors,

1 attorneys, or affiliates, or any of their successors or assigns, for any act or omission in  
2 connection with, relating to, or arising out of the Case, efforts to obtain confirmation of the  
3 Plan, the consummation of the Plan, or the administration of the Plan or the property to be  
4 distributed under the Plan, whether now known or hereafter discovered, *except for gross*  
5 *negligence; willful, wanton, or intentional misconduct; or breaches of fiduciary duties.*

6 **12.7 General Injunction.**

7 Except as otherwise expressly provided in this Plan, the Confirmation Order shall  
8 provide, among other things, that all parties in interest who have held, hold, or may hold Claims  
9 are permanently enjoined with respect to such Claims, on and after the Effective Date, from: a)  
10 commencing or continuing in any manner any action or other proceeding of any kind; b) the  
11 enforcement, attachment, collection, or recovery by any manner or means of any judgment,  
12 award, decree, or order; c) creating, perfecting, or enforcing any encumbrance of any kind; d)  
13 asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due  
14 e) conducting any form of discovery; or f) otherwise engaging in harassment. The forgoing  
15 injunction applies with regard to acts against the Debtor, its Property, its successors in interest,  
16 and the property of its successors in interest.

17 **12.8 Interest.**

18 Unless set forth specifically herein, whenever interest is to be computed under the Plan,  
19 interest will be simple interest and not compounded. Unless otherwise specifically provided for  
20 in the Plan or the Confirmation Order, post-petition interest shall not accrue or be paid on  
21 Claims, and no holder of a Claim will be entitled to interest accruing on or after the Petition  
22 Date on any Claim.

23 **12.9 Additional Assurances.**

24 The Debtor and any party in interest holding Allowed Claims will execute such other  
25 further documents as are necessary to implement any of the provisions of the Plan.

26 **12.10 Confirmation by Non-Acceptance Method.**

27 The Proponents hereby request, if necessary, confirmation of the Plan pursuant to Code  
28 § 1129(b) with respect to any Impaired Class of Claims that does not vote to accept the Plan.

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**12.11 Vesting.**

As of the Transfer Date, Apex shall be vested with all of the Property. All Property shall be free and clear of all liens, Claims, and interests of Creditors and parties in interest except as specifically provided in this Plan.

**12.12 Successors and Assigns.**

The rights and obligations of any Creditor or other party-in-interest referred to in the Plan will be binding upon, and will inure to the benefit of, the successors, assigns, heirs, devisees, executors, and personal representatives of such Creditor or party in interest.

**12.13 Withdrawal of Plan.**

The Plan may be withdrawn by the Debtor or Apex at any time before entry of the Confirmation Order.

**12.14 Severability and Reformation.**

The Debtor intends to comply fully with the Bankruptcy Code and applicable non-bankruptcy law in proposing the Plan. Therefore, if the Court determines that any Plan provision is contrary to the Bankruptcy Code or applicable non-bankruptcy law, at the Proponents' option, that provision may be deemed severed and automatically deleted from the Plan if it cannot be reformed, or the provision or its interpretation may be deemed reformed to ensure compliance; provided, however, that nothing contained in this paragraph will prevent the Debtor from modifying the Plan in accordance with and as set forth in the Plan. Pursuant to any ruling by the Court regarding the subject matter of this paragraph, any such severance or reformation will be stated specifically in the Confirmation Order, which then will control notwithstanding any contrary or inconsistent provisions of the Plan.

**12.15 Prohibition Against Prepayment Penalties.**

If the Debtor so chooses, in its sole and absolute discretion, to prepay any obligation on which deferred payments are provided for under the Plan, the Debtor will not be liable or subject to the assessment of any prepayment penalty thereon unless otherwise ordered by the Court.

///

1           **12.16 Payment of Statutory Fees and Filing of Quarterly Reports.**

2           Before the Case is closed, all fees payable pursuant to 28 U.S.C. § 1980, as determined  
3 by the Court at or in conjunction with the Confirmation Hearing, will be paid on or before the  
4 Effective Date and, thereafter, in accordance with applicable bankruptcy law. The Debtor will  
5 file all quarterly reports of disbursements as required by the Bankruptcy Code.

6           **12.17 Governing Law.**

7           Except to the extent that the Bankruptcy Code is applicable, the rights and obligations  
8 arising under this Plan shall be governed by, construed, and enforced in accordance with, and  
9 subject to, the laws of the State of Arizona, excluding any laws that result in the application of  
10 the laws of another jurisdiction.

11           **12.18 Special Tax Issues.**

12           The issuance, transfer, or exchange of a security as defined under the Bankruptcy Code  
13 or applicable law, or the making or delivery of any instrument of transfer under this Plan, shall  
14 not be taxed under any state or local law imposing a stamp tax or similar tax as provided in  
15 Code § 1146.

16           **12.19 Conflicts Between Plan and Confirmation Order.**

17           In the event the terms of this Plan and the Confirmation Order conflict, the terms of the  
18 Confirmation Order shall govern.

19           RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of September, 2017.

20           **APPROVED AS TO FORM AND CONTENT:**

21           **SACKS TIERNEY P.A.**

21           **ALLEN BARNES & JONES, PLC**

22           By: /s/ Wesley D. Ray (with permission)  
23           Randy Nussbaum  
24           Wesley D. Ray  
24           4250 N. Drinkwater Blvd., 4th Floor  
25           Scottsdale, AZ 85251  
25           Attorneys for Debtor

22           By: /s/ Thomas H. Allen, #11160  
23           Thomas H. Allen  
24           Khaled Tarazi  
24           1850 N. Central Ave., Suite 1150  
25           Phoenix, Arizona 85004  
25           Attorneys for Apex Fun Run, LLC

# Exhibit “B”



## MANAGEMENT AGREEMENT

**THIS MANAGEMENT AGREEMENT** (the "Agreement") is made as of July 26, 2017 (the "Effective Date") by and between Apex Fun Run, LLC, an Arizona limited liability company with a place of business at 1 N. 1<sup>st</sup> Street, Ste. 790, Phoenix, AZ 85004 ("Franchisor"), Apex Fun Run, LLC, a Texas limited liability company ("Apex Texas"), Arizona Fundraising Solutions, Inc., an Arizona corporation with a place of business at 793 E. Maria Lane, Tempe, Arizona 85284 ("Franchisee"), and Christopher Stewart ("Stewart") (Franchisor, Apex Texas, Franchisee, and Stewart may each hereafter be referred to as a "Party," and collectively as the "Parties).

### RECITALS:

**WHEREAS**, Franchisor and Franchisee are parties to a Franchise Agreement dated February 26, 2015 (the "Franchise Agreement"), whereby Franchisor granted an Apex Fun Run franchise (the "Franchise") to Franchisee;

**WHEREAS**, Section 14.3 of the Franchise Agreement provides that Franchisor may take over management of the Franchise for any period of time the Franchisor believes is appropriate;

**WHEREAS**, Franchisee has indicated to Franchisor that Franchisee is not able to continue operating the Franchise without operational support and access to additional credit;

**WHEREAS**, Franchisee is contemplating a bankruptcy filing in order to manage Franchisee's debt and protect Franchisee's creditors (the "Bankruptcy Case");

**WHEREAS**, Franchisor has decided to enter the Franchise and assume its management for an indefinite period of time; and

**WHEREAS**, in the absence of this Agreement, Franchisee believes that it may be forced to cease operations;

**NOW, THEREFORE**, in consideration of the foregoing and of the covenants and agreements hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

### AGREEMENT:

1. **Term.** The term of this Agreement shall begin as of the Effective Date and shall continue until the earlier of (i) the termination of the franchise rights of Franchisee; (ii) the sale of the Franchise to Franchisor or a third party; or (iii) one year from the Effective Date.

2. **Responsibilities of Franchisor.** During the term of this Agreement, Franchisor shall assume responsibility for the day-to-day operations and management of the Franchise. Franchisor shall advance, in accordance with the provisions of this Agreement, and pay the costs and expenses associated with operating the Franchise during the term if Franchisee does not possess adequate funds to cover such costs and expenses.

3. **Responsibilities of Franchisee.** Franchisee shall provide Franchisor with access to Franchisee's books, records, and assets (including but not limited to any and all bank accounts) and to any records and other documents as necessary for Franchisor to carry out the management of the Franchise. Franchisee will use its best efforts to allow the operations of the Franchise to continue on uninterrupted under the management of Franchisor. Franchisee agrees that it will not, without Franchisor's consent, take any action to affect the employees, independent contractors, contracts or anticipated contracts of Franchisee in any way and shall immediately notify Franchisor if it becomes aware of any actions that could potentially result in cancellation, termination, restriction or limitation of any contracts or anticipated contracts with any customers, employees or independent contractors of Franchisee. Franchisee shall use best efforts to arrange for a smooth transition of managerial control of the Franchise to Franchisor. Franchisee will leave all assets of Franchisee as-is, including all agreed-upon funds in all accounts, for Franchisor to use upon takeover of management of the Franchise. In the event of a bankruptcy filing by Franchisee, Franchisor agrees to provide Franchisee and its management such oversight, authority, and information as is necessary for Franchisee to carry out its obligations as a debtor in bankruptcy.

4. **Bankruptcy.** The Parties agree to cooperate in the formulation, presentation, and confirmation of a plan of reorganization to be filed in the Bankruptcy Case that complies with the requirements of the Bankruptcy Code.

5. **Line of Credit.** In order to meet Franchisee's projected financial expenses, and to satisfy Franchisor's obligations under Paragraph 2 of this Agreement, Franchisor hereby agrees to extend to Franchisee an irrevocable revolving line of credit in the maximum amount of \$80,000 (the "LOC"). The LOC may be drawn upon as necessary to fund the costs of Franchisee's operations and the Bankruptcy Case. Franchisee may repay the LOC as its cash flow permits, but shall have no obligation to repay any portion of the LOC unless and until a plan of reorganization is confirmed in the Bankruptcy Case. The Parties hereby agree to work in good faith to prepare and execute any mutually agreeable documentation necessary to put the LOC in place.

6. **Compensation to Franchisor.** As compensation for its management services to Franchisee, Franchisor will be paid as per Section 14.3 of the Franchise Agreement. Franchisor and Franchisee agree that Franchisor may incur significant direct out-of-pocket costs and expenses to manage the Franchise and that Franchisor may, in its reasonable discretion, engage the services of a third-party management company to operate the Franchise. All costs of a third-party management company shall be borne by the Franchisee. In addition, the time of Jeremy Barnhart and Scott Donnell incurred in managing the Franchise, to the extent such time is necessary, shall be paid by Franchisee at a rate of Two Hundred Dollars (\$200) per hour. To the extent Franchisor's employees spend time providing such management services, their services shall be paid by Franchisee at a reasonable rate. Notwithstanding anything to the contrary in the Franchise Agreement or any guaranty executed in connection therewith, any compensation payable to Franchisor or a third-party management company under this Agreement shall be paid exclusively from Franchisee's available business revenues, and shall not be recoverable from any other source.

7. **Compensation to Stewart.** In exchange for his willingness to assist and cooperate in the Franchise and the Bankruptcy Case, upon the execution of this Agreement by all of the Parties, Franchisor will pay to Stewart, in immediately available funds, the sum of \$15,000. Stewart will also be paid by Franchisee a monthly salary of \$4,000 for the first two months of the Bankruptcy Case. Upon expiration of this two-month period, Stewart need not be paid any additional salary, except in so far as may be necessary to maintain Stewart's eligibility to participate in Franchisee's medical insurance plan, which eligibility the Parties hereby agree to preserve through December 31, 2017. Additionally, upon confirmation of a plan of reorganization in which the Franchise is transferred to the Franchisor, or an otherwise mutually agreeable resolution of the Bankruptcy Case, Franchisor will pay to Stewart or his nominee, in immediately available funds, the sum of \$85,000.

8. **Agency.** Franchisee hereby appoints Franchisor as Franchisee's true and lawful agent throughout the term of this Agreement, and Franchisor hereby accepts such appointment, to collect and receive, under Franchisee's tax identification number, all accounts receivable generated by the services provided by Franchisee (the "Services"), to take possession of, endorse in the name of Franchisee, and deposit into Franchisee's bank account any notes, checks, money orders, insurance payments, and any other instruments received in payment of accounts receivable for the Services. Franchisee hereby appoints Franchisor as Franchisee's true and lawful agent throughout the term of this Agreement, and Franchisor hereby accepts such appointment, to write checks and otherwise use Franchisee's funds and accounts to pay any and all amounts due to any and all creditors or vendors of Franchisee, including but not limited to Franchisor. Upon request of Franchisor, Franchisee shall execute and deliver to the financial institutions at which Franchisee's accounts are maintained such additional documents or instruments as Franchisor may reasonably request to demonstrate its authority and otherwise allow Franchisor to manage the Franchise.

9. **Authority.** The parties represent and warrant that, upon its execution, this Agreement will be binding upon each of them and enforceable in accordance with its terms.

10. **Entire Agreement.** This Agreement, including any schedules, exhibits, amendments or attachments thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise modified herein, the provisions of the Franchise Agreement shall remain in full force and effect.

11. **Severability.** If any term, provision or condition contained in this Agreement is deemed or declared unenforceable, invalid or void, the same will not impair or invalidate any of the other provisions contained herein, which will remain in full force and effect.

12. **Governing Law.** This Agreement and the rights of the parties hereunder will be governed and interpreted in accordance with the laws of the State of Arizona.

13. **Waiver.** Waiver by a Party of a breach of any provision of this Agreement will not operate as or be construed to be a waiver of any subsequent breach.

14. **Non-Assignment.** No Party may assign any of its rights or responsibilities under this Agreement without the written consent of the other Parties.

15. **Amendment.** This Agreement may be amended only by mutual agreement in writing executed by the Parties.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any Party may deliver its signed counterpart of this Agreement by facsimile or e-mail transmission and such delivery is deemed made upon receipt of such transmission by the other Party and shall have the same force and effect as a counterpart bearing an original signature.

17. **Indemnification.** Franchisor shall indemnify Franchisee and Stewart from any and all claims, demands, liabilities, obligations, losses, fines, penalties, damages, assessments, judgments, costs, expenses, including reasonable attorneys' fees, (collectively, "Damages") that are incurred by Franchisee during the term of this Agreement, except to the extent any such Damages result from the negligence or willful misconduct of Franchisee or Stewart. To the extent contrary, the provisions of this Section 14 shall supersede the parties' indemnification obligations under the Franchise Agreement.

18. **Mutual Release.** Effective upon the execution of this Agreement, and except for the obligations contained in this Agreement, the Parties waive and release, to the maximum extent permitted by law, any and all claims and rights, they have, had, or may have against each other, their associates, agents, insurers, members, managers, officers, directors, attorneys, predecessors, successors, assigns, or other representatives and their spouses if any. The claims released shall be interpreted in the broadest possible sense and include, but are not limited to, claims relating to the Franchise, the Franchise Agreement, any guaranty executed in connection therewith, and any and all claims, damages, demands, liabilities, obligations, causes, and causes of action of whatever kind or nature based on any cause, circumstance, fact, matter, thing, event, statement, action, omission, act, or failure to act whatsoever, whether arising at law or in equity, whether based on tort, contract, statutory or common law principals, and whether known, unknown, foreseen, or unforeseen.

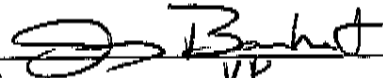
19. **Prior Agreements.** Franchisor hereby consents to the operation of the Franchise in the manner provided herein, and the filing of the Bankruptcy Case, and waives, in addition to any existing default, any default that may otherwise exist under the Franchise Agreement, or any other agreement between Franchisor and Franchisee or Franchisee's principal, arising from the terms and effectuation of this Agreement.

**SIGNATURES ON THE FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the date first above written.

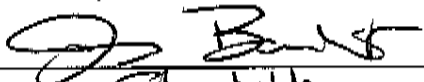
**FRANCHISOR:**

APEX FUN RUN, LLC

By:   
Title: VP

**APEX TEXAS:**

APEX FUN RUN, LLC

By:   
Title: Shareholder

**FRANCHISEE:**

ARIZONA FUNDRAISING SOLUTIONS, INC.

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

**CHRISTOPHER STEWART**

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the date first above written.

**FRANCHISOR:**

APEX FUN RUN, LLC

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

**APEX TEXAS:**

APEX FUN RUN, LLC

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

**FRANCHISEE:**

ARIZONA FUNDRAISING SOLUTIONS, INC.

By: Christopher J Stewart  
Title: President

**CHRISTOPHER STEWART**

Christopher J Stewart 7/27/17

# Exhibit “C”

**APEX FUN RUN LLC  
FRANCHISE AGREEMENT**

\_\_\_\_Christopher J. Stewart\_\_\_\_

Franchisee

Feb 26<sup>th</sup>, 2015

Date of Agreement



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**APEX FUN RUN LLC  
FRANCHISE AGREEMENT**

This Franchise Agreement is between APEX FUN RUN LLC, an Arizona limited liability company (“we”, “us” or “our”), and Christopher J. Stewart, whose form of business and principal office are shown in the Appendix to this Franchise Agreement (“you” or “your”). This Agreement shall be effective as of the date it is signed by us as shown on the signature page of this Agreement (the “Effective Date”).

**RECITALS**

As the result of investment of time, research, effort and money, Apex Fun Run LLC owns a unique, distinctive and proprietary system for a fundraising concept using the Apex Fun Run System, the System Standards and the Marks.

You have applied to us for a franchise to operate a traditional format Apex Fun Run franchise as an independent contractor.

In consideration of the mutual obligations of the parties under this Agreement, and other consideration, which both parties agree is adequate, you and we agree as follows:

**ARTICLE 1. CERTAIN DEFINITIONS**

**1.1 Apex Fun Run System.** The “Apex Fun Run System” will mean the proprietary and confidential system using the Marks and consisting of color schemes, layouts, designs, prizes, themes, curriculum, equipment specifications, techniques, methods and procedures we have developed for the operation of a fundraising franchise operating under the trade name “Apex Fun Run” and completing Fun Runs for schools, all of which we may periodically change, improve, update and develop further from time to time.

**1.2 Gross Revenues.** “Gross Revenues” will mean the gross amount of all of your sales or other income from whatever source, derived from or in connection with the Franchise and any business conducted, whether by check, cash, credit, charge account, barter, exchange or otherwise. Gross Revenues will include amounts received from the sales of any goods and merchandise, promotional or otherwise, and for services performed by your Apex Fun Run team, together with the amount of all fundraising receipts that are paid to you. Gross Revenues will not include the amount of any: (i) sales tax, to the extent you add such taxes to the selling price and actually pay them to the taxing authority; or (ii) refunds, allowances, or discounts to customers (including coupon sales), provided you have previously included the related sales in your Gross Revenues; or (iii) all fundraising receipts that are retained by the schools.

**1.3 Law.** “Law” will mean any applicable statute, law, ordinance, rule, regulation, permit, order, judgment, injunction, decree or award issued by any local, state or federal government, governmental agency, department, commission, board or instrumentality, or by any court or arbitrator.

**1.4 Manager.** “Manager” will mean the individual or individuals whom you select from time to time as the manager(s) of your Franchise, subject to fulfillment of the duties of a Manager under this Agreement. Your Manager may have an ownership interest in you, but is not required to have an ownership interest. A Manager may also be referred to as a “team leader”.

**1.5 Marks.** “Marks” will mean the “Apex” and “Apex Fun Run” service marks, the “Apex Fun Run Building Leaders” and Design mark, and any and all such other trademarks, service marks and logos we develop for use with the Fun Run System.

**1.6 Principal Owner(s).** “Principal Owner(s)” will mean any person or persons having an ownership or voting interest in you (direct or through any other entity), of 25% or more, or any other person

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having an ownership in you who we designate as a Principal Owner in an Addendum to this Agreement before you sign.

**1.7 Franchise.** "Franchise" will mean the franchise you are licensed to own and operate using the Apex Fun Run System under this Agreement.

**1.8 System Standards.** "System Standards" will mean the mandatory specifications, standards, operating procedures and rules that we specify in the Manual (as defined in Section 7.5, infra) or other communications to you from time to time for the operation of Franchises operating under the Apex Fun Run System. We may change, improve, update and further develop the System Standards as provided in Article 2 of this Agreement.

## **ARTICLE 2. SYSTEM STANDARDS**

**2.1 System Standards.** You understand and agree that the operation and maintenance of your Franchise according to the System Standards are essential to the wellbeing and vitality of the Apex Fun Run System and to preserve the goodwill for us and for all other franchisees operating under the Apex Fun Run System. In particular, you understand that it is critical to the success of the Apex Fun Run System for all franchises operating under the Apex Fun Run System to present a uniform and professional image to Apex Fun Run customers regardless of which location the customer interacts with. Therefore, at all times while this Agreement is in effect, you agree to operate and maintain the Franchise in strict compliance with each System Standard, including any periodic modifications or updates we make to the System Standards. We will inform you of System Standards in the Manual (which we may amend and update as provided in Section 7.5), or via bulletins or notices. Any information in the Manual or in bulletins or other communications from us to you regarding the operation of the Franchise will be considered a mandatory System Standard unless it is clear from the express language that the information is merely optional, or is intended by us as a suggestion rather than a requirement. By way of example, System Standards may regulate any one or more of the following aspects of the operation of your Franchise:

- (a) Fun Run design, layout, decor, appearance;
- (b) types, models and brands of prizes, signs, materials and supplies;
- (c) scripts used for pep rally;
- (d) curriculum for leadership training in classrooms;
- (e) standards for reporting results of runs;
- (f) standards and practices for communications with parents, teachers, and school administrators;
- (g) cooperation with and participation in sales, marketing, advertising and promotional programs and materials and media used in those programs;
- (h) staffing levels for the Franchise and matters relating to managing the Franchise; and qualifications, training, dress and appearance of Managers and employees;
- (i) days and hours of operation of the Franchise;
- (j) bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Revenues, financial performance and condition; adherence to the Manual or

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written directions; and furnishing tax returns and other operating and financial information to us; or

(k) regulation of any other aspect of the operation and maintenance of the Franchise that we decide is necessary or desirable to enhance or maintain the efficient operation, image or goodwill of the Marks and the Apex Fun Run System. You agree that System Standards contained in the Manual or which we notify you of in writing, are binding provisions of this Agreement as if they were an integral part of this Agreement. All references to this Agreement include System Standards as periodically modified and updated.

**2.2 Modifications to System Standards.** You understand that the fundraising franchise market is extremely competitive and always changing and evolving. You understand that for the Apex Fun Run System to compete and flourish in this competitive environment, we must be able to review the standards, methods and procedures embodied in the System Standards and change them whenever we think it is necessary to adapt to changing market conditions, take advantage of new market opportunities or to improve the Apex Fun Run System. Therefore, you agree that we may periodically modify any System Standard upon 30 days' written notice to you, and you will implement and follow all our modifications to System Standards. Our modifications to System Standards may accommodate regional or local variations as we feel is appropriate in our discretion. We may also vary System Standards in the case of individual franchisees in our sole discretion.

We agree, however, that we will not make modifications to System Standards that would change your fundamental rights under this Agreement. We will not require you to make any Capital Modifications when we believe you will not be able to amortize your investment over the remaining term of this Agreement, unless we agree to extend the term of this Agreement to the point where we believe you would be able to amortize your investment, or unless the Capital Modification is necessary to comply with Laws. We agree to provide you with a reasonable time to comply with and implement System Standards which require significant Capital Modifications. You understand, however, that we may require you at any time upon 30 days' notice to make any Capital Improvement which is required by Law, regardless of whether your investment can be amortized over the remaining term.

### **ARTICLE 3. GRANT OF FRANCHISE**

**3.1 Grant of Franchise.** We grant to you during the term of this Agreement, an exclusive license to operate a single Franchise within your assigned geographic area, using the Apex Fun Run System, subject to the terms, conditions and restrictions contained in this Agreement and in the System Standards. Your assigned geographic area is defined as the geographic area comprised by the State of Arizona. If the geographic area comprised by the foregoing zip codes changes during the term or any renewal term of this Agreement as a result of changes to the assigned zip codes or the addition of new zip codes, then the boundaries of your geographic area shall not change but shall continue to be defined by the boundaries of the zip codes that were in effect as of the Effective Date of this Agreement. Except as otherwise specified in Section 3.3 below, you may not operate the Franchise or contract with schools that are located outside of your assigned geographic area. This license is limited to the operation of one Franchise and does not grant you the right to buy own or operate additional Franchises. This license will expire or terminate automatically upon expiration or termination of this Agreement. You agree at all times to faithfully, honestly and diligently use your best efforts to promote the business of the Franchise, and not to engage in any other business or activity that conflicts with your operation of the Franchise in compliance with this Agreement.

**3.2 Reservation of Rights.** You acknowledge that the Franchise granted under this Agreement is exclusive in your geographic area, that we are granting you territorial protection, and that we reserve the right in our sole discretion, and without compensating you or seeking your prior approval:

(a) to establish, and grant to other franchisees or licensees the right to establish, a Apex Fun Run franchise or any other business using the Apex Fun Run System or any variation of the Apex Fun Run System, in any location other than the geographic area assigned to you, on any terms and conditions that we deem appropriate;

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(b) to establish, and grant to other franchisees or licensees the right to establish, franchises other than Apex Fun Run franchises in any location on any terms and conditions that we deem appropriate (including locations in and in the immediate vicinity of your geographic area);

(c) to provide products or services other than the Apex Fun Run System identified by the Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, and franchises other than Apex Fun Run franchises; and

(d) to take any other action that we are not expressly prohibited from taking under this Agreement.

**3.3 Operating Outside Assigned Geographic Area.** You may contract with and provide fundraising services to schools that are physically located outside your assigned geographic area, but only if: (i) the school contacts you without being solicited by you or you have a personal relationship with an administrator, teacher or PTO member at the school; and (ii) the school is not located within a territory operated by us or assigned to another franchisee. If you contract with a school outside of your assigned geographic area and another franchisee subsequently purchases the territory in which the school is located, you must transition the school to the franchisee in the manner that we specify unless the franchisee consents to you continuing to service that school.

#### **ARTICLE 4. TERM; RENEWAL**

**4.1 Term of Franchise.** The initial term of this Agreement is for 10 years, unless it is terminated earlier under Article 14. The initial term begins on the Effective Date.

**4.2 Renewal.** When the initial term expires, you will have the option to renew the Franchise for an additional 5 year term and when that term expires, you will have the option to renew the franchise for an additional 5 year term every 5 years, in each instance, if you comply with the following conditions:

(a) You must deliver a written renewal notice to us. The earliest you can give us the renewal notice is one year before the current term expires, and the latest you can give it is 180 days before the current term expires;

(b) You must sign a new Franchise Agreement on the form we are using at the renewal date for Apex Fun Run Franchises. You agree that the new Franchise Agreement may differ from this Agreement as to Royalties and other material terms; and will only provide for the applicable remaining renewals pursuant to this Agreement. You must sign the new Franchise Agreement at least 30 days before the current term expires;

(c) At the time you sign the new Franchise Agreement, you must be in full compliance with the existing Franchise Agreement, and any other agreement between you and us or our affiliates;

(d) Before the applicable term expires, you must sign in each instance a general release in a form satisfactory to us, releasing any claims against us or our officers, directors, employees and agents as well as our affiliates and their respective officers, directors, employees and agents; and

(e) You must pay us a renewal fee of \$5,000;

(f) If you do not elect to, or are not entitled to exercise a renewal option (for example, because you do not meet one or more of the above conditions) then you lose the right to exercise the option for that renewal or any subsequent renewal option.

#### **ARTICLE 5. FEES**

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**5.1 Initial Fee.** In consideration of the license we grant you under this Agreement, you will pay us an initial fee of \$39,500 when you sign this Agreement (the "Initial Fee"). We have fully earned the Initial Fee at the time you pay it, and it is nonrefundable.

**5.2 Royalty Fee.** In consideration of the rights we grant you under this Agreement, you will pay us a continuing, nonrefundable royalty fee equal to eight (8%) percent of your Gross Revenues ("Royalty") for revenues generated in your exclusive geographic territory and twelve (12%) percent for revenues generated outside your exclusive geographic territory, assuming it is an area not owned by another franchisee, in which case you may not provide services in that territory without written approval from the franchise owner of that territory. You will pay the Royalty weekly. We currently require you to pay the Royalty by electronic funds transfer. You must report your weekly sales to us on Tuesday (for the preceding week beginning on Monday and ending on Sunday) ("Due Date"), but we may specify other Due Dates periodically. We will then generally draft the Royalty from your bank account on Friday. At least 30 days before the Franchise opens, you must sign the Authorization Agreement for preauthorized payment of Royalties and any other amounts you owe us, by electronic funds transfer from your bank account to ours. A form of Authorization Agreement is attached as Attachment B to this Agreement. On the Due Date each week, you must report your Gross Revenues for the prior week, along with any other information we specify. We may require you to make the report by phone, email, extranet or any other method we specify periodically. We will have the right to verify your Royalty payments and reports any time we want and in any way we reasonably specify. If you do not send us your Royalty report by the Due Date for any weekly period, we will assume that the Royalty due is equal to the highest weekly Royalty amount reported during the 52 weeks you last reported, and we may debit your account for that amount. Our debit of your account will not relieve you of your obligation to pay any late fees or interest due under Section 5.6. If you send us the late report within 21 days after it was due, however, and the Royalty you owe (plus applicable late fee and interest) is less than we debited from your account, we will give you a credit for the difference. If the Royalty you owe is more than we debited, we will draft your account for the difference.

**5.3 Administrative Support Fee.** Our support personnel will provide you with a variety of administrative services, including answering all email inquiries sent to our website to ensure timely responses, consistent messaging and accurate information (rather than forwarding the emails to you to respond to), assisting with uploading of new employee data, obtaining employee background checks and such other tasks that we reasonably determine from time to time. In consideration of these services, you agree to pay us an administrative support fee for each school that you contract with. The amount of the administrative support fee is \$75 per contracted school per year. The administrative support fee is due the month in which you are scheduled to conduct the Apex program at the school.

**5.4 Additional Training / Support Fee.** We may charge you a fee of up to \$500 per day for: (i) all training specified in this Agreement (or any other training that you request) other than the pre-opening Initial Training program; and (ii) all special support that we provide beyond what is required under this Agreement. In addition, if we agree to provide any on-site training or support, you must also reimburse us for all costs that we incur for food, lodging and travel. The fee and expense reimbursements, if applicable, are due 10 days after invoicing.

**5.5 Method of Payment.** You will make all payments to us in U. S. dollars. You will make payments by the methods we specify periodically, which may include check, cash, certified check, pre-authorized drafts from your bank account, automatic bank account debit, or electronic funds transfer.

**5.6 Late Payments.** If you are late making any payment of Royalties or any other payment you owe us, we will charge you interest from due date until the date you make the payment at the rate of 1.5% per month or the highest interest rate allowed by law, whichever is less. For late Royalty payments, we will also charge you an administrative late fee of \$100 for each late payment. If you are late with multiple payments, you must pay a separate \$100 fee for each late payment. The late fee is not interest; it compensates us for the costs we incur when you make late payments. You must also reimburse us for all of our expenses in collecting late

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payments, including our reasonable attorneys' fees.

Any time you are more than seven days late paying a Royalty Fee, making any required reports to us, or paying an invoice for goods or services you buy from us or our affiliates, we have the unrestricted right to suspend any support, products or services we provide you until you bring the late payments current or submit the delinquent reports. You agree that our suspension of support, products or services to you while you are more than seven days delinquent in submitting payments or filing reports will not be a breach of this Agreement. You understand that, despite our right to charge interest and late fees and suspend support and services, we are not required to permit or tolerate any late payments or reports, and we reserve the right, any time, under any circumstances and in our sole discretion, to notify you of default and terminate this Agreement as provided in Article 14. You also understand that if we tolerate one or more late payments or reports from you or from other Apex Fun Run franchisees, it does not mean we will tolerate late payments or reports from you in the future or that we have waived any rights, including our right to declare a default and terminate this Agreement. We reserve the unrestricted right to deal with each late payment/reporting situation differently as we believe is in our best interest, including different treatment of different franchisees, and we always reserve the right to terminate this Agreement for any late payments or reports. We may apply any payments you make to us to any amounts you owe us for any reason, regardless of your directions to apply a particular payment to a particular obligation.

**5.7 Failure to Comply with System Standards.** You acknowledge the importance of every one of our System Standards to the reputation and integrity of the System and the goodwill associated with the Marks. If we notify you of a failure to comply with our System Standards and you fail to correct the non-compliance within the period of time that we require, then, in addition to any other remedies available to us under this Agreement, we may impose a fine of up to \$500 per occurrence. We may also impose this fine if you fail to submit reports in a timely manner as required by this Agreement.

## **ARTICLE 6. MARKS**

**6.1 Changes and Discontinuance of Marks.** We have the right at any time, by giving notice to you, to add to, delete from, and make changes in the Marks in our unrestricted discretion. You must, at your expense, adopt and use any additions, deletions and changes to the Marks that we require. If we decide at any time in our sole discretion to modify or discontinue the use of any Mark or use additional or substitute Marks, you must comply with our directions within a reasonable time after we give you notice. Except as otherwise provided in this Agreement in Section 15.4 ("Indemnification"), we have no obligation to reimburse you for any expenses you incur in connection with our modification or discontinuance of any Marks, including your direct costs of changing signs, loss of revenue or costs of promoting any new or modified Mark.

**6.2 Limitations on Your Use of Marks.** You agree to use only the Marks and no other names or marks to identify the Franchise. You may not use any Mark as part of your corporate or legal business name, or with any prefix, suffix or other modifying words or designs. You may not use any Mark to sell unauthorized goods or services, or in any other way we have not expressly authorized in writing. You agree that we or our representatives may visit your Franchise events any time, without liability to you, to correct or remove any unauthorized use of the Marks, including removal of signs. You agree to display the Marks only as we specify, only on products, supplies or materials we have designated or approved and only in connection with advertising and marketing materials we have approved. You must file or display any notices of trademark and service mark registration that we periodically specify and file any fictitious or assumed name registrations required by Law. You may not use the Marks as part of any domain name or e-mail address you maintain on the Internet or World Wide Web, or any other electronic network, unless we have given our prior written approval.

**6.3 Notification of Infringements and Claims.** You agree to notify us immediately if you become aware that anyone is infringing or challenging your use of any Mark, or anyone is claiming rights to any Mark contrary to our rights or yours as our licensee. We have sole discretion to take any such action we consider appropriate (which may include taking no action). We have the exclusive right to control any litigation or U.S. Patent and Trademark Office proceeding relating to any Mark. You agree to sign any documents, render

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assistance and take any other action we believe is necessary or desirable to protect our interest in the Marks.

**6.4 Ownership and Goodwill of Marks.** The only rights you have to use the Marks or any goodwill attached to the Marks are the rights we have expressly granted to you in this Agreement. Your rights are subject to all the conditions and restrictions contained in this Agreement and the System Standards, and those rights will cease entirely when this Agreement terminates or expires. Your right to use the Marks are limited to your operation of the Franchise in strict compliance with this Agreement and all System Standards. You acknowledge that the Marks are valid and that, except as described in Section 6.5, we have the exclusive right to use the Marks. You agree that your use of the Marks and any goodwill established by your use of the Marks is for our benefit exclusively. This Agreement does not grant you any goodwill or other right, title or interest in the Marks (other than the right to use the Marks to operate the Franchise in compliance with this Agreement and System Standards). You understand that you have no right to be compensated for any loss of goodwill if this Agreement terminates or expires for any reason, since all current and future goodwill associated with the Marks and your operation of the Franchise is ours and not yours.

## **ARTICLE 7. TRAINING; MANUAL; OPERATING ASSISTANCE**

**7.1 Completion of Initial Training.** One of your Principal Owner(s) and one Manager, must attend and successfully complete to our satisfaction: (i) the initial training program at Apex Fun Run University and (ii) the in-field training components of the initial training program. Initial training at Apex Fun Run University and initial in-field training are each described in more detail in Section 7.3 and are referred to collectively as our "Initial Training". If one of your Principal Owner(s) and one Manager fail to successfully complete Initial Training, we may terminate this Agreement upon written notice to you. You must complete training no later than 30 days after signing your franchise agreement. Up to two Principal Owners and one Manager may attend Initial Training.

**7.2 Expenses of Training.** The Initial Fee covers the cost of Initial Training for up to two Principal Owner(s) and one Manager at Apex Fun Run University and any other in-field training location we designate. The Initial Fee does not include your expenses for travel, hotel, food or wages for your personnel attending training. You are solely responsible for all of those expenses.

**7.3 Initial Training.** At least one (and up to two) Principal Owner(s) and one Manager will attend Initial Training at Apex Fun Run University in Phoenix, AZ, or other location that we designate. Initial Training at Apex Fun Run University will last approximately 10 training days. Also, we (or our designee) will provide at least one (and up to two) Principal Owner(s) and one Manager with hands-on training at a certified Apex Fun Run school site we designate. The precise schedules for all Initial Training will be determined by us to accommodate the training requirements specified in this Agreement.

**7.4 Subsequent Training.** If you want additional training or retraining for the Principal Owner(s) or a Manager any time after you complete Initial Training, we may provide it at a location and time convenient for us. We may require the Principal Owner(s) and/or previously trained and experienced Managers to attend periodic refresher training courses at your expense and at the times and locations we designate. We also may require any new or replacement Manager hired after the Franchise's opening to complete all or part of our standard Initial Training. We may in our discretion periodically require one of your Principal Owner(s) and/or Managers to attend retraining or additional training to correct any problems or deficiencies we become aware of in the operation of your Franchise. You will bear all costs associated with any additional training or retraining we require. You also agree to pay us the additional training fee set forth in Section 5.4 with respect to any training we provide other than Initial Training.

**7.5 Manual.** During the term of this Agreement, we will loan you one copy of, or provide you with electronic access to our confidential operations manuals (collectively referred to as the "Manual"), which may consist of printed manuals, computerized documents or software, information provided on the internet or an extranet, audiotapes, videotapes, or any other medium adopted periodically for use with the Apex Fun Run

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System and designated as part of the Manual. The Manual will contain information and specifications concerning System Standards and any other information and advice we provide periodically to our Apex Fun Run franchisees. We may update and change the Manual periodically ("Amendments") to reflect changes in the System Standards. We may notify you of Amendments via mail, facsimile, email, internet, extranet or other means as they become available. We may require you to access our extranet or similar system on a daily basis to check for and collect Amendments. If you fail to check for Amendments in the way that we require, you will still be bound by any Amendment that you would have received if you had checked and collected the Amendment as required. You agree to comply with any Amendment within the time specified in the Amendment, or if no effective date is specified, within 30 days after we notify you of the Amendment. It is your responsibility to keep your copies of the Manual current and to check for and collect Amendments by any means we require. You must keep any printed Manual in a secure location at the Premises. You must restrict employee access to the Manual on a need to know basis, and take reasonable steps to prevent unauthorized disclosure or copying of any information in any printed or computerized Manual. If you and we have any disagreement about the most current contents of the Manual, our master copies of the Manual will be controlling. You must never copy (or let anyone else copy) any part of the Manual in any medium without our express prior authorization. You may not disclose any information contained in the Manual to anyone not employed in the Franchise's operation. When this Agreement expires or terminates, you will return all copies of the Manual to us, and upon our request you must certify to us that you have not kept any copies in any medium. All Manual are confidential and our exclusive property.

You agree to notify us immediately if you become aware that anyone is copying or using the Manual, or anyone is claiming rights to any portion of the Manual contrary to our rights or yours as our licensee. We have sole discretion to take any such action we consider appropriate (which may include taking no action). We have the exclusive right to control any litigation or U.S. Copyright Office proceeding relating to the Manual. You agree to sign any documents, render assistance and take any other action we believe is necessary or desirable to protect our interest in the Manual. Except as otherwise provided in this Agreement in Section 15.4 ("Indemnification"), we have no obligation to reimburse you for any expenses you incur in connection with our changing of the Manual, including your direct costs.

**7.6 Start-Up Assistance.** Before you open the Franchise for business we will provide you with all System Standards that must be used or satisfied prior to opening, and the names and contact information of any suppliers you are required or authorized to use to supply you with products or services complying with System Standards. We will also provide you with certain branded equipment and operating supplies that you must purchase from us. In addition, we may at our discretion provide you with on-site visits and consultation at your Franchise events during your first 90 days of operation at 2 days of one of your first events (Pep rally or Teacher huddle or Theme day or Race day).

**7.7 Operating Assistance.** We will provide you reasonable advice and assistance in the ongoing operation of the Franchise to the extent we determine is necessary from time to time. Operating assistance may include advice and guidance on: (i) methods of signing schools, (ii) training employees; (iii) advertising and promotional programs; and (iv) administrative, bookkeeping, accounting, and general operating procedures. Our assistance may be provided in the Manual, in periodic updates or in bulletins, e-mails or extranet postings or other information we distribute to all Apex Fun Run franchises. We will not charge you for this type of operating assistance. We may, however, charge the fee set forth in Section 5.4 for special operating assistance that we determine is necessary due to your failure to comply with this Agreement or Systems Standards, or special operating assistance you request in excess of the assistance we normally provide.

**7.8 Consultant.** We may retain the services of an independent consultant to represent us in the area in which the Franchise is located and perform some or all of the services we provide under this Agreement. The services the consultant may perform could include, for example, assistance in signing schools, training team members, marketing assistance, coordination with other Apex Fun Run System franchisees in your area and general supervision and monitoring of your Franchise on our behalf. You agree in advance to our delegation to a consultant of some or all of our obligations, and assignment to a consultant of some or all of our rights, under

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this Agreement. You agree that we may require you to submit to the consultant any reports you are required to submit to us. Upon our request, you will provide the consultant with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third party beneficiary of any agreement between us and any consultant, and the consultant does not have authority to act in our name or to bind us to any obligation to you or a third party. We reserve the right in our sole discretion to remove any consultant at any time and, to appoint any other consultant.

**7.9 Annual Updates to Fun Run Theme.** On an annual basis, we will provide you with the Fun Run Theme that we develop for the current school year that may be used in advertising. The theme and prizes are only for the current school year and are not allowed to be used in any subsequent school year, as we develop a new theme, curriculum and prizes each year for you, which helps you rebook schools.

## **ARTICLE 8. OPERATIONAL COVENANTS**

**8.1 Direct Supervision.** The Franchise must always be under the direct, in-field supervision of the Principal Owner(s) or a Manager unless we have given our prior written approval otherwise. At least one of your Principal Owner(s) or a Manager must devote his/her entire work time to the management of the Franchise (excluding reasonable vacation periods).

**8.2 Insurance.** Before you open the Franchise, you must obtain at your sole expense commercial general liability and all other insurance coverages that we require under the System Standards, with the coverage limits, endorsements and other terms that we require. Our current insurance requirements are as follows:

(i) commercial general liability insurance (including products and contractual liability) at combined single limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate against claims for bodily injury or property damage;

(ii) workers' compensation insurance (coverage B) as required by Law (including coverage of any Principal Owner(s) and Manager who will attend Initial Training or participate in the operation of the Franchise);

(iii) non-owned auto coverage insurance.

You must always keep the required insurance coverage in force and you must comply with any changes we make periodically to insurance requirements. All insurance policies must be issued by an insurance carrier rated "A" or better by Alfred M. Best and Company, Inc. or any other ratings or rating agencies that we designate periodically. All policies must insure you and name us as an additional insured, and must provide that we will receive at least 30 days written notice of cancellation or modification. Before you open the Franchise (and any time after the opening, if we request), and annually upon renewal of your insurance coverage, you must provide us certificates of insurance or copies of insurance policies showing your compliance with our insurance requirements as well as proof of premium payment. If you do not pay premiums due on insurance policies we require, we will have the right to pay the premiums and charge you for the premiums we paid. You must also obtain and maintain workmen's compensation, unemployment compensation, disability insurance, social security and other mandatory insurance coverages required by Law. If your Franchise sustains any damages covered by insurance, you must use your insurance proceeds to restore the Franchise to its original condition as soon as possible, unless prohibited by the Sublease or unless we have otherwise consented in writing.

**8.3 Start-Up Obligations.** Before you open the Franchise, you must complete all of the following at your expense. Where applicable these are also continuing obligations for as long as this Agreement is in effect:

(a) You must obtain storage space sufficient to store your necessary prize and supply inventory.

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(b) You must buy or lease the necessary transportation and trailer to haul your required prizes, supplies and materials to/from the schools for the runs.

(c) At least one Principal Owner and one Manager must attend and satisfactorily complete Initial Training as described in Section 7.3.

(d) You must obtain all permits, licenses and inspections required by Law for operation of the Franchise, including Laws governing fictitious name registrations and sales tax registration.

(e) You must purchase all equipment and operating supplies that we specify, some of which must be purchased exclusively from us.

**8.4 Ongoing Obligations.** In addition to your obligations described elsewhere in this Agreement, you must always comply with the following while this Agreement is in effect:

(a) Operate and manage the Franchise within the Apex Fun Run System in strict compliance with System Standards, including any changes to the System Standards that we make periodically.

(b) Not operate any other business and/or engage in any activity under any other name, without our prior written consent.

(c) Not place the Apex Fun Run name or Marks or any reference to us or our affiliates on any product that we have not approved.

(d) Exercise exclusive control over, and assume full responsibility for, all labor relations, including the hiring, firing, disciplining, compensation and work schedules of your employees.

(e) Pay all taxes, trade debt, bank debt and other amounts you owe to any third parties on or before the date payment is due. You agree to permit us to communicate with any third party to whom you owe any money, and authorize any such third party to communicate with us regarding the status of any of your debts or accounts.

(f) Participate in all national, regional or local advertising and promotional activities we require. You understand that your participation in these programs is essential to their success and that your participation may entail some cost to you. You agree that we have no obligation to reimburse you for any costs you incur due to your mandatory participation in these special promotional programs.

(g) Participate at your expense in any market research and test-marketing programs that we ask you to participate in, including promoting and using test-market products and providing us with reports and other information we request.

(h) Obtain and maintain in force all required licenses, permits and certificates. You understand that it is your responsibility (and not ours) to determine which licenses, permits and certificates are necessary for the operation of the Franchise and to determine procedures necessary for you to comply fully with all Laws. You must notify us immediately if any System Standards conflict with any Laws.

(i) Notify us in writing within 10 days after you receive notice of any litigation, arbitration, administrative proceeding or governmental investigation (regardless of your assessment of its materiality) that involves you or that could affect our rights or yours under this Agreement.

(j) Make sure that all managers or employees maintain the standards of dress (including any uniforms we require), appearance and hygiene that System Standards require.

(k) Attend any annual or periodic Apex Fun Run conventions or seminars we require at a local,

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regional or national level. You must pay all of your travel and lodging expense, and we may charge you a reasonable registration fee for any convention or seminar.

(l) Refrain from taking any actions that would be likely to injure our reputation or the goodwill associated with the Apex Fun Run System.

## **ARTICLE 9. APPROVAL OF PRODUCTS AND SUPPLIES**

**9.1 Approved Products.** In order to ensure a uniform public image for the Apex Fun Run System, you must use all prizes, products and services we periodically authorize you to offer. You may not offer any prizes, products or services we do not authorize you to offer. You must get our advance written authorization for prizes, products or services you offer. We reserve the right at any time to withdraw our authorization of any prize, product or service that we previously authorized.

**9.2 Equipment.** We will provide you with System Standards for preparation of a fun run and of equipment required for the operation of the Franchise. System Standards may include minimum standards for performance, warranties, design and appearance, local zoning, signage and other restrictions. You must buy all prizes and supplies from us, unless we tell you that you can buy a particular item from any supplier. If you want to buy or lease any equipment, furniture, fixtures or signs that we have not already approved as meeting System Standards, you must notify us and get our prior written approval. We may require you to submit specifications, photographs, drawings, samples or other information to enable us to decide whether the prize, equipment, or sign meets System Standards. We will notify you within a reasonable time whether the item meets System Standards.

**9.3 Approved Suppliers.** You must purchase all prizes, products, services supplies, and materials required for the operation of the Franchise from us. In the future, we may allow or require that you purchase some or all these items from an unaffiliated third party supplier. We reserve the right periodically to designate a single supplier (including us or our affiliates) for any services, products, equipment, supplies or materials used in the operation of the Franchise. If we designate a single supplier, you will be required to use that supplier exclusively for the applicable prizes, services, products, equipment, supplies or materials. You understand that we need the ability in our sole discretion to designate suppliers and require you to buy from designated suppliers, including single-source suppliers, for many reasons including: protection of trade secrets and confidential information; maintaining a reliable supply of uniform products and services conforming to System Standards; and the opportunity to negotiate system-wide discounts or long-term supply contracts on a local, regional or national basis. If we designate ourselves or our affiliates as a supplier, we have the right to earn a profit on any items we supply. We and our affiliates may (we currently do not) receive payments or other consideration from suppliers based on the suppliers' dealings with you and other Apex Fun Run franchisees, including sole-source suppliers. There are no restrictions on our use of payments we receive from suppliers, and we are not required to give you an accounting of supplier payments or to share the benefit of supplier payments with you or other Apex Fun Run franchisees.

**9.4 Request for Change of Supplier.** If you want to buy certain types of prizes, products, services, supplies, or materials from suppliers other than us or those we have previously approved, you must submit a written request for us to approve the supplier. We will notify you in writing whether we approve or reject the proposed supplier within thirty (30) days after we complete our investigation of the proposed supplier. We may periodically inspect any supplier's facilities and products to assure proper production, processing, storing, and transportation of products, services, supplies, or materials you intend to purchase from the supplier. We will not consider any supplier for approval unless they permit our inspection and provide us with any other information we reasonably request. We may also require product samples from a proposed new supplier to be delivered to us for testing prior to approval and use. You must reimburse us for the cost of any product testing. We reserve the right in our sole discretion to approve or reject any proposed new supplier. We may also refuse to consider proposals for new suppliers for certain categories of products or services that we consider particularly important to the integrity or uniformity of the Apex Fun Run System. You must send all requests to

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approve new suppliers to our office in the manner described in Article 17.

**9.5 Prices.** We may periodically offer suggestions to you regarding the percentage splits you charge the schools. You are required to follow our suggestions on fundraising revenue percentage splits, except for certain limited time offers, which must be approved in writing by us. You may not charge more than the percentage splits we specify.

**9.6 PayPal.** We may require that you have each school open a PayPal account which allows them to collect pledges through credit card payments, which improves percentage and timeliness of collections.

## **ARTICLE 10.      MARKETING**

**10.1 Grand Opening Program.** With our assistance, you may develop and implement a Grand Opening promotion approved by us to introduce or (if you are purchasing an existing Franchise) re-introduce the Franchise to the public within 120 days after you open or begin operating the Franchise.

**10.2 Approval of Advertising Materials.** You must obtain our prior written approval for any marketing or promotional materials you use in connection with the Franchise. You must discontinue using any advertising or promotional materials (including materials we have previously approved) within three days following our request to do so. You may not conduct any advertising or promotion through the Internet, World Wide Web email or similar network without our prior written approval. All advertising and promotional materials you use must be factually accurate and comply with Law.

## **ARTICLE 11.      RESTRICTIVE COVENANTS; CONFIDENTIAL INFORMATION**

**11.1 Non-Competition During Term.** You acknowledge that we have licensed to you commercially valuable information which comprises the Apex Fun Run System, including operations, marketing, advertising, and related information, and that the value of this information arises from the time, effort, and money invested by us in developing the information and its use by all Apex Fun Run franchisees. You therefore agree that, other than the Franchise, neither you nor any of your officers, directors, shareholders, members, partners or other owners required to be listed in the Appendix, nor your spouse nor the spouse of any of these individuals (collectively, "Bound Parties"), will during the term of this Agreement:

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

(b) perform services as a director, officer, manager, employee, consultant, representative, agent, or otherwise for a Competitive Business, regardless of location; or

(c) divert or attempt to divert any business related to the Franchise, our business, or any other Apex Fun Run franchisee, or divert or attempt to divert the employment of any of our employees, or employees of another franchisee, to any Competitive Business; The term "Competitive Business" means any business operating, or granting franchises or licenses to others to operate, a franchise or other fundraising business. Neither you nor the other Bound Parties will be prohibited from owning securities in a Competitive Business if they are listed on a stock exchange or traded on the over-the-counter market and represent 2% or less of that class of securities issued and outstanding.

**11.2 Post-Termination Covenant Not to Compete.** For two years following the effective date of termination or expiration of this Agreement for any reason, or following the date you transfer or assign the Franchise or your rights under this Agreement, neither you nor any other Bound Party may have any direct or indirect interest as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative, agent, or in any other capacity in any Competitive Business located or operating within your assigned geographic area or within the assigned geographic area of any other Apex Fun Run Franchise existing

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on the later of the effective date of termination or expiration of this Agreement or the date on which Franchisee and all other Bound Parties begin to comply with this Section. Notwithstanding the foregoing, if the foregoing geographic area is determined by a court of competent jurisdiction to be too broad to be enforceable, then for two years following the effective date of termination or expiration of this Agreement for any reason, or following the date you transfer or assign the Franchise or your rights under this Agreement, neither you nor any other Bound Party may have any direct or indirect interest as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative, agent, or in any other capacity in any Competitive Business located or operating within your assigned geographic. The restrictions of this Section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 2% or less of the number of shares of that class of securities issued and outstanding. You and the other Bound Parties acknowledge that you and they possess general work skills and abilities and have other opportunities for exploiting such skills, so that enforcement of these covenants will not deprive you or them of your or their ability to earn a living.

**11.3 Additional Remedies for Breach.** In addition to any other remedies or damages allowed under this Agreement, if you or any Bound Party breaches Sections 11.1 or 11.2, you must pay us a fee equal to our then-current Initial Franchise Fee for each Competitive Business opened in violation of the covenants, plus 8% of such Competitive Business's gross revenues until expiration of the non-competition period in Section 11.2.

**11.4 Solicitation of Employees.** You and the Bound Parties agree that while this Agreement is in effect and for two years after expiration or termination of this Agreement for any reason, you and the Bound Parties will not, directly or indirectly, solicit or attempt to solicit, or otherwise interfere with or disrupt our relationship with any of our employees or employees of any Apex Fun Run franchisee.

**11.5 Trade Secrets and Confidential Information.**

(a) You acknowledge and agree that (i) in connection with the operation of Apex Fun Run franchises and the Apex Fun Run System, we have developed at a great expense competitively sensitive Trade Secrets and Confidential Information which are not commonly known by or available to the public, and that for purposes of this Agreement, "Trade Secrets" means information as defined in applicable state law, and "Confidential Information" means any information and documentation, regardless of form, other than Trade Secrets, which relates to the operation of Apex Fun Run franchises or the Apex Fun Run System and which is confidential and proprietary to us. Trade Secrets and Confidential Information do not, however, include any information that (i) is commonly known by or available to the public; (ii) has been voluntarily disclosed to the public by us; (iii) been independently developed or lawfully obtained by you; or (iv) has otherwise entered the public domain through lawful means. All materials contained in the Manual, or which we otherwise specifically designate as confidential, will be considered Confidential Information for purposes of this Agreement, unless (and then only to the extent) the information falls within the exempt categories (i) through (iv) in the preceding sentence. In addition, any information which a reasonable person would consider competitively sensitive and not within the preceding categories (i) through (iv) will be considered Confidential Information.

(b) You and each Bound Party agrees that while this Agreement remains in effect such party will not, directly or indirectly, disclose or publish to any party, or copy or use for such party's own benefit, or for the benefit of any other party, any of our Trade Secrets or Confidential Information, except as required to carry out your obligations under this Agreement or as we have otherwise expressly approved in writing. You and each Bound Party agree that the restriction contained in the preceding sentence will remain in effect with respect to Confidential Information for five years following termination or expiration of this Agreement for any reason, and will remain in effect with respect to our Trade Secrets for as long as such information remains our Trade Secret under applicable Law. You also agree that you and all of your employees and agents will take appropriate steps to protect our Confidential Information and Trade Secrets from any unauthorized disclosure, copying or use. At any time upon our request, and in any event upon termination or expiration of this Agreement, you will immediately return any copies of documents where there are materials containing Trade Secrets or Confidential Information and will take appropriate steps to permanently delete and render unusable

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any Trade Secrets or Confidential Information stored electronically.

**11.6 Employee Confidentiality Agreements.** Each person who is actively involved in the management or operation of your Franchise must, at the time of employment, sign a Confidentiality Agreement in a form we require and may modify periodically. A copy of the current form is attached hereto as Attachment A. You will use your best efforts to prevent any employees from violating their respective Confidentiality Agreements and from disclosing or misusing Trade Secrets and Confidential Information. You must notify us immediately if you become aware that any of your employees violated their Confidentiality Agreement.

**11.7 Intentionally Omitted.**

**11.8 Assignment of Intellectual Property Rights.** If you develop any improvements to the Apex Fun Run System, the improvements you develop will belong to us exclusively, and will be deemed a work made for hire by you for us, even though you are an independent contractor and not our employee. To the extent your improvements are not works for hire, you will immediately assign them to us as the sole and exclusive owner. We may use, license, assign, modify, publish or sell the improvements freely and without any obligation to compensate you. You agree to sign any documents we require to complete the full assignment to us of the improvement.

**ARTICLE 12. FINANCIAL INFORMATION; AUDITS; INSPECTIONS**

**12.1 Records and Bookkeeping.** You must implement and maintain at your own expense a bookkeeping, accounting and recordkeeping system that complies with the System Standards we adopt periodically. You agree to send us financial information and reports in the formats we require from time to time. We may change bookkeeping, accounting and recordkeeping requirements and reporting formats. You must comply with any changes after 30 days written notice. If you commit any default under this Agreement relating to late payment of any amounts you owe us or relating to late or inadequate reporting at any time while this Agreement is in effect, we may (in addition to any of our other rights under this Agreement) require you to obtain third party accounting or bookkeeping services from a party we designate for a period of 12 months following notice of default, regardless of whether you cured the default.

**12.2 Weekly and Annual Reports.** You must send us financial reports as required by System Standards, which we may modify periodically. Your current reporting obligations include the following:

(a) Weekly reports on forms we designate reporting your Gross Revenues for the previous week.

(b) a semi-annual internal balance sheet and profit and loss statement and an annual balance sheet and profit and loss statement reviewed by a certified public accountant.

(c) an annual copy of your signed 1120 or 1120S tax form as filed with the Internal Revenue Service (or any forms which take the place of those forms), all state and local sales and use tax reports you are required to file and, upon our written request, copies of all tax returns or reports filed by you for the periods specified in the our notice.

You must verify and sign each report and financial statement in the form we periodically require. You give us the right to disclose information from your reports relating to your income, expenses and sales from the operation of the Franchise. We may also use information from your reports in our solicitation of other franchisees or for similar purposes. We may require you to have your financial statements reviewed or audited by a certified public accountant at your cost and expense. We have the right as often as we want (including daily) to access any of your computer systems and to retrieve all information relating to the Franchise's operations, or to program your computer systems to send such information automatically to us or our designee. You must take whatever actions we specify to ensure that we have continuous, realtime remote electronic access

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to any of your business systems in order to monitor and retrieve all information stored in the systems.

**12.3 Audits.** We have the right at any time during normal business hours, upon 5 days' notice, to inspect and audit your business, bookkeeping and accounting records, sales and income tax records and returns and other records pertaining to your Apex Franchise. You must cooperate fully with us or any representatives and independent accountants we hire to conduct any inspection or audit. If any inspection or audit discloses an understatement of the Franchise's Gross Revenues, you must pay us on demand the full Royalty due in the amount of the understatement, plus interest at the rate described in Section 5.6 from the date originally due until the date of payment. If we have to conduct an inspection or audit because you failed to furnish reports, supporting records or other information we required, or to furnish them on a timely basis, or there is an understatement of Gross Revenues for the period of any audit greater than 5%, you must reimburse us for the cost of the inspection or audit, including the charges of attorneys and accountants, travel expenses, room and board and compensation of our employees. You must maintain all records relating to Gross Revenues at the Premises for at least three years after the date you are required to report the Gross Revenues.

**12.4 Inspections.** We and our representatives (including the consultant) will have the right at any time during normal business hours, without notice to you, to attend a Fun Run event, inspect records, monitor procedures, and evaluate performance to determine if you and your employees are operating in compliance with this Agreement and System Standards. All of your books and records relating to the operations of the Franchise must be available for inspection and copying at all reasonable times by us or our representatives. Our right to inspect includes the right to examine books, computerized data, tax returns and records of other businesses you own or operate to determine whether you have reported all your Gross Revenues and paid all Royalty Fees you owe us. Our right to inspect also includes the right to observe, photograph or videotape the operations of the Franchise; use anonymous "mystery shoppers"; remove samples of products, materials or supplies for testing; and interview employees and customers of the Franchise. You must cooperate fully with any inspection or audit we conduct. You may not refuse to admit us or our representatives for any such inspection or audit, or restrict the scope of an inspection or audit. You understand your refusal to admit us or our representatives or to cooperate in any inspection or audit will entitle us to terminate this Agreement.

**12.5 Survival.** Our right to audit and inspect your books and records under Sections 12.3 and 12.4 will survive for two years following any expiration or termination of this Agreement.

## **ARTICLE 13. TRANSFER AND ASSIGNMENT**

**13.1 Transfer of Franchise.** You understand that we have granted you a franchise based on our assessment of the character, skills, resources and abilities of you and/or your current owners. Therefore, this Agreement is personal to you and you may not sell, assign, transfer or encumber the Franchise or your rights under this Agreement without our prior written consent. Any purported sale, assignment, transfer or encumbrance in violation of this Article 13 will be void. If you are a corporation, limited liability company or similar entity, a "transfer" for purposes of this Agreement will include any sale, resale, pledge, assignment, transfer or encumbrance of more than 50% of your voting stock or other ownership interest or any sale, transfer or encumbrance of all or substantially all of the assets of the Franchise. If you are a partnership, then a "transfer" will include any removal or addition of any general partner (or the transfer of any ownership interest of the general partner if the general partner is not an individual). If you are a corporation or limited liability company you will promptly place a legend on the front and back of each of your share certificates giving conspicuous notice of the restrictions contained in this Article 13. You must disclose to us on the Appendix the names of all of your partners, members, owners or shareholders, and must give us prompt notice of any changes, additions or deletions. If there is any change in, or transfer of your ownership interest while, this Agreement is in effect, the party acquiring the ownership interest is required as a condition of obtaining the ownership interest to execute the personal covenants referred to in Section 11.7 of this Agreement.

**13.2 Death or Disability of Franchisee.** If you or one of your stockholders or partners dies or becomes permanently disabled, the party who dies or becomes disabled may transfer his or her interest to their

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spouse, heirs or immediate relatives, or to another of your shareholders or partners, provided that we determine in our sole discretion and judgment, that such parties obtaining such interest are capable of operating the Franchise satisfactorily in accordance with System Standards and all requirements of Section 13.4 have been met and each party executes the personal covenants referred to in Section 11.7 of this agreement.

**13.3 Right of First Refusal.** If you receive and want to accept a bona fide written offer from a third party to purchase the Franchise (including any sale of substantially all of the assets of the Franchise), you must give us written notice of the offer (specifying the name and address of the prospective purchaser and the price and terms of the offer) and copies of any written documents relating to the offer. For 30 days after we receive your notice (the "Option Period") we will have the option to purchase the Franchise, including your right to occupy and use the Premises, on the same terms and conditions as offered by the third party and at the same price, less 5%. If any portion of the consideration being offered by the third party is other than cash, we will have the option of substituting the cash value of the non-cash consideration, less 5%. Upon our request, you must provide us any information about the business and operations of the Franchise that we request. If we do not exercise our option within the Option Period, you may sell the Franchise and assign all of your rights under this Agreement to the third party within 30 days of the expiration of the Option Period, provided the conditions of Section 13.4 have been met. If we exercise our option, we will waive the 5% transfer fee described in Section 13.4(h). Any material change in the terms of the offer prior to the closing of the sale to the third party will be considered a new offer, subject to our same rights of first refusal as in the case of an initial offer. Our failure to exercise our option under this Section 13.3 will not constitute a waiver of any other provision of this Agreement, including the requirements of Section 13.4 below with respect to the proposed transfer.

**13.4 Conditions for Transfer.** You agree that the restrictions on transfer contained in this Agreement are reasonable and necessary to protect the Franchise, and the Apex Fun Run System, as well as our reputation and image, and are essential for the protection of us and our other franchisees. We agree not to unreasonably withhold our consent to a sale, assignment or transfer of the Franchise by you; provided, however, that we may refuse to grant our consent unless:

(a) All of your obligations under this Agreement and any other agreement affecting the Franchise are assumed by the transferee.

(b) All of your debts to us or to any of our affiliates are paid.

(c) You are not in default under this Agreement, the Sublease or any other agreement with us or any of our affiliates.

(d) You or the proposed transferee have provided us with all information we have reasonably requested regarding the terms of the proposed transfer and identity and background of the proposed transferee and its owners.

(e) The transferee and its partners, officers and shareholders, if applicable, satisfactorily complete Initial Training on our then current terms prior to the date of transfer.

(f) We are satisfied in our sole and absolute discretion that the transferee, and its partners, officers and shareholders, if applicable, meet all of our requirements for new franchisees, including good reputation and character, business skill, operational ability, management skills, credit rating, financial strength and other business considerations.

(g) The transferee signs our then-standard form of Franchise Agreement and all other then-current related agreements we require of new franchisees on the date of transfer, including any adjustments to the Royalty Fees specified in this Agreement as may be necessary to reflect the then-prevailing rates.

(h) The proposed transferee does not have any interest in a Competitive Business.

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(i) You and all of your individual owners and/or the transferee, if we request, execute general releases, in a form satisfactory to us, of all claims against us, our affiliates and the respective officers, directors, employees and agents of us and our affiliates.

(j) You and all Bound Parties sign non-compete and nondisclosure agreements, in forms we require periodically, containing covenants identical in substance to the pre – and post-termination provisions of Sections 11.1, 11.2, 11.3, 11.4 and 11.5.

(k) You pay us a transfer fee equal to 5% of the sale price (all consideration) for the transfer.

(l) We receive fully executed copies of all transfer documents.

(m) The Franchise is renovated as necessary to conform to our then-standard System Standards.

(n) At least one full year of occupancy remains under the then-current term of the Sublease.

**13.5 Assignment to Corporation, Partnership or Limited Liability Company.** If you are an individual, we will allow you to assign this Agreement and the Franchise (and its assets) to a corporation, partnership or limited liability company (LLC), provided:

(a) the corporation, partnership or LLC conducts no business other than the operation of Franchises (or other related activities authorized under this Agreement);

(b) more than 50% of each voting class of the shares, interests or units of the corporation, partnership or LLC is owned by you and more than 50% of all classes of shares, interests or units of the corporation, partnership or LLC is owned by you;

(c) the Franchise is actively managed by such successor; and

(d) all shareholders, partners or members of such successor are acceptable to us, meet our requirements as established from time to time and agree to guarantee the obligations of the corporation, partnership or LLC under this Agreement and to be bound by the terms of this Agreement and all ancillary agreements in the manner we periodically require.

The organizational documents of any partnership, corporation or LLC owning the franchise, including all stock certificates, must recite that they are subject to all restrictions contained in this Agreement. You must provide us with all documents to be executed in connection with any such assignment and we will use our reasonable efforts to approve or disapprove such documents within 30 days after receipt. We reserve the right to charge you a transfer fee sufficient to cover our reasonable costs in effecting the transfer.

**13.6 Assignment by Us.** All of our rights and obligations under this Agreement and any ancillary agreements are freely assignable by us without your consent and shall inure fully to the benefit of any assignee. Our liabilities and obligations to you under this Agreement will terminate upon any such assignment, provided that the assignee agrees in writing to assume our obligations and liabilities. We have the right, now or in the future, to merge, acquire, be acquired by, or affiliate with any existing or future competitive or non-competitive franchise network, chain or other business regardless of the location of that chain or business's other facilities and to operate them under the Apex Fun Run Marks and Apex Fun Run System or to change the Marks and adopt a new system (which you must follow) following any such merger, acquisition or affiliation. We have the right to offer our stock publicly, to issue any debt or equity securities and to undergo any kind of economic or financial restructuring or recapitalization.

#### **ARTICLE 14. DEFAULT AND TERMINATION**

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**14.1 Termination by the Franchisor With Right to Cure.** In addition to any other termination rights or remedies we may have under this Agreement or otherwise, we have the right to terminate this Agreement if any of the following occur, without giving up any other rights or remedies:

(a) If you misuse the Apex Fun Run System or the Marks, or take any action which we believe materially impairs the goodwill or reputation associated with the Apex Fun Run System or the Marks, or if you use any names, marks, systems, insignia or symbols in connection with the Franchise in a way that is not authorized by us.

(b) If any Bound Party violates Section 11 of this Agreement.

(c) If you fail to pay when due any Royalty Fee or other payment required under this Agreement or any other agreement between you and us or any of our affiliates.

(d) If you fail to submit to us when due any report of Gross Revenues or other Financials, signed packets, school contracts, event videos or other information you are required to submit.

(e) If you deny us or our representatives (including an Area Representative) the right to inspect the Premises or to examine or audit your books and records.

(f) If you fail to operate the Franchise every day (except for holidays we designate) in accordance with the Manual; use products or provide services which we instruct you not to provide; fail to use products or provide services which we require you to provide; or fail in any other way to comply with System Standards in the operation of the Franchise.

(g) If you fail to maintain the Prizes and all equipment in accordance with System Standards or to equip the Franchise in accordance with System Standards.

(h) If you violate any health, safety or sanitation law, ordinance or regulation and do not begin to cure the noncompliance or violation immediately, and correct it within 72 hours (or sooner if required by Law).

(i) If you grossly mismanage the Franchise.

(j) If you fail to obtain our written approval or consent before taking any action when our consent or approval is expressly required by this Agreement.

(k) If you fail to participate in any advertising or promotional activities, or if you take any unauthorized actions with respect to advertising and promotional activities in violation of this Agreement.

(l) If you permit a violation of Law in connection with the operation of the Franchise, and permit the violation to continue after notification, unless there is a bona fide dispute as to the violation or legality of the Law, and you are promptly and diligently contesting the violation or legality of the law in the appropriate forum.

(m) If you default in the performance of any other obligation under this Agreement (other than defaults to which Section 14.2 applies).

(n) If you or your affiliate is in default under any other agreement with us.

(o) If any current or future owner of any entity that is the franchisee under this Agreement fails or refuses to sign the personal guaranty referred to in Section 15.5.

Termination for any of the reasons listed in this Section 14.1 will be effective 60 days following our written

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notice to you unless the default has been fully cured prior to expiration of such 60 day period.

**14.2 Termination by Franchisor Without Right to Cure.** If any of the following occur, we may terminate this Agreement immediately, effective upon written notice to you, without opportunity to cure:

(a) If you or any of your executive officers improperly removes money from the Franchise or any School or other customer.

(b) If you or any of your executive officers or any one person owning more than 25% of ownership interest in your franchise, or your general partner, is convicted of a crime punishable by an imprisonment for more than one year, or if your Principal Owner(s) is deported or loses the right to live and work in the United States.

(c) If you or your affiliate, or your general partner or Principal Owner(s) becomes insolvent due to inability to pay debts as they mature; or is adjudicated bankrupt, files or has filed against it a petition in bankruptcy, reorganization or similar proceeding under federal bankruptcy laws; or if a receiver, permanent or temporary, of you or any such person, is appointed, or if you or any such person requests the appointment of a receiver or makes a general assignment for the benefit of creditors; or if a final judgment against you or any such person in the amount of \$10,000 or more remains unsatisfied of record for 30 days or longer; or if the bank accounts, property or receivables of you or any such person are attached and such attachment proceedings are not dismissed within a 30 day period; or if execution is levied against the business or property of you or any such person, or if suit to foreclose any lien or mortgage against the Premises, the Franchise or its property is instituted and not dismissed within 30 days.

(d) If you make, or have made, any material misrepresentation to us in connection with this Agreement, the Appendix or the Exhibits to this Agreement or in operating the Franchise.

(e) If your Principal Owner(s) and Manager fail to successfully complete Initial Training.

(f) If you intentionally understate Gross Revenues in any report or financial statement or if you intentionally fail to report Royalties payable to us, maintain intentionally false books or records or otherwise defraud us.

(g) If your conduct of the Franchise results in an imminent danger to the public health, or provides unauthorized products to the public after notice of default and continuing to provide such products whether or not you have cured the default after one or more notices;

(h) After curing a default under Section 14.1, you commit the same default again within 12 months of the default, even if you would otherwise be given an opportunity to cure the current default;

(i) We give you valid notice of default more than three times in a 12 month period, regardless of whether you cured such defaults after notice.

(j) You cease to operate or abandon the Franchise. Cessation of the business will not result in a default if caused by causes out of your control. For purposes of this Section 14.2(j), ceasing to operate or otherwise abandoning its Franchise shall be defined as your failure to sign a school or complete a Fun Run in 6 months.

(k) If you attempt any assignment other than in compliance with Article 13 or, if you are a corporation, partnership or limited liability company, you are dissolved.

(l) If you receive overall negative ratings from 3 schools in a 12 month period. (see operations manual for ratings system details).

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(m) If you receive three (3) or more complaints from schools, teachers, PTOs, parents and/or administrators relating to your Business, the Apex Fun Run program you conduct or your manner of interaction with schools, teachers, PTOs, parents, students and/or administrators.

(n) If you fail to complete a Fun Run for a school as contracted.

(o) If you fail to rebook at least 50% of your schools where you have completed a Fun Run.

(p) If you fail to follow the program scripts as provided for Pep Rally, Team Days and Fun Runs or make any statements at such events that go against our corporate values or the mission of the organization. (See training materials and operations manual for further details)

(q) If you fail to complete the required classroom time for a Fun Run or deviate from the curriculum as provided by us.

(r) If you fail to collect at least 70% of dollars pledged at 2 schools in a 6 month period.

(s) If you fail to serve 6 schools within your first 12 months of operations or less than 12 schools for any year subsequent.

(t) If you fail to commence operating the Franchise business within 120 days after the Effective Date by contacting and marketing the Apex Fun Run program to schools in your territory.

**14.3 Our Right to Take Over Management.** We have the right (but not the obligation), under the circumstances described below, to enter Franchise and assume the Franchise's management for any period of time we feel is appropriate. If we assume the Franchise's management, you must pay us (in addition to the Royalty Fee) 3% of the Franchise's Gross Revenues, plus our direct out-of-pocket cost and expenses. If we assume the Franchise's management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchise incurs, or to any of your creditors for any supplies or services the Franchise purchases. We may assume the Franchise's management if you abandon the Franchise or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. Our exercise of our management rights under this Section 14.3 will not affect our right to terminate this Agreement.

**14.4 Termination by Franchisee.** This Agreement may be terminated by you for a material breach of this Agreement by us if we fail to cure such breach within 60 days after receiving written notice. Any purported termination by you except as provided in this Section 14.4 will be considered a default by you without opportunity for cure.

**14.5 Obligations Upon Termination.** You agree to do the following upon expiration or termination of this Agreement for any reason:

(a) To pay within 10 days all amounts due to us under this Agreement.

(b) To cease immediately to use the Apex Fun Run System and all of the Marks and any confusingly similar names, marks, systems, insignia, symbols, color schemes, designs, other rights, procedures or methods.

(c) To immediately amend or terminate any assumed or fictitious name filings to delete any of the Marks.

(d) To return the Manual and all other plans and specifications, designs, records, data, samples,

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models, programs, handbooks or drawings related to or concerning our operations or business to us, together with any copies, and permanently delete any electronic copies of the same.

(e) To cease immediately to use any of our Trade Secrets or Confidential Information for any purpose.

(f) To cease immediately to use any advertising materials provided by us or our advertising agencies, as well as any imitations or derivations.

(g) To cease immediately to hold yourself out in any way as our franchisee.

(h) To maintain all books, records and reports required under this Agreement for a period of at least two years after termination or expiration and allow us final inspections and audits of your books, records and reports within such period for the purpose of verifying that you have complied with this Agreement and have paid all fees and other amounts due to us hereunder.

(i) To assign to us or our designee all of your rights, title, and interest in the telephone numbers, telephone directory listings and advertisements, website URLs, email addresses and governmental licenses or permits used for the operation of the Franchise. Simultaneously with your execution of this Agreement, you will execute the Internet Web Sites and Listing Agreement attached as Attachment D to this Agreement.

(j) To comply with all provisions of this Agreement which by their terms or reasonable implication survive termination of this Agreement, including Sections 11.2, 11.4, 11.5, 11.8 and 15.4.

**14.6 Right to Repurchase.** Upon termination or expiration of this Agreement for any reason, we will have the right, but not the obligation, to purchase all or part of the assets of the Franchise exercisable by written notice delivered to you at any time prior to the effective date of termination (unless we terminate you for cause, in which case, we may deliver notice at any time up to 30 days following the effective date of termination). There will be no compensation for goodwill, and the purchase price for the assets will be equal to their fair market value less goodwill. If you and we cannot agree on the purchase price for the assets within 10 days following our exercise of this option, an independent appraiser that we designate will determine the fair market value and you and we will share equally the cost of the appraiser. The appraiser's decision will be final and binding with no appeal. The closing of the purchase will take place at the location, and on the date we choose. At closing, you will deliver a bill of sale for the assets in a form acceptable to us. We will be entitled to set-off against the purchase price any amount you owe us or our affiliates, and to pay all or a portion of the purchase price to satisfy claims of your unpaid creditors.

## **ARTICLE 15. RELATIONSHIP OF PARTIES; INDEMNIFICATION**

**15.1 Independent Contractors.** You are not our agent, representative, joint venturer, partner or employee for any purpose, and you will not do anything to give other parties an impression that you are. You are an independent contractor and are not authorized to bind us to any contract, agreement, warranty or representation, or to create any express or implied obligation on our behalf. You will clearly indicate your independent ownership of the Franchise in all public records and in your relationship with other parties, on business letterheads and forms, and in any other ways that we may periodically require. We are an independent contractor in our relationship with you. We are not your partner, joint venturer, trustee or fiduciary and owe you no special duty other than to comply with our contractual duties under this Agreement.

**15.2 No Liability For Acts Of Other Party.** You may not use our name or any of the Marks in signing any contract or applying for any license or permit, or in a way that may result in our liability for any of your debts or obligations. Neither you nor we will make any express or implied agreements, warranties, guarantees or representations or incur any debt in the name or on behalf of the other, represent that their relationship is other than franchisor and franchisee, or be obligated by or have any liability under any

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agreements or representations made by the other without express prior written approval. We will have no liability or responsibility for any damages to any person or property directly or indirectly arising out of the Franchise's operation.

**15.3 Taxes.** We will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property, employment or other taxes, whether imposed on you, or the Franchise (except any taxes we are required by law to collect from you with respect to our sales to you). You are solely responsible for paying such taxes.

**15.4 Indemnification.** You agree to indemnify, defend and hold harmless us and our affiliates, shareholders, directors, officers, employees, agents, successors and assignees (the "Indemnified Parties") against and to reimburse any one or more of the Indemnified Parties for all claims, obligations and damages described in this Section, any taxes described in Section 15.3 above and any claims and liabilities directly or indirectly arising out of the Franchise's operation or your breach of this Agreement, except to the extent they arise as a result of our own gross negligence or willful misconduct. For purposes of this indemnification, "claims" includes all obligations, damages (actual, consequential or otherwise) and costs reasonably incurred in the defense of any claim against any of the Indemnified Parties, including reasonable accountants', arbitrators', attorneys' and expert witness fees, costs of investigations and proof of facts, court costs, other expenses of litigation, arbitration or alternative dispute resolution and travel and living expenses. We have the exclusive right to defend any such claim. This indemnity will continue in effect after the expiration or termination of this Agreement. Under no circumstances will we or any other Indemnified Party be required to seek recovery from any insurer or other third party, or otherwise to mitigate their or our losses and expenses, in order to maintain and recover fully a claim against you.

Notwithstanding the foregoing, we agree to hold harmless, indemnify and defend you and your officers, directors, owners, employees and agents against all claims for copyright, service mark or trademark infringement arising out of your authorized use of the Marks and Manual in accordance with this Agreement and the Operations Manual, provided you notify us in writing within ten (10) days after learning of any claim, and also provided we have the right to control any litigation or proceeding resulting from any such claim; however, such obligation only covers legal expenses and court-ordered damages, as well as direct expenses incurred in changing signage or written materials required by a court order up to a maximum amount of three thousand dollars (\$3,000).

**15.5 Owner's Guarantees.** If you are organized other than as a sole proprietorship, all owners must guarantee personally the payment and performance of all of your obligations under this Agreement. You must deliver signed guarantees, in the form attached as Attachment C to this Agreement, for all such parties at the time you deliver the signed copy of this Agreement. If any person becomes an owner after the date of this Agreement, you must notify us and they must sign the personal guarantee. You and we intend for such persons to be jointly and severally bound to guarantee your obligations regardless of whether a signed guarantee is actually delivered to us. Your failure to deliver a signed personal guaranty from each owner constitutes a material event of default under this Agreement.

## **ARTICLE 16. ENFORCEMENT**

### **16.1 Severability And Substitution Of Valid Provisions.**

(a) Except as expressly provided to the contrary in this Agreement, each section, paragraph, term and provision of this Agreement, and any portion of each, will be considered severable. If, for any reason, any such provision is held to be invalid or contrary to or in conflict with Law, that ruling will not impair the operation of, or have any other effect upon, any other portions of this Agreement that remain otherwise intelligible. Those other portions will continue to be given full force and effect and bind the parties.

(b) If any covenant in this Agreement which restricts competitive activity is deemed

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unenforceable by virtue of its scope in terms of area, business activity prohibited and/or length of time, but would be enforceable by reducing any part or all of such covenant, you and we agree that such covenant will be enforced to the fullest extent permissible under the Laws. You and we agree that the relationship between us under this Agreement is unlike an employer/employee relationship, and that standards of review based on the employer/employee relationship should not be applied to review of any covenants restricting competitive activity under this Agreement. You agree that we may at any time by unilateral written notice to you (including notice given while an enforcement action is pending) narrow or reduce the scope of any restriction contained in Sections 11.1, 11.2, 11.3, 11.4 or 11.6.

(c) If any Law requires a greater prior notice than is required under this Agreement of the termination of this Agreement or of our refusal to renew this Agreement, or the taking of some other action not required by this Agreement, or if, under any Law, any provision of this Agreement or any System Standard is invalid or unenforceable, the prior notice and/or other action required by such Law will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision or System Standard 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 of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement, or any System Standard, any portion or portions which a court or arbitrator 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 a court order or arbitration award. Such modifications to this Agreement will be effective only in such jurisdiction, unless we elect to give them greater applicability, and will be enforced as originally made and entered into in all other jurisdictions.

**16.2 Waiver Of Obligations.** You and we may unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or such other effective date stated in the written notice of waiver. No oral waivers, or waivers by conduct, will be effective, and may not be relied upon or enforced under any circumstances. Any waiver we grant will 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 10 days' prior written notice. You and we will 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 of this Agreement or to declare any breach thereof to be a default and to terminate this Agreement prior to the expiration of its term) by virtue of any custom or practice at variance with the terms of this Agreement; your or our failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by the other with the respective obligations of this Agreement, including, without limitation, any System Standard; our waiver, forbearance, delay, failure or omission to exercise any right, power or option, whether of the same, similar or different nature, with respect to other Apex Fun Run franchises; the existence of other franchise agreements for Apex Fun Run franchises which contain different provisions from those contained in this Agreement; or our acceptance of any payments due from you after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to us will constitute a waiver, compromise, settlement or accord and satisfaction. We are authorized to remove or obliterate any legend or endorsement, and such legend or endorsement will have no effect.

**16.3 Force Majeure.** Neither you nor we will be liable for loss or damage or deemed to be in breach of this Agreement if your or our failure to perform any obligation results from:

(a) transportation shortages, inadequate supply of equipment, products, supplies, labor, material or energy or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any federal, state or municipal government or any department or agency thereof;

(b) acts of God;

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(c) fires, strikes, embargoes, wars or riots; or

(d) any other similar event or cause beyond the control of the affected party. Any delay resulting from any of said causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that said causes will not excuse payments of amounts owed at the time of such occurrence or payment of royalties due on any sales thereafter.

**16.4 Costs And Attorneys' Fees.** If we incur expenses in connection with your failure to pay any amounts you owe when due, to submit any required reports when due or otherwise to comply with this Agreement, you agree to reimburse us for any of the costs and expenses which we incur, including, without limitation, reasonable accounting, attorneys', arbitrators' and related fees.

**16.5 Withholding Of Payments Prohibited.** You agree that you will not set off or withhold payment of any amounts you owe us on the grounds of our alleged nonperformance of any of our obligations under this Agreement or for any other reason. You agree that all such claims will, if not otherwise resolved, be submitted to arbitration as provided in Section 16.7.

**16.6 Cumulative Rights.** The rights granted hereunder are cumulative, and no exercise or enforcement by either party of any right or remedy hereunder will preclude the exercise or enforcement of any other right or remedy to which either we or you is entitled.

**16.7 Arbitration.** Except for controversies, disputes or claims based on your failure to pay royalty fees when due, your violation of any health or safety law, or your use of the Marks after the expiration or termination of this Agreement, all controversies, disputes or claims (including claims which might otherwise be asserted as counterclaims to the claims enumerated in the first clause of this sentence) between you, your shareholders, officers, directors, agents and employees and us (and our owners, guarantors, affiliates and employees, if applicable) arising out of or related to:

(1) this Agreement or any other agreement (other than the Sublease) between you and us or any provisions of any such agreement;

(2) the relationship between us and you;

(3) the validity of this Agreement or any other agreement between you and us or any provision of any such agreement will be submitted on demand of either party for arbitration to the office of the American Arbitration Association closest to our principal executive offices on the date of submission and will be heard by one arbitrator in accordance with the then current commercial arbitration rules of the American Arbitration Association. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) and not by any state arbitration law. Any dispute regarding the validity of this arbitration provision, or the applicability of this provision to a particular claim, shall be decided by arbitration under this Section 16.7 and not by a court.

The arbitrator will have the right to award or include in the award any relief which the arbitrator deems proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance and injunctive relief, provided that the arbitrator will not have the right to declare any Mark generic or otherwise invalid or, except as otherwise provided in Section 15.4, to award exemplary or punitive damages. The award and decision of the arbitrator will be conclusive and binding upon all parties hereto, and judgment upon the award may be entered in any court of competent jurisdiction. You and we agree to be bound by the provisions of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. You and we further agree that, in connection with any such arbitration proceeding, each party must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim which is not submitted or filed as described above will be forever

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barred. You and we agree that unless all parties agree otherwise, prehearing discovery shall be limited to requests for, and exchange of, documents relevant to the dispute and two depositions per side, including expert and opinion witnesses. No deposition may exceed eight hours without agreement of the parties or order of an arbitrator. Any party shall have the right to file prehearing motions to dispose of some or all of the claims or to obtain rulings on the admissibility of evidence prior to an evidentiary hearing. Such motions shall be filed sufficiently in advance of the hearing date to permit the arbitrator to rule on the motion prior to the hearing date. You and we each agree to share equally all arbitration costs that are part of the arbitration award. Otherwise each party shall bear its own attorneys' fees, expert witness fees and other court or arbitration costs incurred in connection with any arbitration or other legal action between you and us.

You and we agree that arbitration will be conducted on an individual, not a classwide basis, and that an arbitration proceeding between us, our officers, directors, agents and employees and you (and/or your owners, guarantors, affiliates and employees, if applicable) may not be consolidated with any other arbitration proceeding between us and any other person, corporation or partnership.

Notwithstanding anything to the contrary contained in this paragraph, you and we each have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction; provided, however, that the party bringing such action must contemporaneously submit such dispute for arbitration on the merits as provided in this Agreement.

The provisions of this Section are intended to benefit and bind certain third party nonsignatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this agreement.

**16.8 Governing Law.** All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent governed by the Federal Arbitration Act as required hereby, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Section 1051 et seq.) or other federal law, this Agreement, and all claims arising from the relationship between you and us will be governed by the laws of the State of Arizona, without regard to its conflict of laws principles. In any proceeding relating to our enforcement of your obligations under Article 11, however, we may at our sole option elect for the law of your jurisdiction to apply.

**16.9 Consent to Jurisdiction.** You and your owners agree that all actions arising under this Agreement (other than those subject to mandatory arbitration under Section 16.7), or otherwise as a result of the relationship between you and us may be commenced in a state or federal court of general jurisdiction in the county and state in which our principal executive offices are located on the date of filing, and you (and each Bound Party) irrevocably submit to the jurisdiction of such courts and waive any objection you (and each Bound Party) may have to either the jurisdiction of or venue in such courts.

**16.10 Waiver of Punitive Damages and Jury Trial.** Except with respect to your obligation to indemnify us pursuant to Section 15.4 and claims we bring against you for your unauthorized use of the Marks or unauthorized use or disclosure of any Trade Secrets or Confidential Information, you and we and each of our respective owners waive to the fullest extent permitted by law any right to or claim for any punitive, special or exemplary damages against the other and agree that, in the event of a dispute between the parties, the party making a claim will be limited to equitable relief and to recovery of any actual damages it sustains. You agree that any claim for lost earnings or lost profits by you will be limited to the amount of net profits earned during your last full tax year as shown on your federal tax return for such year.

You further agree that if this Agreement is terminated due to your default, you will be liable to us for a lump sum equal to the net present value of the royalty fees that would have become due following termination for the remaining term of this Agreement if the termination had not occurred, based on your average gross revenues for the 12 months preceding the termination date. You and we irrevocably waive trial by jury in any action, proceeding or counterclaim, whether at law or in equity, brought by either of the parties to this Agreement.

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**16.11 Binding Effect.** This Agreement is binding upon you and us and your and our respective executors, administrators, heirs, beneficiaries, and permitted assigns and successors in interest and may not be modified except by written agreement signed by you and us.

**16.12 Limitations Of Claims.** Except for claims arising from your nonpayment or underpayment of amounts you owe us under this Agreement, any and all claims arising out of or relating to this Agreement or your relationship with us will be barred unless a judicial or arbitration proceeding is commenced within one year from the date on which the party asserting such claim knew or with reasonable diligence should have known of the facts giving rise to such claims.

## **ARTICLE 17. NOTICES AND PAYMENTS.**

All written notices, reports and payments permitted or required to be delivered by the provisions of this Agreement or the Manual will be deemed so delivered:

(a) at the time delivered, if delivered by hand;

(b) One business day after being placed on the hands of a commercial courier service for next business day delivery; or

(c) Three business days after placement in the United States Mail by registered or certified mail, return receipt request, postage prepaid; and must be addressed to the party to be notified at its most current principal business address of which the notifying party has been notified. We may send any notice to you at your address. Notwithstanding the deemed delivery dates above, any required payment or report which we do not actually receive during regular business hours on the date due will be deemed delinquent. Our current address for notices is 1 North 1<sup>st</sup> Street, Suite 790, Phoenix, AZ 85004.

## **ARTICLE 18. ACKNOWLEDGEMENTS**

You acknowledge that:

(a) You have conducted an independent investigation of the business contemplated by this Agreement and recognize that it involves business risks making the success of the venture largely dependent upon your business abilities. We deny making, and you acknowledge we have not made and you have not relied on, any warranty or guaranty, express or implied, as to the potential volume, profits, earnings or success of the business venture contemplated by this Agreement.

(b) You have no knowledge of any representations by us, or our officers, directors, shareholders, employees, or agents about the business contemplated by this Agreement, that are contrary to the terms of this Agreement or the documents incorporated in this Agreement. As an inducement to our entry into this Agreement, you promise that you have made no misrepresentations in obtaining this Agreement.

(c) You have received, read and understood this Agreement, and all attachments, including a copy of our Franchise Disclosure Document ("FDD"); you received the FDD, including our standard franchise agreement and all related agreements, at least 14 calendar days prior to signing this Agreement or making any payment to us. We have fully and adequately explained the provisions of each to your satisfaction; and we have provided you ample time and opportunity to consult with your attorney and other advisors of your choosing about the potential benefits and risks of entering into this Agreement.

(d) You have received a substantially complete version of this Agreement and all attachments at least 7 calendar days before signing this Agreement.

(e) You are aware of the fact that some of our current and future franchisees may operate under

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different forms of agreement and under variations of the Apex Fun Run System and, consequently, that our obligations and rights with respect to our various franchisees may differ materially in certain circumstances. You understand that variations of the Apex Fun Run System and forms of franchise agreement will not benefit you or modify in any way your obligations under this Agreement.

(f) We reserve the right and may require you (or any transferee) to attend an interview to confirm facts and information relating to the purchase of your Apex Fun Run franchise and your decision to enter into this Agreement. We may refuse to approve and sign this Agreement until the interview has been conducted. The interview may be conducted in person, in writing or by telephone, at our option. The interview will generally be conducted within 30 days after you sign this Agreement. The interview may be audio or video recorded, in which case we will provide you with a copy of the recording. You will have no rights under this Agreement until we have approved and signed it.

IN WITNESS WHEREOF, the parties have duly executed this Agreement to be effective as of the Effective Date.

[Signature Page Follows]

**FRANCHISOR:**

Apex Fun Run, LLC, an Arizona limited liability company

By: SD  
Name: Scott Donnell  
Its: President

**YOU (If you are an entity):**

Arizona Fundraising Solutions, Inc.  
a(n) Arizona Corporation  
By: Chris J Stewart  
Name: Christopher J Stewart  
Its: President

**YOU (If you are not an entity):**

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

**Franchisee's Principal Business Address:**

793 E. Maria Ln  
Tempe, AZ 85284

APPENDIX

TO FRANCHISE AGREEMENT

1. Your legal organization (circle one): (a) sole proprietorship, (b) partnership, (c) corporation, (d) limited liability company.
2. If you are not a sole proprietor, list of all your partners, members or shareholders or others holding any ownership interest in you:

| Name and address   | % interest  | Active in Operation of Business?<br>(yes/no) |
|--|-------------|--|
| a. <u>Christopher J Stewart</u><br><u>793 E. Maria Ln.</u><br><u>Tempe, AZ 85284</u> | <u>100%</u> | <u>Yes</u>                                   |
| b. _____<br>_____<br>_____   | _____       | _____  |
| c. _____<br>_____<br>_____   | _____       | _____  |
| d. _____<br>_____<br>_____   | _____       | _____  |
| e. _____<br>_____<br>_____   | _____       | _____  |

3. If you are a corporation, attach certified copy of Articles of Incorporation and all corporate documents authorizing the corporation to enter into this Agreement. If you are a partnership, attach your Partnership Agreement. If you are a limited liability company, attach Articles of Organization and Operating Agreement or equivalent. If you are any other form of business organization, attach copies of the documents under which you were organized and authorized to enter into this Agreement.
4. List your principal business address, which will serve as your address for notices under this Agreement.

793 E. Maria Ln.  
Tempe, AZ 85284

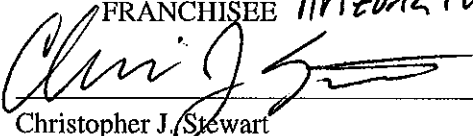
5. List each of your officers and directors:

| Name                             | Title                                  |
|----------------------------------|--|
| (a) <u>Christopher J Stewart</u> | <u>President, Secretary, Treasurer</u> |
| (b) _____                        | _____                                  |
| (c) _____                        | _____                                  |
| (d) _____                        | _____                                  |
| (e) _____                        | _____                                  |

6. Manager: \_\_\_\_\_

The undersigned certifies that all information contained in this Appendix 1 is accurate and complete, and agrees to notify Apex Fun Run LLC promptly (and in any case within 30 days) upon any change in the information required to be disclosed in this Appendix 1.

FRANCHISEE Arizona Fundraising Solutions, Inc.

  
\_\_\_\_\_  
Christopher J. Stewart

By: President  
Title

Date: 2/24/2015



**ATTACHMENT "A"**  
**TO FRANCHISE AGREEMENT**  
**CONFIDENTIALITY AGREEMENT**

*[See Attached]*

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**APEX FUN RUN LLC**  
**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (the "Agreement"), is dated 2/26/15, between Apex Fun Run LLC, an individual ("Discloser"), and Christopher J. Stewart ("Recipient"). Recipient and Discloser are sometimes referred to herein collectively as the "Parties."

**WHEREAS**, Recipient will be receiving from Discloser or its officers, directors, agents, employees, affiliates or representatives, including advisers and legal counsel (collectively, "Representatives") information of a confidential and non-public nature for use by it and its Representatives in connection with the purchase and operation of an Apex Fun Run franchise (the "Transaction"). The Parties desire to protect the confidentiality of such information in accordance with the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

**1. Confidential Information Defined.** Recipient may receive certain non-public and confidential information from Discloser or its Representative regarding Discloser's fundraising franchise, including but not limited to technical and financial information, market projections, source codes, database information, business plans and/or other confidential or proprietary information. All such technical, financial or other confidential, non-public information thus supplied by the Discloser (in any form, written or oral) is hereinafter called the "Confidential Information."

**2. Exceptions to Confidentiality.** This Agreement imposes no obligation upon the Recipient with respect to any Confidential Information disclosed under this Agreement that (a) was in the Recipient's possession before receipt from the Discloser or its Representatives; (b) is or becomes a matter of public knowledge through no fault or violation of the Recipient; or (c) is rightfully received by the Recipient from a third party who, to the Recipient's knowledge, is not under a duty of confidentiality to the Discloser. Notwithstanding any other provision of this Agreement, the Recipient may disclose Confidential Information to the extent such disclosure is required by law, rule (including any stock exchange rule), regulation or legal process or such disclosure is requested by a governmental agency or self-regulatory organization; provided, however, Recipient shall, unless to do so would be prohibited by law, give written notice of any such request for information to the Discloser, and agrees to cooperate with Discloser, at the Discloser's expense, to the extent permissible and practicable, to challenge the request or limit the scope thereof, as the Discloser may reasonably deem appropriate.

**3. Nondisclosure Obligation.** Recipient shall keep all Confidential Information received by it confidential and shall not disclose such information, in whole or in part, to any person other than (on a need-to-know basis) its Representatives. It is understood (a) that such Representatives shall be informed by Recipient of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purpose described above, (b) that such Representatives shall be required to agree to keep the Confidential Information confidential, and (c) that, in any event, Recipient shall be responsible for any breach of this Agreement by any of its Representatives. The Confidential Information shall be used by the Recipient solely in connection with its operation of an Apex Fun Run franchise, and shall not be used for any other purpose. For the purpose of complying with the obligations set forth herein, the Recipient shall use efforts commensurate with those it employs for the protection of its own confidential or sensitive information.

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**4. No Representations.**

All disclosures made hereunder are at the sole discretion of the Discloser. It is understood that this Agreement does not obligate either Party to enter into any further agreements. Discloser does not make any covenants, warranties or representations with respect to the accuracy or completeness of any Confidential Information disclosed hereunder, and Discloser shall have no liability to Recipient arising out of the use of Confidential Information supplied under this Agreement except to the extent set forth in a definitive agreement duly executed by the Parties with respect to the Transaction.

**5. Return of Information.** Upon the written request of Discloser, Recipient shall return all copies of the Confidential Information and will provide to Discloser a written certification of an officer of Recipient that Recipient has complied with this section.

**6. Miscellaneous.**

(a) Recipient's obligations hereunder shall apply to any Confidential Information provided to Recipient by Discloser, whether delivered before or after the date of this Agreement. Recipient's obligations hereunder shall survive any termination or expiration of this Agreement.

(b) All additions or modifications to this Agreement must be made in writing and must be signed by both Parties.

(c) This Agreement is made under, and shall be construed and enforced in accordance with, the laws of the State of Arizona (without giving effect to the conflict of laws rules thereunder). In the event any legal action becomes necessary to enforce or interpret the terms of this Agreement, the parties agree that such action may be brought in a court of appropriate jurisdiction in the State of Arizona. Recipient consents to personal jurisdiction in any action brought in any court, federal or state, within the State of Arizona having subject matter jurisdiction arising under this Agreement.

(d) The Recipient acknowledges that money damages may not be a sufficient remedy for any breach of this Agreement, and that, accordingly, in the event of any such breach or threatened breach, the Discloser shall be entitled to equitable relief, including an injunction or specific performance without the necessity of showing actual damages or posting a bond or security.

(e) Nothing contained herein shall in any way limit the rights or activities of either Party to deal directly with any third party so long as it complies with its obligations hereunder.

(f) If any one or more provisions of this Agreement are determined to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall remain in effect and shall not be affected by such invalidity, illegality or unenforceability.

(g) This Agreement (i) constitutes the entire agreement of the Parties with respect to the subject matter and supersedes any prior agreement or understanding with respect to the subject matter hereof and (ii) may be executed in counterparts.

*[Signature Page Follows]*

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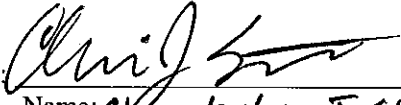
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year first above written.

**RECIPIENT:**


Arizona Fundraising Solutions, Inc.  
Christopher J. Stewart

**DISCLOSER:**

APEX FUN RUN, LLC

By:   
Name: Christopher J Stewart  
Title: President

By:   
Name: Scott Donnell  
Title: President

  
an individual

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**ATTACHMENT "B"**  
**TO FRANCHISE AGREEMENT**  
**ELECTRONIC FUNDS TRANSFER**

*[See Attached]*

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**ELECTRONIC FUNDS TRANSFER AUTHORIZATION**

Depositor hereby authorizes and requests Arizona Fundraising Solutions, Inc. (the "Depository") to initiate debit and credit entries to depositor's (select one):

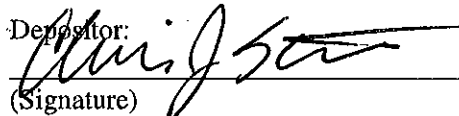
- checking account
- savings account

indicated below drawn by and payable to the order of Apex Fun Run, LLC by Electronic Fund Transfer provided there are sufficient funds in said account to pay the amount on 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: Arizona Fundraising Solutions, Inc.  
Account Name (if different): \_\_\_\_\_  
City: Tempe State: AZ Zip Code: 85284  
Transit/ABA Number: 122105278 Account Number: 6811010138

This authority shall remain in full force and effect until Apex Fun Run, LLC and Depository have received at least thirty (30) days' written notification from Depositor of its termination to afford Apex Fun Run, LLC and Depository a reasonable opportunity to act on such request.

Depositor:   
(Signature)

Christopher J Stewart  
(Print Name)

2/24, 2015  
(Date Signed)

Please attach a voided blank check, for purpose of setting up Bank and Transit Numbers

**ATTACHMENT "C"**  
**TO FRANCHISE AGREEMENT**  
**PERSONAL GUARANTY OF FRANCHISEE**

*[See Attached]*

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## GUARANTY

1. As an inducement to Apex Fun Run, LLC (“we,” “our” or “us”) to execute that certain Franchise Agreement (including any future amendments thereto) with Christopher J. Stewart (“Franchisee”) dated as of 2/26/15, a copy of which is attached hereto, (the “Franchise Agreement”), each of the undersigned for themselves, their heirs, successors, and assigns, do jointly and severally, hereby absolutely and unconditionally warrant to us and our parent, successors and assigns that all representations of Franchisee contained in both the Franchise Agreement and the application submitted in connection therewith are true and correct. The undersigned also jointly and severally agree to be personally bound by each and every covenant, term, condition, agreement and undertaking (including, without limitation, the timely payment and performance of all of Franchisee's obligations under the Franchise Agreement and all restrictive covenants, such as confidentiality, noncompetition and transfer restrictions), contained and set forth in the Franchise Agreement, and the full and prompt payment of any amounts, costs, expenses, claims, charges or liabilities incurred by us under the Franchise Agreement or this Guaranty, including attorneys' fees and costs, related to the making, performance, or enforcement of the Franchise Agreement or this Guaranty, and agree that this Guaranty shall be construed as though the undersigned and each of them executed agreement(s) containing the identical terms and conditions of the Franchise Agreement.

2. If more than one person has executed this Guaranty, the term “the undersigned” as used herein, shall refer to each such person, and the liability of each of the undersigned hereunder shall be joint and several and primary as sureties.

3. The undersigned hereby agree that without the consent of or notice to any of the undersigned and without affecting any of the obligations of the undersigned hereunder: (a) any term, covenant or condition of the Franchise Agreement may be amended, compromised, released or otherwise altered by us and the Franchisee, and the undersigned do guarantee and promise to perform all the obligations of the Franchisee under the Franchise Agreement as so amended, compromised, released or altered; (b) any guarantor of or party to the Franchise Agreement may be released, substituted or added; (c) any right or remedy under the Franchise Agreement, this Guaranty or any other instrument or agreement between us and the Franchisee may be exercised, not exercised, impaired, modified, limited, destroyed or suspended; and (d) we or any other person may deal in any manner with the Franchisee, any of the undersigned, any party to the Franchise Agreement or any other person.

4. Should Franchisee be in breach or default under the Franchise Agreement, we may proceed directly against any or each of the undersigned without first proceeding against or notifying the Franchisee and without proceeding against any others of the undersigned. Upon notice from us that Franchisee has failed to pay monies due and owing to us under the Franchise Agreement, any and each of the undersigned agree to cure any monetary default within thirty (30) business days from such notice.

5. Notice to and demand upon Franchisee or any of the undersigned shall be deemed notice to or demand upon Franchisee and all of the undersigned, and no notice or demand need be made to or upon any or all of the undersigned. The cessation of or release from liability of Franchisee or any of the undersigned shall not relieve any other of the undersigned from liability hereunder or under the Franchise Agreement, except to the extent that the breach or default has been remedied or monies owed have been paid.

6. Upon the death of an undersigned, the estate of such undersigned shall be bound by this Guaranty but only for defaults and obligations hereunder existing at the time of death. The obligations of the surviving undersigned shall continue in full force and effect.

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7. This Guaranty constitutes a guaranty of payment and performance and not of collection, and each of the undersigned specifically waives any obligation we may have to proceed against the Franchisee on any money or property held by the Franchisee or by any other person or entity as collateral security, by way of set off or otherwise. The undersigned further agree that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment or any of the guaranteed obligations is rescinded or must otherwise be restored or returned by us upon the insolvency, bankruptcy or reorganization of the Franchisee or any of the undersigned, all as though such payment has not been made.

8. The undersigned expressly acknowledge that the obligations hereunder survive the termination of the Franchise Agreement.

9. Any waiver, extension of time or other indulgence granted by us or our agents, successors or assigns, with respect to the Franchise Agreement shall in no way modify or amend this Guaranty which shall be continuing, absolute, unconditional and irrevocable. This Guaranty may be assigned by us voluntarily or by operation of law without reducing or modifying the liability of the undersigned hereunder.

10. Our failure to enforce all or any portion of our rights under this Guaranty shall not constitute a waiver of our ability to do so at any point in the future.

11. Any litigation initiated under this Guaranty may be instituted exclusively at our discretion in state or federal court in the County and state in which our principal executive offices are located at the time of bringing suite. The undersigned expressly agree that they are subject to the jurisdiction and venue of those courts for purposes of such litigation. The undersigned hereby waive and covenant never to assert any claim that they are not subject to personal jurisdiction in those courts or that venue in those courts is for any reason improper, inconvenient, prejudicial or otherwise inappropriate (including, without limitation, any claim under the judicial doctrine of forum non conveniens).

12. Except to the extent governed by federal law, this Guaranty is to be exclusively construed in accordance with and/or governed by the law of the State of Arizona without recourse to any other choice of law or conflicts of law principles. If, however, any provision of this Guaranty would not be enforceable under the laws of Arizona, and if the business franchised under the Franchise Agreement is located outside of Arizona and the provision would be enforceable under the laws of the state in which the franchised business is located, then the provision (and only that provision) will be interpreted and construed under the laws of that state. Nothing in this Guaranty is intended to invoke the application of any franchise, business opportunity, antitrust, implied covenant, unfair competition, fiduciary or other doctrine of law of the State of Arizona or any other state, which would not otherwise apply.

13. If we choose to proceed against the undersigned under this Guaranty, and we prevail, the undersigned shall reimburse us our costs and expenses associated with the litigation, including our reasonable attorneys' fees, court costs and expenses.

14. The undersigned hereby specifically waives, presentment, notice, notice of protest, demand, notice of dishonor, and notice of default with respect to any obligation set forth in the Franchise Agreement or this Guaranty.

*[Signature Page Follows]*

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IN WITNESS WHEREOF, each of the undersigned has executed and delivered this Guaranty as of the date of the Franchise Agreement.

Witness:



Witness:

\_\_\_\_\_

Guarantors:

\_\_\_\_\_  
Christopher J. Stewart , Legal Signature

Address: 793 E. Maria Ln.

Tempe, AZ 85284

Telephone No.: 480 656 1611

Social Security No.: 330 60 3060

\_\_\_\_\_  
GUARANTOR2, Legal Signature

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

**ATTACHMENT "D"**  
**TO FRANCHISE AGREEMENT**  
**INTERNET WEBSITES AND LISTINGS AGREEMENTS**

*[See Attached]*

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## Internet Web Sites And Listings Agreement

THIS INTERNET WEB SITES AND LISTINGS AGREEMENT (the "Internet Listing Agreement") is made and entered into as of the 26 day of February, 2015 (the "Effective Date"), by and between Apex Fun Run, LLC, an Arizona limited liability corporation (hereinafter "we," "us," "our," or the "Company"), and Christopher J. Stewart ("you"), whose principal address is shown on Appendix 1 to that certain Apex Fun Run, LLC Franchise Agreement of even date herewith (the "Franchise Agreement").

### RECITALS

WHEREAS, you desire to enter into the Franchise Agreement; and

WHEREAS, we would not enter into the Franchise Agreement without your agreement to enter into, comply with, and be bound by all the terms and provisions of this Internet Listing Agreement;

NOW, THEREFORE, 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 Internet Listing Agreement shall have the meanings set forth in the Franchise Agreement. "Termination" of your 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. You have, or will acquire during the Term of the Franchise Agreement, certain right, title, and interest in and to certain domain names, hypertext markup language ("html"), uniform resource locator ("url") addresses, and access to corresponding Internet web sites, and the right to hyperlink to certain web sites and listings on various Internet search engines (collectively, the "Internet Web Sites and Listings") related to your Apex Fun Run Franchise or the Company's trademarks (all of which right, title, and interest is referred to herein as your "Interest").

2.2 Transfer. On Termination of the Franchise Agreement, if we direct you to do so, you will immediately direct all Internet Service Providers, domain name registries, Internet search engines, and other listing agencies (collectively, the "Internet Companies") with which you have Internet Web Sites and Listings: (i) to transfer all your Interest in such Internet Web Sites and Listings to us; and (ii) to execute such documents and take such actions as may be necessary to effectuate such transfer. In the event we do not desire to accept any or all such Internet Web Sites and Listings, you 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 we direct.

2.3 Appointment; Power of Attorney. You hereby constitute and appoint us and any officer or agent of ours, for our benefit under the Franchise Agreement and this Internet Listing Agreement or otherwise, with full power of substitution, as your true and lawful attorney-in-fact with full power and authority in your place and stead, and in your name or the name of any affiliated person or affiliated company of yours, on Termination of the Franchise Agreement, to take any and all appropriate action and

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to execute and deliver any and all documents that may be necessary or desirable to accomplish the purposes of this Internet Listing Agreement. You further agree that this appointment constitutes a power coupled with an interest and is irrevocable until you have satisfied all your obligations under the Franchise Agreement and any and all other agreements to which you and any of your affiliates on the one hand, and we and any of our affiliates on the other, are parties, including without limitation this Internet Listing Agreement. Without limiting the generality of the foregoing, you hereby grant to us the power and right to do the following:

2.3.1 Direct the Internet Companies to transfer all your Interest in and to the Internet Web Sites and Listings to us;

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 effect such transfer or termination of your Interest.

2.4 Certification of Termination. You hereby direct the Internet Companies to accept, as conclusive proof of Termination of the Franchise Agreement, our written statement, signed by an officer or agent of ours, that the Franchise Agreement has terminated.

2.5 Cessation of Obligations. After the Internet Companies have duly transferred all your Interest in such Internet Web Sites and Listings to us, as between you and us, you will have no further interest in, or obligations under, such Internet Web Sites and Listings. Notwithstanding the foregoing, you will remain liable to each and all of the Internet Companies for the sums you are obligated to pay such Internet Companies for obligations you incurred before the date we 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. You hereby release, remise, acquit, and forever discharge 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. You are solely responsible for all costs and expenses related to your performance, your nonperformance, and our enforcement of this Agreement, which costs and expenses you will pay us in full, without defense or setoff, on demand. You agree that you will indemnify, defend, and hold harmless us and our affiliates, and the directors, officers, shareholders, partners, members, employees, agents, and attorneys of us and our affiliates, and the successors and assigns of any and all of them, from and against, and will reimburse us 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 us hereunder are solely to protect our interests and shall not impose any duty on us to exercise any such powers. You expressly agree that in no event shall we be obligated to accept the transfer of any or all of your Interest in any or all such Internet Web Sites and Listings.

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3.4 Further Assurances. You agree that at any time after the date of this Internet Listing Agreement, you 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 our rights and powers, and all your obligations, under this Internet Listing Agreement shall be binding on your 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 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 your obligations under this Internet Listing Agreement shall be joint and several.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Internet Listing Agreement as of the Effective Date.

Apex Fun Run Inc.   
By: Scott Donnell  
Title: President, Managing Member

Arizona Fundraising Solutions, Inc.  
Christopher J. Stewart  
By:   
Title: President