

FIRST AMENDMENT TO MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT (this “Amendment”) is entered into as of April 1, 2025 (the “Effective Date”) by and between DEXTER COMMUNITY SCHOOLS, a Michigan general powers school district, whose address is 2704 Baker Rd., Dexter, MI 48130 (the “School District”), and CHELSEA HEALTH & WELLNESS FOUNDATION, a Michigan nonprofit corporation, whose address is 14800 E. Old Us Hwy 12, Chelsea, MI 48118 (the “Foundation”) (collectively the “Parties”).

R E C I T A L S

WHEREAS, School District and Foundation are parties to a Management Agreement dated April 26, 2024 (“Management Agreement”), pursuant to which the Foundation manages for the District the Dexter Wellness Center located at 2810 Baker Road, Dexter, MI 48130 (“Wellness Center”);

WHEREAS, Foundation has entered into a Sub Management Agreement dated April 1, 2025, (“Sub Management Agreement”) with Power Wellness Management LLC, an Illinois limited liability company (“Power Wellness”) pursuant to which Power Wellness sub manages the Wellness Center for the Foundation;

WHEREAS, the current term of the Management Agreement is set to expire on March 31, 2025, and School District and Foundation desire to extend the term of the Management Agreement to March 31, 2027;

WHEREAS, School District and Foundation desire to amend the Management Agreement, as set forth below;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, School District and Foundation agree as follows:

AGREEMENT:

Paragraph 2 of the Management Agreement is deleted and replaced with the following:

Management Agreement Certification. Attached as Exhibit A to this Amendment is a true and complete copy of the Sub Management Agreement and said Sub Management Agreement has not been amended, rescinded, modified, subject to any oral or written modification, and remains in full force and effect as of the date hereof, and Foundation has not assigned or delegated any of its duties under the Sub Management Agreement.

Paragraph 3 is deleted and replaced with the following:

The “Term” shall be from April 1, 2025 through March 31, 2027.

Paragraph 5: The following is added to Paragraph 5:

Notwithstanding anything to the contrary contained in this Agreement, Foundation shall be excused from its obligation to operate the Facility in conformity with the terms of this Agreement: (1) to the extent a material breach by School District of any provision hereof prevents such performance, but only after Foundation provides School District with written notice of said breach and a reasonable opportunity to cure (but no less than fifteen (15) business days and if in the case of breach which cannot, by its nature be cured within such fifteen (15) business day period, then within such longer period reasonably necessary to effectuate a cure thereof); or (2) School District places a limitation on Foundation's ability to expend funds which were previously part of an approved budget in respect of the Facility provided that the failure to expend funds by reason of the operation of such limitation shall reasonably prevent Foundation from meeting the terms of this Agreement and Foundation has provided prior written notice to School District of such inability and the reason for such inability to perform. It is expressly understood and agreed that each and every provision contained in this Agreement pursuant to which Foundation is excused from its obligation to operate the Facility in conformity with the terms of this Agreement shall operate without prejudice to any other remedy (including the right to terminate this Agreement) which Foundation shall have under the terms of this Agreement.

Paragraph 6: The first sentence is deleted and replaced with the following:

In satisfaction of its duties and obligations, Foundation shall continue to provide oversight of Power Wellness as the Sub Manager under the Sub Management Agreement.

The third sentence is deleted and replaced with the following:

Notwithstanding Foundation's delegation of its duties to Power Wellness, Foundation shall remain directly, primarily, and fully responsible to School District for both the Foundation and Power Wellness' obligations under the Sub Management Agreement.

Paragraph 10: The following sentence is added to the beginning of the Paragraph:

All bank accounts related to the operation of the Wellness Center are owned by and shall be established in the name of School District.

Paragraph 11: The second sentence is deleted and replaced with the following:

School District's approval must be granted or denied in writing within 10 days of School District's receipt of the notice from Foundation.

Paragraph 11(d): Subsection 11(d) is deleted.

Paragraph 12 is deleted and replaced with the following:

Insurance.

a. School District's Insurance Obligation. The School District shall secure and maintain insurance against damage to or destruction of the Wellness Center and shall be the "loss payee"

for such insurance. Such insurance may be obtained through a commercial policy, a risk management pool, or a self-funded program at the School District's discretion.

b. Insurance Inspections and Compliance. The Foundation acknowledges that the School District's insurance provider may conduct inspections of the premises. The Foundation agrees to comply with any reasonable requirements and recommendations made by the insurer's risk management professionals to maintain coverage and ensure the safety and integrity of the property. If any such requirements or recommendations include repairs or improvements to the Wellness Center, these shall be completed at School District's sole expense.

d. Foundation Liability Insurance.

(i) Foundation shall procure and maintain continuously throughout the Term of this Agreement from such companies as are listed in the most current "Best's Insurance Guide" as possessing a minimum policyholder rating AM Best rating of at least A- VIII. It is agreed that the following required liability insurance may be met by a combination of primary and umbrella/excess policies, provided the umbrella excess policies must follow from the underlying policy or include the appropriate endorsements to comply with the requirements set forth herein.

- a. The Foundation shall maintain comprehensive general liability insurance with coverage of no less than \$5,000,000 per occurrence for bodily injury, property damage, and personal injury liability, naming the School District as an additional insured on a primary and non-contributory basis.
- b. (i) Workers' Compensation Insurance with statutory limits or a State Certificate of self-insurance, and (ii) Employer's Liability coverage with limits of not less than \$500,000 per occurrence.
- c. Any time that Foundation actions under the Management Agreement involves the use of owned, hired and/or non-owned vehicles, Foundation shall procure and maintain Automobile Liability Insurance covering all owned, hired and non-owned vehicles with limits of not less than \$1,000,000 combined single limit per occurrence.

(ii) The Foundation's liability insurance policies shall include specific endorsements stating:

- a. The School District and its insurers, including MAISL, shall not be called upon to provide any coverage, whether primary, excess, umbrella, or contributory, for claims arising solely out of the Foundation's management of the Wellness Center.
- b. The Foundation's insurance is primary and non-contributory for claims arising solely out of the Foundation's management of the Wellness Center.

(iii) The Foundation's insurance coverage limits shall serve as the sole source of recovery for any claims, damages, or losses arising solely from the Foundation's management of the Wellness Center. The Foundation expressly acknowledges that any

judgment, settlement, or award arising solely from the Foundation's management of the Wellness Center shall be limited to the liability coverage maintained by the Foundation, and the School District's insurers, including MAISL, will not provide coverage beyond this limit.

(iv) Certificates of insurance naming the School District as additional insureds, with the required endorsements, must be provided to the School District before occupancy and upon policy renewal. These certificates shall confirm that:

- a. Coverage cannot be canceled or materially altered without 30 days' prior written notice to the School District.
- b. Policies include a waiver of subrogation in favor of the School District and its insurers.

e. Exclusion of School District's Liability Coverage.

(i) It is expressly agreed that the School District's insurance policies, including MAISL policies, shall not provide liability coverage or contribute to any judgment, settlement, or award arising solely from the Foundation's management of the Wellness Center. The only exception is for defense costs incurred to secure dismissal or withdrawal of the School District from legal proceedings.

(ii) The Foundation acknowledges and agrees that the School District's insurers, including MAISL, shall not be responsible for any liability or damages exceeding the coverage limits maintained by the Foundation in the event of any judgment, settlement, or award arising solely from the Foundation's management of the Wellness Center.

(iii) In the event of mediation, litigation, or any legal proceedings, the School District shall present this agreement as evidence to confirm that:

- o The Foundation's insurance limits define the sole available coverage for claims arising solely from the Foundation's management of the Wellness Center.
- o No excess, umbrella, or supplementary liability coverage is available through the School District or its insurers for claims arising solely from the Foundation's management of the Wellness Center.

(iv) Nothing in Paragraph 12 of this Amendment is intended to preclude the potential application of the School District's liability insurance policies for claims arising from independent actions of the School District and/or its ownership of the Wellness Center.

f. Catastrophic Events and Natural Disasters.

(i) In the event of damage to the Wellness Center caused by natural disasters, such as tornadoes, floods, or earthquakes, the School District's insurance shall cover structural repairs or rebuilding costs.

(ii) If damage to the Building is caused by the Foundation's management of the Wellness Center, the Foundation's liability insurance shall fully cover repair or replacement costs on a primary and non-contributory basis.

g. Mediation and Legal Defense Provisions.

(i) In the event of a legal claim involving the Foundation's management of the Wellness Center, the Foundation agrees to indemnify and defend the School District against all claims, except those arising solely from the gross negligence or willful misconduct of the School District.

(ii) The Foundation's defense obligation includes reimbursement of the School District's legal costs, including attorney fees, associated with securing dismissal or withdrawal from any lawsuit.

(iii) The Foundation's insurance policies must explicitly include coverage for contractual indemnification obligations as outlined in this Agreement.

h. Carrier Change Provisions.

(i) Carrier Changes During Term: The School District's current insurance carrier is part of a risk management trust pool. However, the carrier may change during the term of this agreement. In the event of a change in either the School District's or Foundation's insurance policy, the responsible party shall promptly notify all relevant parties, including details regarding the terms and coverage of the new carrier.

(ii) Adjustment of Terms: Should the terms and conditions of the policy change, including coverage limits, deductibles, premiums, or any other relevant factors, updates must be provided. If the School District's carrier changes, the School District shall inform the Foundation as soon as possible before the effective date. If the Foundation's carrier changes, the Foundation shall notify the School District, and any necessary adjustments to this agreement will be made in writing and agreed upon by both parties within 90 days of the change.

(iii) Approval Process: If the Foundation obtains insurance from a new carrier, the policy must meet the minimum requirements specified in this agreement. The terms and conditions of the Foundation's new insurance policy must be reviewed and approved by the School District within 90 days of the carrier change.

(iv) Notification Requirement: In the event of a change in insurance carrier, the responsible party must promptly notify all relevant parties, providing the new carrier's identity, the effective date of the change, and any modifications to the policy coverage.

(v) Revisions to Requirements: Should there be any revisions or changes in coverage requirements due to the change in carrier, all parties will collaborate to update the agreement to reflect these changes and ensure continuous coverage with no lapse.

Paragraph 13: Delete the first two sentences and replace with the following:

Section 13 (c) of the Sub Management Agreement identifies Foundation and School District as the owners of the “Shared Data”, which includes membership and financial data. After the Purchase, Foundation and School District shall be considered owners of the Shared Data.

Delete the fourth sentence and replace with the following:

Foundation shall have equal ownership rights in the Shared Data that is created after this Agreement’s Effective Date.

Paragraph 15 is deleted and replaced with the following:

School District shall not enter into any leases with a third party during the term of this Agreement without the prior written approval of Foundation, which cannot be unreasonably withheld, conditioned, or delayed.

Paragraph 16: is deleted and replaced with the following

Management Fee. School District will pay Foundation a Management Fee of \$18,000 annually, payable in monthly payments of \$1,500

Paragraph 17 is deleted and replaced with the following:

Liaison: Each Party shall appoint a qualified liaison (“Liaison”) who will actively engage in the oversight, coordination, and success of the facility’s operations and the performance of this Agreement. The Liaison shall serve as the primary point of contact between the Parties to ensure effective communication, collaboration, and issue resolution. In the event that a Liaison retires, is unable, or unwilling to continue serving in this role, the respective Party shall appoint a temporary or replacement within forty-five (45) days. Any replacement Liaison shall be qualified with the responsibilities of the role and subject to the other Party’s approval, which shall not be unreasonably withheld, and must be commercially reasonable. The initial Liaison for the School District shall be Sharon Raschke. The initial Liaison for the Foundation shall be Steve Petty.

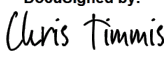
Paragraph 20: The last sentence of Paragraph 20 is deleted.

Signatures on Following Page

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed on the day and year first above written.

SCHHOL DISTRICT:

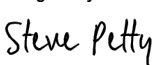
DEXTER COMMUNITY SCHOOLS,
a Michigan general powers school district

By: 

Christopher Timmis, Ed.D.
Superintendent

FOUNDATION:


**THE CHELSEA HEALTH AND WELLNESS
FOUNDATION**, a Michigan nonprofit corporation

By: 

Steve Petty
Chief Executive Officer

**ACKNOWLEDGED AND CONSENTED TO SUBJECT TO THE TERMS AND
PROVISIONS OF THE SUB MANAGEMENT AGREEMENT BY:**

POWER WELLNESS MANAGEMENT, LLC
an Illinois limited liability company

By: 

Print Name: Brian Hummert, President
Title: President

EXHIBIT A
Sub Management Agreement

SUB MANAGEMENT AGREEMENT

THIS SUB MANAGEMENT AGREEMENT dated April 1, 2025 (the “Agreement”) is hereby entered into by and between **5 HEALTHY TOWNS FOUNDATION, a Michigan nonprofit corporation** (“Foundation”) and **POWER WELLNESS MANAGEMENT, LLC.**, an Illinois limited liability corporation (“Manager”), individually known as a (“Party”) and collectively known as the (“Parties”).

RECITALS:

WHEREAS, Foundation is a nonprofit charitable institution whose mission is to cultivate improvements in personal and community wellness for the populations geographically located in the school districts of Chelsea, Dexter, Grass Lake, Manchester, and Stockbridge, Michigan (the “Service Area”) through stewardship of its resources, innovative and collaborative grants, and engagement of the community residents in the pursuit of healthy life choices (the “Mission”). Providing or managing community health and wellness centers to the general public, including the Center covered by this Agreement, is one way the Foundation fulfills its charitable mission.

WHEREAS, pursuant to a Purchase Agreement dated April 26, 2024, Dexter School District (“School District”) purchased from Foundation the Dexter Wellness Center (“Center” or “Facility”) located at 2810 Baker Road, Dexter, Michigan 48130.

WHEREAS, School District requested and Foundation agreed to manage the Wellness Center after the Purchase under the terms and conditions set forth herein and has entered into a Management Agreement with the School District, dated April 26, 2025.

WHEREAS, Foundation requested and Manager agreed as ,sub manager, to manage the Dexter Wellness Center after the Purchase under the terms and conditions set forth herein.

WHEREAS, Foundation shall continue in its oversight role of Power Wellness as the “Manager” under this Sub-Management Agreement. Notwithstanding Foundation’s delegation of its duties to Power Wellness, Foundation shall remain directly, primarily, and fully responsible to School District for the obligations of Foundation and Manager under this Sub-Management Agreement. Foundation will manage day-to-day direction of this Sub-Management Agreement and all communication to Power Wellness shall be exclusively through the Foundation.

WHEREAS, Manager has experience in providing management, administrative and professional services similar to the Center and is capable of delivering such services in accordance with Foundation’s Mission.

WHEREAS, Foundation desires to engage Manager as an independent contractor to manage and operate the Facility (the “Services”) (as specified in Exhibit A) on behalf of Foundation in accordance with Foundation’s Mission, and Manager desires to accept such engagement.

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereto do hereby agree as follows:

Section 1. TERM.

(a) The term of this Agreement shall commence on April 1, 2025, and shall continue for two (2) years. Either Party may terminate this Agreement for cause by providing one hundred ten (110) days written notice or, in the event of a breach by a Party, such shorter period set forth in Section 9 below.

(b) Upon termination of this Agreement, except as otherwise provided in this Agreement, each Party shall promptly (within five (5) days) return to the other Party all property and confidential information of the other Party in such Party's possession or control (which shall include property and confidential information in the possession or control of a Party's contractors or subcontractors), including all copies thereof. Specifically, Manager agrees to return to Foundation and / or School District all records pertaining to the Facility, including but not limited to clients and program participants, financial reports and corporate strategies of Foundation and / or School District or its affiliates, product invoices, production reports and procurement documentation, provided that Manager may retain copies of such documentation to the extent necessary to comply with legal and or auditing requirements, and subject to the ongoing obligation to maintain the confidentiality of such information. Such documentation includes financial reports, operational key indicators, and information pertaining to Manager's insurance obligations.

(c) In the event of termination or expiration of this Agreement for any reason, neither Party shall have any further obligations hereunder, except for obligations accruing prior to the date of termination and the obligations surviving in accordance with specific provisions of this Agreement, including without limitation the responsibility for indemnification and confidentiality.

(d) Upon termination or expiration of this Agreement, the parties shall reasonably cooperate to facilitate a seamless transition of all services being provided pursuant to this Agreement, including but not limited to providing Foundation and / or School District with all working files, excluding Manager's work product, (defined below) and documents related to the Services in a mutually agreed upon format, and returning (at Foundation's cost) to Foundation and/or School District all Data (defined below) and other property of Foundation and/or School District and any affiliates that are in the possession of Manager.

Section 2. USE AND OPERATION OF THE FACILITY.

2.1 Use and Standard of Operation - Services.

(a) Management services are described in Exhibit A ("Management Services" or "Services"). All Management Services shall be provided in a timely, professional, competent, efficient and workmanlike manner, by individuals who are (i) qualified by training and experience in professional health and wellness center operations, and (ii) knowledgeable about regulatory requirements applicable to health and wellness center operations. Manager agrees to operate the Facility in the best interests of Foundation and in accordance with the Mission and in a professional businesslike, effective and cost-efficient manner as the agent of and for the benefit of Foundation, subject to Foundation's budgetary systems, accounting and other instructions and constraints and in compliance with this Agreement and the Mission. Manager shall use the Facility solely for the

operation of a health and wellness facility and for other activities which are customary and usual in connection with operation of such Facility and which are in accordance with Foundation's Mission. Manager, as agent of Foundation, shall:

- Manage the operation of the Facility in the ordinary course of business, including the right to negotiate and enter into such reasonable contracts in the name and at the expense of School District as may be reasonably necessary in connection with the operation of the Facility;
- Determine the terms of labor policies for Power Wellness Employees (including wage rates, the hiring and discharging of employees, and the installation of employee retirement or other benefit plans);
- Recommend to Foundation hours of operation for the Facility
- Recommend to Foundation services to be provided at the Facility, including classes

(b) Manager and Foundation will be jointly responsible for establishing pricing, promotion and publicity relating to the Facility based on their respective understanding of the Mission and market, however, the final decision regarding same shall be made by Foundation.

(c) All acts performed by Manager pursuant to the terms of this Agreement shall be for the account and benefit of Foundation and at Foundation's or School District's expense, except such acts which are a breach or outside the scope of Manager's authority under this Agreement or which constitute negligence or willful misconduct.

(d) Manager shall engage all such personnel as may be reasonably necessary and appropriate for the timely and efficient provision of the Services. All employees of the Center will be employees of Manager. Foundation retains the right to increase or decrease the human resource budget for individuals providing wellness or administrative services. Manager, as an independent contractor, retains all the rights and privileges of an employer as to Manager's personnel including, but not limited to, the right to hire, direct, discipline, compensate, and terminate its employees assigned to Facility. Manager shall be solely responsible for all aspects relating to the recruitment, employment, labor law compliance, compensation of (including the payment rate and benefits, and the withholding, reporting and payment of all payroll taxes and other withholdings) with respect to all such personnel. Foundation will cause School District to ~~will~~ reimburse Manager for the Centers' payroll cost as detailed in a written invoice, monthly on the 10th day of each month for the total aggregate compensation (including performance bonuses) for the current month, which includes allocations and amounts for Manager's cost of payroll taxes, human resources and legal services, fringe benefits and related administrative costs (health insurance, dental insurance, life insurance, 401(k) match, long term disability insurance, and employee assistance program), manager's insurance (See Section 6) and related risk management costs. The costs in this Section shall be charged at a rate of thirty one (31%) of cash compensation and will be adjusted in accordance with market conditions for such costs and set forth in each annual operating budget.

(e) Foundation will cause School District to ~~will~~ reimburse Manager for the direct costs for any employees of Manager working on matters directly related to operation of the Center,

together with third party payroll processing charges and any general expenses, at cost, an estimate of which must be provided to and approved in writing (includes annual budget approval) by Foundation and School District prior to commencement of the work. Foundation will cause School District to reimburse manager at the rate of \$.25 per member per month for estimated costs relating to Cyber Liability, HIPAA training and HIPAA compliance.

(f) Manager represents and warrants that all Facility Employees have and will maintain the requisite certifications, licensure, training, expertise, ability, and legal right to render services required under this Agreement, including the right to work in the United States. All Manager Personnel shall undergo a criminal background check, including a check of sexual predator status, negative for any criminal convictions or pleas, including no contest pleas, other than for minor traffic violations, prior to being assigned to the Facility. Such background check shall, at a minimum, include statewide correspondence checks for each state in which the individual has resided during the thirty-six (36) months prior to being assigned to the Facility, and any other screening required by applicable law, regulation, and Foundation's or School District's policies. Manager Personnel assigned to the Facility may be required, at Foundation's option, to attend one or more orientation programs or other in-service programs presented by Foundation.

(g) Except as otherwise agreed by Foundation, Manager shall use its best efforts to maintain the continuity of Manager Personnel.

(h) At any time, and at the sole discretion of Foundation, and in accordance with federal and state laws, if any Manager Personnel (i) does not meet the applicable qualifications to provide services hereunder, including but not limited to a high degree of aptitude, ethical behavior, positive attitude, and good interpersonal relationships; (ii) is subject to a judicial or administrative order or enters into a consent decree or other settlement with respect to fraud or other wrongdoing, or is suspended or excluded or debarred from any federal program; (iii) takes any action that places participant health or safety in imminent and serious danger, as reasonably determined by Foundation or Manager; or (iv) is otherwise unacceptable to Foundation, then Manager will immediately remove said Manager Personnel and replace with an individual acceptable to Foundation as soon as reasonably possible. Foundation has the right to require that Manager's Personnel leave the Facility at any time that Foundation reasonably determines whether it is necessary or desirable.

(i) Notwithstanding anything to the contrary contained in this Agreement, Manager shall be excused from its obligation to operate the Facility in conformity with the terms of this Agreement to the extent and whenever there shall occur any material breach by Foundation of any provision hereof, or any provision within the Management Agreement by and between the Foundation and Dexter School District, after written notice to Foundation and an opportunity to cure, which breach would prevent Manager from performing the Services, or Foundation places a limitation on Manager's ability to expend funds in respect of the Facility provided that the failure to expend funds by reason of the operation of such limitation shall reasonably prevent Manager from meeting the terms of this Agreement and Manager has provided prior written notice to

Foundation of such inability and the reason for such inability to perform. It is expressly understood and agreed that each and every provision contained in this Agreement pursuant to which Manager is excused from its obligation to operate the Facility in conformity with the terms of this Agreement shall operate without prejudice to any other remedy (including the right to terminate this Agreement) which Manager shall have under the terms of this Agreement.

(j) Foundation or School District shall maintain all state and federal licenses, registrations, and certifications necessary to conduct its business and shall provide copies of said licenses, registrations and certificates to Manager. Foundation or School District shall be the sole owner and holder of Facility specific licenses, permits, certifications and contracts, however, Manager will provide any necessary assistance in obtaining and retaining any such licenses, permits, certifications and contracts.

(k) **Ownership.** Any materials or brochures, records, data, information, artwork, images, reports, formulas, processes, ideas, inventions, techniques, documentation, databases, computer programs, fitness assessment forms, fitness and exercise programs, marketing and operational materials (including charts, notes, outlines and drafts) developed or generated by Manager for the use by Foundation or School District or the Facility in connection with the Services provided pursuant to this Agreement (“Work Product”) and all data collected from Facility clients, participants, Foundation or School District affiliates (“Data”) are works made for hire owned by Foundation or School District as of the date of creation and are not, at any time during or after the term of this Agreement, to be utilized, distributed, copied or otherwise employed by Manager (except to provide Services for the Facility), without the prior written consent of Foundation. To the extent Manager uses pre-existing templates in providing the Services hereunder, that Manager uses in the performance of services to its other clients, Foundation or School District shall have ownership rights only in the data in the records prepared exclusively for Foundation or School District and shall have no ownership in the general templates. The Parties acknowledge and agree that the other Party has its own intellectual capital, goodwill, technical know-how, membership related data and documents, computer programs, data, financial reports, policies, procedures, secret shop forms, membership surveys, sales reports, forms, marketing materials, quality assurance and control materials, forms and documents training and education materials, expertise and best practices that such Party has developed, and ownership rights to those materials are not transferred to the other Party. For example, the materials developed by Manager through its general consultant and management services and practices shall be considered "Manager Owned Materials". Any Manager Owned Materials provided to Foundation for use at the Facility shall remain the sole and exclusive property of Manager.

(l) **Data Aggregation and Use.** Manager may only aggregate Data for use in Facility operations, to generate reports for Foundation or to analyze de-identified aggregated data as follows. Foundation acknowledges that Foundation is part of a group of fitness and wellness centers that Manager manages collectively. To the extent Manager prepares and analyzes combined statistical data for all or a portion of the centers it manages for the benefit of the Facility

and its other clients, Manager is authorized to use only de-identified data as part of its collective statistical data analysis, and its general reports for clients only. Upon termination of this Agreement or upon request of Foundation, Manager shall promptly return all Data to Foundation. Manager is strictly prohibited from using (for any purpose other than providing Services hereunder), sharing, transferring or selling Data or aggregated Data unless otherwise approved.

2.2 Leases and Concessions. Manager shall not, without the approval of Foundation, enter into leases or concessions for any Facility operations or for any other operation in or about the Facility. Any such lease or concession so approved shall be entered into in Foundation and / or School District's name and shall be executed by Foundation or School District (or Manager, if directed by Foundation to function as agent for Foundation). Manager shall, during the Term, use reasonable efforts to perform, as agent for Foundation, all of the obligations of Foundation as landlord or concessionaire under all present or future leases and concessions made or granted with respect to the Facility. Manager shall during the term hereof use reasonable efforts to perform all of the obligations concerning the granting of concessions and shall use reasonable efforts to collect the sums due from such concessions and shall deposit same in the Operating Accounts.

2.3 Bank Accounts. There shall be deposited in a bank or banks designated by Foundation or School District and in accounts established in School District's name all monies received by Manager from the operations of the Facility ("Operating Accounts"). School District and Manager shall be designated as an authorized signatory on any Operating Accounts set up hereunder. Upon approval by Foundation, Manager shall pay out of the Operating Accounts, to the extent of the funds from time to time therein, agreed upon costs and expenses incurred in connection with the operation of the Facility and all other amounts required to perform its obligations hereunder. Foundation will cause the School District to ~~shall~~ pay certain costs and expenses incurred in connection with the operation of the Facility and provide Manager with a description of such costs and expenses on a monthly basis for purposes of financial reporting.

2.4 Limitation on Manager's Authority. Except as otherwise provided in this Agreement, throughout the Term, Foundation shall retain all authority and control over the business, policies, operations and assets of the Facility. Manager shall obtain Foundation's prior written consent, which Foundation may withhold in its sole discretion, before entering into agreements with any subcontractors who may supply any services related to this Agreement. Manager agrees that the engagement of any subcontractor shall in no way diminish, reduce, modify or affect Manager's duties or warranties to Foundation hereunder. Manager is and shall remain responsible for all payments, out of School District's accounts, to a subcontractor, hired to perform services or provide products for Foundation's benefit, and for the subcontractor's performance, and a breach by any subcontractor of any provision of this Agreement shall constitute a breach by Manager.

In addition, Manager shall not, without the prior written consent of Foundation enter into any contract for the account of Foundation or School District, provided that this limitation shall not

apply to the extent that any such contract is deemed necessary by Manager in the event of an emergency posing a threat to persons or property. Manager shall take all steps necessary to notify Foundation immediately about the emergency situation and any actions taken by Manager to address the emergency situation.

2.5 Operating Budget.

(a) In accordance with Foundation's budget schedule, Manager shall submit to Foundation an operating budget and operating and marketing plan (collectively the "Operating Budget") for the operation of the Facility for the next fiscal year, containing reasonably detailed revenue and expense projections, including Foundation or School District allocated expenses, and providing projections of capital expenditures for replacements of and additions to furnishings and equipment.

(b) The Operating Budget is intended as and will represent only an estimate of the projected revenues and expenditures for such year based upon assumptions believed by Manager to be reasonable at the time of preparation. Although Manager will use its best efforts to achieve the budgetary goals reflected in the Operating Budget, the Operating Budget cannot be relied upon as an assurance of actual results for such year, and failure to achieve the budgetary goals set forth in any Operating Budget shall not constitute an event of default hereunder. Manager shall promptly notify Foundation of the need to depart in any material way from the Operating Budget if, in Manager's reasonable judgment, adherence to the Operating Budget is impractical or such departure is necessary or desirable for the efficient or profitable operation of the Facility.

(c) Foundation shall have the right to approve each Operating Budget, or material departures from approved Operating Budgets, of which approval shall not be unreasonably withheld or delayed and pending such approval. Manager shall operate the Facility in accordance with the last approved Operating Budget, adjusted by mutual agreement of Foundation and Manager on account of changes in volume and cost of living. To the extent Manager cannot do so without interfering with the orderly and efficient operation of the Facility as contemplated by this Agreement, Manager shall promptly notify Foundation of the need to depart in any material way from the Operating Budget.

2.6 IT Equipment and Software.

(a) Manager will utilize certain information technology hardware/equipment (the "IT equipment") to provide the Services, as set forth in the Operating Budget. On behalf of and at the cost of School District, the Manager will specify, procure, configure and install the IT equipment required to run and support applications necessary for the efficient operation of the Facility. School District will own the IT equipment. The IT equipment will be housed at the Facility, and it is required that all such applications reside on Manager's private wide area network and Manager shall be responsible for the safe keeping and security of the IT equipment throughout the Term of this Agreement. Upon termination of this Agreement, Manager will collaborate with School District to timely and securely remove the IT equipment, owned by Manager, from

Manager's private wide area network and execute any assignment documents that may be necessary to demonstrate School District's ownership of all IT equipment.

(b) Manager will also utilize certain software systems to provide the Services, which may be changed from time to time in the best interest of the operation of the Facility. Manager's software includes both proprietary software developed by Manager and software obtained from a third party(s) and configured or further developed by Manager specific for Manager's use. A complete listing of all of software licensing, support and maintenance to be charged to School District on a monthly, quarterly or annual basis, by Manager, will be provided in the Operating Budget. Any changes, enhancements to the software not routinely provided to customers at no cost under maintenance programs, will be charged to School District as a part of the subscription and costs will be presented in annual Operating Budgets. Upon expiration or termination of this Agreement, Manager shall provide the IT transition services set forth in this Agreement. If Foundation desires, at time of expiration or termination, Manager will collaborate with Foundation to provide out of contract pricing for proprietary software and provide vendor contact information for non-proprietary software.

Section 2.7 Marketing. Manager will provide marketing and social media services for the Facility in accordance with Foundation's and / or School District's brand standards. Foundation shall have approval of all public facing material prior to publishing or distribution. Manager will charge a monthly retainer fee as delineated in the annual marketing and operating budget. The marketing fee, provides unlimited access for marketing support covering: annual marketing plan; campaign creation and management; coordination of all marketing projects; all direct mail prospect lists; corporate call lists; design for all direct mail pieces; design of all center collateral (flyers, signage, brochures, etc.); design of all social media and emails graphics/communications; social media support; stock images for collateral pieces; website management and support; website hosting; management of all center digital directories; blog posts; monthly meetings; sourcing and negotiations for media buys (print, billboard etc.). The marketing fee does not cover annual demographic studies; printing costs; postage for mailings and photo shoots or other services provided by third party. Such costs will also be delineated in the annual marketing and operating budget and charged separately by Manager.

Section 2.8 Off-Site Programming. From time to time, Foundation or School District may request Manager to provide programming outside of the Facility building on Facility grounds or at third party locations, collectively referred to as "Off-Site". For Foundation or School District "Off-Site" programming, the provisions of staff reimbursement, insurance and indemnification contained herein shall apply for such programming. For "Off-Site" programming for third parties, at the request of Foundation or School District, Foundation or School District and Manager shall create a programming agreement with the applicable third party to include: a fee to cover Manager's labor and travel; reimbursement of program supplies and other related costs; provisions for insurance and indemnity covering all parties; and risk and indemnity waivers for all program participants.

Section 3. MANAGEMENT FEES.

On the 1st day of the month, Manager will provide Foundation an invoice for the Management Fee as set forth in Exhibit B attached to this Agreement. All undisputed amounts shall be payable within fifteen (15) days after receipt of invoice.

Section 4. REPAIRS AND LEGAL REQUIREMENTS.

4.1 Repairs and Maintenance. Manager shall maintain the Facility in good order and condition except (a) to the extent prevented by causes beyond its reasonable control including Force Majeure Causes and the unavailability of funds from School District (b) portions leased to tenants or (c) portions managed by third parties who undertake a duty of repair and maintenance. Manager's responsibilities shall not include the structural integrity of the Facility or defects in design, materials or workmanship in the construction of Improvements. Manager shall, at Foundation's request, coordinate and supervise, as Foundation's agent, capital improvements under \$10,000 to the Facility made during the Term. With respect to projects over \$10,000, Manager, School District, and Foundation shall issue an extra work order setting forth (a) the scope of Manager's work and (b) compensation School District agrees to pay Manager for undertaking the scope of work. This compensation is independent from School District's obligation to pay the Management Fees in Exhibit B.

4.2 Compliance with Legal Requirements. Except as elsewhere herein limited or excused, throughout the Term, Manager shall cause the Facility and the operation thereof to comply with all applicable legal requirements within the scope of Manager's work. If any alterations, additions or improvements, structural or nonstructural, shall be required in order to cause the Facility to be in compliance with applicable legal requirements, within Foundation's or School District's responsibilities under this Agreement or the Agreement between Foundation and School District, Manager shall promptly inform Foundation and the same shall be the responsibility of and shall be performed at the expense of School District. Manager agrees in the performance of this Agreement to comply with all federal, state and municipal laws, rules and regulations. Failure by either Party to comply with such laws, rules or regulations may be grounds for termination of this Agreement.

Section 5. GENERAL COVENANTS OF MANAGER AND FOUNDATION.

5.1 Working Capital. Foundation shall, at all times during the Term, cause School District to have sufficient working capital funds to be on hand in the Operating Accounts to assure the timely payment of all current liabilities of the Facility and all other items of expense to be paid from the Operating Accounts as provided in Section 2.3, the uninterrupted and efficient operation of the Facility at all times during the Term and the performance by Manager of its obligations hereunder. Manager shall promptly notify Foundation at least five (5) business days in advance of the need for any such working capital funds if sufficient funds are unavailable in the Operating Accounts.

5.2 Right of Inspection and Review. Foundation through its duly authorized agents shall have the right to enter upon any part of the Facility at all reasonable times during the Term for the purposes of examining or inspecting the Facility or upon reasonable advance notice and mutual coordination, examining or making extracts from the books and records of the Facility operation, or for any other purpose which Foundation, in its discretion, shall deem necessary or advisable, but the same shall be done with as little disturbance to the operation of the Facility as possible. Notwithstanding anything to the contrary herein, Foundation shall be permitted access to inspection of personnel records upon reasonable advance notice and coordination.

5.3 Payment of Taxes. During the Term, Foundation shall cause ~~or~~ School District to pay (or direct Manager to pay from reserves created therefore), prior to delinquency, all real property, personal property, use taxes or other taxes assessed against the Facility. Manager acknowledges that Foundation and School District are exempt from State sales, use and related taxes, and all purchases made for the Facility should be made in Foundation's or School Districts' name and for Foundation's or School District's benefit, in order to secure such tax exemptions. Manager shall use Foundation's or School District's exemption certificate only for purchases made on behalf of Foundation or School District for the Facility as permitted under this Agreement.

5.4 Financial Reports. Manager shall deliver to Foundation, within ten (10) days after the end of each month, an unaudited financial statement prepared from the books and records maintained by Manager for the Facility containing (i) a current statement of assets and liabilities, (ii) a current profit and loss statement showing the results of the Facility operations for such month, year to date and compared to budget, (iii) a statement of cash flow for the month and year to date, and (iv) such other information as Foundation may request from time to time. Manager agrees to deliver information, data and reports that are reliable, and provide all necessary data on which to base marketing, sales, operational and financial decisions.

Section 6. INSURANCE.

6.1 Insurance to be Maintained During Term.

(a) Foundation Insurance. Foundation and/or School District shall maintain, at all times during the Term, the following insurance respecting the Facility (including for Foundation or School District Off-Site Areas in which Manager performs services for the benefit of Foundation) in amounts and with responsible and properly licensed companies or self-insurance programs (provided that such amounts shall in no event be less than the amounts required under any mortgage, deed of trust or security agreement affecting the Facility):

(i) For operations outside the scope of Services and Foundation and School District Off-Site Areas outside the Facility for which Manager is not responsible, listing the Manager as an additional insured, such insurance shall be primary and non-contributory, General liability insurance (or self-insurance) providing coverage against liability for property damage, bodily injury, and personal injury with a limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate.

ii) Business Auto Liability insurance for owned vehicles for a combined single limit of bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per accident.

(iii) Property Insurance on the building and contents insuring against loss or damage by fire, lightning, windstorm, earthquakes, sinkhole and all other risks included in the special cause of loss form including boiler and machinery/equipment breakdown, in amounts not less than the full insurable replacement value of the Facility and bearing a replacement cost agreed amount endorsement, and all such deductibles shall be the responsibility of the School District.

(iv) Business Income insurance covering loss of income, extra expenses and any necessary continuing expenses for interruptions caused by any occurrence covered by: (i) the insurance referred to in subsections (ii) above and providing coverage on an actual loss sustained basis and (ii) any occurrence related to any Force Majeure event.

(v) Flood insurance if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area" and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor thereto) in an amount which reasonably assures that there will be sufficient proceeds to replace the Improvements in the event of a loss against which such insurance is issued.

(vi) Such other insurance for protection against claims, liabilities and losses resulting from or arising out of the Foundation's obligation to the operation of the assets of the Facility under this Agreement as is customarily carried for Facility of similar character.

(vii) Foundation shall ensure that School District is named as an Additional Insurance and loss payee on the Foundation and Power Wellness insurance, provide School District with thirty (30) days' advance written notice in the event of cancellation or a material change in the policy, as well as a waiver of any right of subrogation or other recovery against School District, its affiliates and their insurers.

(b) Manager Insurance. Manager shall maintain, at all times during the Term, the following insurance with companies licensed to do business in Michigan with an AM Best Rating of A-VII or better and acceptable to Foundation, with limits not less than the ones stated below:

(i) Commercial General liability insurance (providing coverage against liability for property damage, bodily injury, personal injury and liquor liability (if applicable) with a limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate.

(ii) Business Auto Liability insurance including owned, non-owned and hired vehicles for a combined single limit of bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per Occurrence.

and (iii) Workers Compensation insurance at amounts required by state law

(iv) Employers Liability coverage with limits not less than:

- a. \$1,000,000 for Each Accident
- b. \$1,000,000 Disease – Each Employee
- c. \$1,000,000 Disease – Policy Limit

(v) Umbrella or Excess Liability which will follow form General Liability, Automobile Liability, Employers' Liability and Liquor Liability (if applicable), with limits in a minimum amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence/aggregate.

(vi) Professional Liability with a limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate

(vii) Employment Practices Liability including coverage for third parties with a limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate

(viii) Manager shall maintain crime, and fidelity insurance against dishonest acts by employees and others that includes a Joint Payee Endorsement in favor of Foundation .

(c) The Manager's General Liability policy shall name Manager as the principal insured and shall name Foundation and School District and any Foundation and School District affiliate or any mortgagee of the Facility or creditor of any member of Foundation and School District as additional insureds on a primary and non-contributory basis by endorsement.

(d) The cost of Managers insurance directly attributable to the Facility or the Services provided hereunder shall be reimbursed to Manager as noted in Section 2.1(d).

(e) The provision of required insurance shall in no way be construed to limit Manager's liability pursuant to this Agreement.

6.2 Notice of Cancellation or Change. All insurance policies required to be carried here under shall have attached thereto an endorsement that the same shall not be canceled without at least thirty (30) days' prior written notice to all named insureds and additional insureds. Each Party shall promptly notify the other Party in the event that any insurance required hereunder is cancelled or reduced. In the event that Manager's insurance is cancelled, non-renewed or materially changed, Foundation may terminate this Agreement without penalty.

6.3 Evidence of Insurance Coverage. For the purpose of evidencing compliance with the provisions of this Section 6, Manager shall furnish to Foundation insurance certificates for all insurance policies required to be maintained by Manager pursuant to this Section 6 in advance of the commencement of this Agreement and annually thereafter at a reasonable period prior to renewal of the required policies. If Manager's insurance required in this section is provided on a claims-made basis, such Party shall purchase "tail coverage" or continuously maintain such claims made insurance for any events occurring during the Term of this Agreement

for a period of not less than five (5) years following the expiration or termination of this Agreement. The coverages required in this Section shall not in any way limit either Party's liability under this Agreement.

Section 7. COMPLIANCE.

(a) Manager represents and warrants that it is an equal opportunity employer, and Manager shall not illegally or intentionally discriminate against any employee or applicant for employment in violation of an applicable law. Further, Manager represents and warrants that in the course of providing services under this Agreement, Manager shall comply with all applicable Laws and Foundation Policies prohibiting discrimination. Services shall be provided without illegal regard to race, color, creed, sex, sexual orientation, gender identity, age, handicap status, or national origin of the person providing or receiving such services. Manager further represents and warrants that it has and enforces policies and procedures designed to prevent illegal discrimination, sexual harassment, and other improper employment practices.

Section 8. INDEMNIFICATION.

(a) **Foundation Indemnification.** To the fullest extent permitted by law the Foundation agrees (a) to indemnify, defend and hold harmless the Manager, its officers, directors, employees and agents (and those of any affiliate) from and against any claims, suits, liability, loss, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs), damages, settlements and judgments suffered or incurred by Manager, to the extent caused by or arising out of (i) injury to persons or property by reason of any acts or omissions of Foundation or Foundation's employees or agents (not including Manager), (ii) any breach of this Agreement by Foundation, (iii) infringement of any third party intellectual property rights arising out of the Manager's use of Foundation's name, logo or marks as permitted under this Agreement, (iv) any accident, injury or damage caused by the negligence or willful misconduct of Foundation or Foundation's employees or (v) any injury to person or property as a result of programs, services and activities conducted by Manager in Off-Site Areas for the benefit of Foundation.

(b) **Manager Indemnification.** To the fullest extent permitted by law the Manager agrees to indemnify, defend and hold harmless the Foundation, its officers, directors, employees and agents (and those of any affiliate) from and against any claims, suits, liability, loss, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs), damages, settlements and judgments suffered or incurred by Foundation or any affiliate, to the extent caused by or arising out of (i) injury to persons or property by reason of any acts or omissions of Manager or Manager's employees or agents, (ii) infringement of any third party intellectual property rights arising out of use by Foundation or any affiliate of any materials provided by Manager, including but not limited to deliverables, programs, software, materials, and logos, (iii) any breach of this Agreement by Manager; or (iv) any accident, injury or damage not caused by the negligence or willful misconduct of Foundation or Foundation's employees or agents (not including Manager).

(c) It is expressly understood and agreed that the provisions of this Section 8 shall survive the termination or expiration of this Agreement.

(d) Both Parties are required to notify the other within ten (10) days of receipt of any lawsuits, claims, suits, proceedings or notices of intent to file a lawsuit based in any manner on services rendered pursuant to this Agreement. If both Parties are responsible for an injury or liability, Manager and Foundation will allocate responsibility and incur their respective pro rata expenses.

Section 9. DEFAULT AND TERMINATION.

The following shall constitute events of default hereunder:

(a) The failure of either Party (the "Defaulting Party") to pay to the other Party (the "Non-Defaulting Party") any undisputed sum which may become due hereunder within fifteen (15) days after receipt by the Defaulting Party of a written late notice from the Non-Defaulting Party specifying such failure; or

(b) The failure of the Defaulting Party to perform, keep or fulfill any of the material terms, covenants, undertakings, obligations or conditions set forth in this Agreement other than those referred to in the foregoing subsection (a), and the continuance of such failure for a period of thirty (30) days after written notice to the Defaulting Party from the Non-Defaulting Party specifying such failure, or, in the event such failure is of such a nature that it cannot, with due diligence and in good faith, be cured within thirty (30) days, the failure of the Defaulting Party to commence to cure the same within such thirty-day period and thereafter to prosecute the curing of such failure with due diligence and in good faith it being intended that, in connection with a failure not susceptible of being cured with diligence and in good faith within thirty (30) days, the time allowed the Defaulting Party within which to cure the same shall be extended for such period as may be necessary for the curing thereof with due diligence and in good faith; or

(c) If the Defaulting Party shall file a voluntary petition in bankruptcy for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect, or shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy or inability to pay its debts as they mature; or if within ninety (90) days after the filing against the Defaulting Party of any involuntary proceedings under the Federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect, such proceeding shall not have been vacated; or if all or a substantial part of the Defaulting Party's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within ninety (90) days; or if the Defaulting Party shall be adjudicated a bankrupt; or if the Defaulting Party shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property; or if any order appointing a receiver for, trustee of or liquidator of the Defaulting Party or all or a major part of the property of the Defaulting Party is not vacated within ninety (90) days following the entry thereof.

If the Defaulting Party fails to cure the default during the cure periods provided in items (a) through (c) above, the Non-Defaulting Party may terminate this Agreement with fifteen (15) days prior written notice to the Defaulting Party. In addition to the foregoing, Foundation may terminate this Agreement upon written notice to Manager if Manager fails to continuously maintain the insurance coverage required under this Agreement or fails to continuously meet the requirements of Section 6.1. Further, the Manager acknowledges that a material breach by Manager of the same term or condition of this Agreement more than two (2) times during the Term shall be deemed, at the discretion of Foundation, a breach which is not capable of cure, and shall therefore result in the Foundation's right to terminate this Agreement immediately with written notice, upon the occurrence of the same breach of third time. Such termination shall be without prejudice to any right to damages that the Non-Defaulting Party may have against the Defaulting Party under applicable law.

Section 10. EMPLOYEE TRANSITION.

Subject to the provisions in Sections 11 and 19, in the event of termination of the Agreement by either Party, Foundation and Manager agree to work together professionally and expeditiously to assess the placement of Manager's employees prior to or upon the effective date of termination.

Section 11. RESTRICTIVE COVENANTS.

For a period of 18 months following termination of the Agreement, Foundation agrees that it will not solicit for employment, attempt to hire or hire the following Manager's Employees: Senior Director of Operations, Center Director, Operations Manager, Facility Engineer, Fitness Manager, and Member Services Manager ("Manager's Leaders") without the express written consent of Manager. Subject to the provisions of Section 20, Foundation acknowledges and agrees that if Manager consents to the hire of Manager's Leaders by Foundation, Foundation shall be obligated to pay Manager a fee of thirty percent (30%) of the individual's last annual salary earned for the preceding twelve (12) months while employed by Manager ("Hiring Fee"); provided, however, that Manager, in its sole discretion, may approve the hire of Manager's employee(s) by Foundation without payment of the fee set forth herein. Any such approval by Manager of Hiring Fee must be written to be effective. Foundation is not obligated for Hiring Fee for any of Manager's Leaders employed at Facility prior to Agreement.

Section 12. NON-DISCLOSURE, NON-DISPARAGEMENT AND NON-COMPETITION.

(a) During the Term hereof and indefinitely thereafter, Manager will (i) refrain from directly or indirectly using or causing to be used in any manner whatsoever any Foundation or School District information (or that of any affiliate) of a proprietary or confidential nature (as defined below) other than in connection with fulfilling its obligations hereunder and, upon

termination of this Agreement, such information, to the extent that it has been reduced to writing (including any and all copies thereof), together with all copies of all records, forms and charts of every kind, whether confidential or otherwise, shall be promptly returned to Foundation and shall not be retained by Manager or furnished to any third party, either by sample, facsimile, or by verbal communication: (ii) refrain from any disparagement of Foundation or School District or any of its employees, officers, directors or agents; and (iii) refrain from soliciting or encouraging any program participant or client of the Facility to join any other facility or obtain similar services elsewhere for the six (6) months following expiration or termination of this Agreement. Provided, however, that this restriction shall not apply to any program participant or client of the Facility that makes the initial contact with Manager about joining another of Manager's Facility or purchasing services at another of Manager's Facility, provided that Manager has not communicated with the individuals about other Facility or provided any marketing materials regarding those Facility either directly or through a mail campaign.

(b) During the Term hereof and indefinitely thereafter, Foundation or School District will (i) refrain from directly or indirectly using or causing to be used in any manner whatsoever any Manager information of a proprietary or confidential nature (as defined below) or Manager's Materials other than in connection with the operation of the Facility, provided that sharing such information with Foundation or School District's affiliated entities is permitted in discussions regarding the operation of the Facility; (ii) refrain from any disparagement of Manager or any of its employees, officers, directors or agents (iii) refrain from soliciting the business of any corporate client for whom Manager has provided service (other than those provided at the Facility) during the six (6) months following expiration or termination of this Agreement.

Section 13. CONFIDENTIAL INFORMATION.

(a) Foundation or School District's confidential or proprietary information, which shall either be marked "Confidential", or which should reasonably be considered confidential given the nature of the material and circumstances of disclosure, and shall include but not be limited to the following: all sales and marketing information and protocols; marketing plans; client names, addresses or any other client-related information; client accounting, policies, procedures, forms and reports; cash flows and receivables; short-term and long-term management strategy; business data; financial records; income and expense information; pricing and charging for services; employee flow and placement methodology; procedures to document services provided; revenue and expense monitoring and analysis; client satisfaction information; client intake procedures; client booking procedures; collections procedures and strategies; charge/billing generation and documentation procedures; employee record documentation procedures; fee schedules; fee information; payroll information; billing and payment methodology; copyright; trademark; personnel information; volume of business; strategic plans; administrative policy; quality management procedures; information related to earnings and other financial information; assets; participant information, research, and all other information deemed by Foundation or School District to be confidential and proprietary.

(b) Manager's confidential or proprietary information, which shall either be marked "Confidential", or which should reasonably be considered confidential given the nature of the material and circumstances of disclosure, shall include but not be limited to the following (except as used by or related to the Foundation or School District or the Facility, while this Agreement is in effect) or thereafter: all Manager sales and marketing information and protocols; proprietary programming and/or marketing plans protected by trademark or copyright; secret shop forms; membership surveys; Manager's other client names, addresses or any other information regarding Manager or Manager's other clients, including accounting, policies, procedures, forms and reports; cash flows and receivables; short-term and long-term management strategy; business data; financial records; income and expense information; pricing and charging for services; employee flow and placement methodology; procedures to document services provided; revenue and expense monitoring and analysis; client satisfaction information; client intake procedures; client booking procedures; collections procedures and strategies; charge/billing generation and documentation procedures; employee record documentation procedures; fee schedules; fee information; payroll information; billing and payment methodology; personnel information; volume of business; strategic plans; administrative policy; quality management procedures; information related to earnings and other financial information; assets; and all other information deemed by Manager to be confidential and proprietary.

(c) Foundation and Manager acknowledge that there is certain confidential information shared by both (collectively, "Shared Data"). The parties agree that Shared Data includes member contact information and member data; marketing, outcome and business strategies and data; financial records, including Center cash flow and receivables, income and expense information; pricing and charge for services detail. It is intended, through the Shared Data section, that data about the Center's clients, finances, business operations, performance, customers and business strategies belong to School District, but all such information is jointly shared with Manager to enable Manager to perform its obligations under this Agreement. It likewise is intended that Manager's templates, policies, protocols and documents belong to Manager but are shared documents with Foundation and / or School District to the extent Foundation and / or School District's data is utilized in connection with Manager's proprietary Work Product to fulfill Manager's obligations under this Agreement.

(d) If either Party receives a subpoena, order or other legal request for the other Party's confidential information, the Party shall promptly notify the other Party, to the extent permitted by law, to allow time to challenge the disclosure.

(e) The provisions of this Section shall survive termination of the Agreement.

Section 14. REPRESENTATIONS AND WARRANTIES.

(a) **Infringement.** Manager represents and warrants that all products and materials developed by or provided by Manager for Foundation or any of its affiliates pursuant to this Agreement, if any, including but not limited to software, documentation, programs and any

and all other source information, do not and will not infringe any patent, copyright, trade secret or other proprietary right of any third party; and Manager has full title, or the right to convey title to, all portions of any products and materials to be developed for or provided to Foundation and its affiliates under this Agreement, if any, all free from any liens, security interests or other encumbrances or restrictions upon transfer.

(b) **Virus.** Manager further represents and warrants that it will use commercially reasonable efforts to ensure that nothing delivered by Manager to Foundation or School District or any affiliate shall contain any protection feature, calendar-related kill codes, Trojan horse, bug collection device or “back door” designed to prevent use of Foundation or School District’s or any affiliate’s software or operating system and Manager shall use commercially reasonable efforts when accessing Foundation or School District’s and any affiliate’s computer system not to introduce any virus, worm, or disabling instruction into Foundation or School District’s or any affiliate’s operating system.

(c) **Pass-Through Warranty.** Manager represents and warrants that if it provides any third- party products to Foundation or any affiliate, Manager shall pass through to Foundation and its affiliates any third party product and third party end-user warranties and indemnities and shall take all steps necessary to ensure such warranties and indemnities flow to and for the benefit of Foundation and its affiliates. To the extent Manager is not permitted to pass through, Manager agrees to notify Foundation in writing of applicable limitations and enforce such warranties and indemnities on behalf of Foundation and its affiliates.

(d) **Mutual Warranties.** Each Party represents and warrants to the other that:

- (i) it is organized and validly existing under the laws of the state of its incorporation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;
- (ii) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder;
- (iii) this Agreement is a legal and valid obligation binding upon it and enforceable according to its terms; and
- (iv) the execution, delivery and performance of this Agreement by such Party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound.

Section 15. SUCCESSORS AND ASSIGNS.

Manager shall not assign this Agreement without the prior written consent of the Foundation. If such consent shall be given, the terms, provisions, covenants, undertakings, agreements, obligations and conditions of this agreement shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the Parties hereto with the same effect as if mentioned in each instance where the Party hereto is named or referred to.

Section 16. NOTICES.

All notices to be given hereunder shall be deemed received when delivered personally or by express courier or three (3) business days after being sent by certified or registered U.S. mail, return receipt requested, to the Parties listed below:

If to Foundation: Steve Petty
 Chief Executive Officer
 14800 East Old US Highway
 Chelsea, MI 48118

If to Manager: Brian Hummert
 President
 Power Wellness Management LLC
 851 Oak Creek Drive
 Lombard, IL 60148

Either Party hereto may change its address for notices hereunder by notice of such change to the other Party hereto in the manner herein provided above.

Section 17. APPROVALS.

If a Party shall desire the approval of the other Party hereto to any matter, such Party must give written notice to such other Party that it requests such approval, specifying in such notice the matter as to which such approval is requested and reasonable detail respecting such matter. Approvals must be granted in writing.

Section 18. FURTHER INSTRUMENTS.

Each Party hereto shall execute and deliver all such other appropriate supplemental agreements and other instruments and take such other action as may be necessary to make this Agreement fully and legally effective, binding and enforceable as between the Parties hereto and as against third parties, as the other Party may reasonably request.

Section 19. APPLICABLE LAW.

This Agreement shall be governed by and construed and enforced in accordance with the laws of Michigan without regard to the conflict of law rules principals thereof, and the exclusive venue for any disputes arising out of this Agreement shall be the state and federal courts located in Washtenaw County, Michigan.

Section 20. SURVIVAL AND CONTINUATION.

Upon termination or expiration of this Agreement, (a) Foundation's obligations to pay to Manager any amounts due to Manager hereunder (for services rendered prior to the effective date of termination), subject to Section 9 of this Agreement, shall survive such termination or expiration and shall continue until all such amounts, are paid in full, and (b) all terms, provisions and obligations of either Party contained herein which, in order to give them effect and accomplish their intent and purpose, need to survive such termination shall, by agreement between Foundation and Manager, survive and continue until they have been fully satisfied or performed.

Section 21. NOTICE OF CLAIMS

Manager agrees to promptly notify Foundation of any participant event or other event that Manager reasonably determines may result in liability to or any claim against either Party relating to or resulting from the Services or otherwise relating to or arising from this Agreement or the Facility, and of any complaints received from participants or other parties relating to the Facility, or the services provided under this Agreement. No provision of this section is intended to or shall be construed as a waiver of any applicable peer review, attorney-client or insured-insurer privilege. In the event of a third- party lawsuit relating to the Services, Manager shall reasonably cooperate with Foundation and its affiliates in the defense of said lawsuit.

Section 22. INDEPENDENT CONTRACTOR

Foundation and Manager are each acting as independent contractors. Neither Party shall be construed in any manner whatsoever to be an employee or agent of the other, nor shall this Agreement be construed as a contract of employment or agency. Specifically, all fitness instructors and other personnel providing Services are and shall remain employees of Manager during the term of this Agreement, and Manager shall be solely responsible for paying and providing all benefits to all such personnel and for withholding, reporting and remitting any and all taxes, FICA, FUTA, unemployment and disability insurance required by Federal, state and local law to be reported and paid in connection with Manager's payments to such personnel, subject to reimbursement by Foundation in accordance with the Operating Budget. Foundation shall not withhold any taxes or other withholdings from any payments made pursuant to this Agreement. Without limiting Manager's indemnification obligations pursuant to this Agreement, if the Internal Revenue Service, the federal or any state Department of Labor, or the Connecticut or any other state's Department of Revenue questions the independent contractor status of either or both of the Parties hereto or of any personnel provided by Manager to provide the Services, the Parties agree that both Parties shall have the right to participate in any discussion or negotiation with such agency regardless of who initiated such discussions or negotiations. Manager agrees to cooperate with Foundation in its efforts to notify Foundation staff and visitors that Manager and its personnel are not Foundation agents or employees, including through the use of written notices.

Section 23. FORCE MAJEURE.

Neither Party shall be liable to the other Party for any failure to perform caused by any circumstances beyond its reasonable control, including strikes, riots, storms, weather disturbances, power outages, health pandemics, contagious disease outbreaks, federal, state or local government closure mandates and/or restrictions, anticipated construction interruptions or delays, fires, war or any other catastrophe (each a “Force Majeure Event”). Any failure or delay by a Party in performance of any of its obligations under this Agreement due to a Force Majeure Event shall not be construed as a breach of this Agreement, provided the failure is remedied as soon as practicable under the circumstances. Each Party shall use commercially reasonable efforts to continue to perform, to the extent practical, in the event of a Force Majeure Event, and shall keep the other Party reasonably informed about the status of their ability to perform. Either Party may terminate this Agreement with written notice to the other Party if any Force Majeure Event continues for more than thirty (30) consecutive days.

Section 24. NO CONFLICT.

Each Party represents and warrants that it is not bound by any agreement or arrangement that would preclude the Party from entering into, or fully performing under this Agreement.

Section 25. CHANGE IN LAW.

This Agreement shall be construed to be in accordance with all applicable laws. If any new law becomes effective or any authoritative interpretation of a law by any governmental authority, whether federal or state, is rendered which makes any of the material terms of this Agreement unlawful, makes illegal the structure of the relationship between the Manager and the Foundation set forth in this Agreement, jeopardizes the tax exempt status of Facility, Foundation, any Foundation affiliate, or the tax exempt status or treatment of any debt, bonds or other obligations of Facility, Foundation or of any Foundation affiliate or is reasonably likely to materially and adversely affect the manner in which either Party may perform or be compensated for its services under this Agreement, the Parties hereto agree to negotiate an amendment to this Agreement with each other in good faith for a period of ninety (90) days; unless legal counsel to either Party opines that continued performance of such Agreement is unlawful or subjects either Party to potential civil or criminal liability or jeopardizes the tax exempt status or treatment of any debt, bonds or other obligations of Facility, Foundation or any Foundation affiliate, in which event the Party may terminate this Agreement immediately, upon written notice to the other Party.

Section 26. USE OF FACILITY BY FOUNDATION.


No provision of this Agreement shall prohibit Foundation or School District or any Foundation or School District affiliate from utilizing any portion of the Facility. Any such use by Foundation or School District shall be deemed within Foundation or School District’s scope of work and outside Manager’s scope of Services under the Agreement, consistent with the indemnity provisions in Section 8. The Parties shall reasonably cooperate in scheduling such use(s).

Section 27. INTERPRETATION.

The headings and captions herein are inserted for convenient reference only, and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement contains the entire Agreement and understanding of the Parties in respect to the subject matter hereof, and the same may not be amended, modified or discharged, nor may any of its terms be waived, except by an instrument in writing signed by the Parties to be bound thereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above set forth.

**FOUNDATION:
5 HEALTHY TOWNS FOUNDATION**

By: 
Steve Petty (Apr 7, 2025 14:02 EDT)
Name: Steve Petty
Title: Chief Executive Officer
Date: 07/04/25

**MANAGER:
POWER WELLNESS MANAGEMENT, LLC.**

By: 
Brian Hummert (Apr 7, 2025 10:07 CDT)
Name: Brian Hummert
Title: President
Date: 07/04/25

EXHIBIT A

MANAGEMENT SERVICES

Manager will provide the following Management Services. This list is not intended to be all-inclusive and may increase or decrease as appropriate.

Human Resources, Education, Training and Legal Support:

- Team Member recruitment, interviews, and drug screens/background checks.
- Team Member orientation and on boarding.
- Team Member handbook updates.
- Team Member performance management and evaluation process.
- Catalogue certification requirements through secured site.
- Evaluate, develop and administer training and education resources for all staff (Health Stream, Talent Tracks, and Club Connect).
- Access/recommendations to continuing education programs.
- Administer company-wide Team Member recognition program, Passion with Power.
- Administer, develop and/or present hiring practices, diversity and sensitivity, Team Member engagement, change management, state mandated and other customized professional development Team Member/manager training.
- On-demand assessment and advice on risk, compensation, Team Member performance and other employment business practices.
- Team Member benefits administration, leaves of absence, and workplace accommodation requests.

Communications & Best Practices:

- Utilizing Manager's national network of Facility to benchmark, network and collaborate throughout the year to develop, implement and improve best practices.
- Regularly scheduled update calls with each Center Director.
- Foundation's meetings monthly, or as requested.
- Information sharing with all Manager's centers and employees.
- On-site and off-site leadership and job-specific training and educational events for Center Managers and team members.

Programming:

- Provision of the following member services;
 - Group exercise programming
 - Aquatics programming and swim lessons
 - Personal training
 - Child / Youth programming
 - Virtual programming

- Special population programming
- General health & wellness assessment protocols.
- New Member Journey to enhance new member engagement.
- In person and virtual member retention programs.

Financial:

- Establishment of internal control procedures and administrative form design for cash receipts, cash disbursements, member billing, and safeguarding of inventory and fixed assets.
- Annual budget preparation.
- Monthly statement of operations, prepared in accordance with GAAP, with comparison to budget.
- Monthly balance sheet reconciliations.
- Monthly operational and financial key indicator reporting.
- Center credit card management and recording of expenses.
- Annual / Quarterly statement of operations with key operating statistics and narrative.
- Preparation of year-end audit work papers as requested.
- Accounts payable processing
- Year-end 1099 processing.
- Sales tax reporting.
- Industry benchmarking.

Business Systems:

- Membership contract management.
- Membership software management and support:
 - Club configuration, update / upgrade analysis & implementation
 - Membership types, plans, and enrollment/dues products
 - Ancillary service products
 - Inventory products
 - Point of sale
- Membership portal configuration and implementation.
- Training & support including new features or system enhancements.
- Membership billing (including payroll deduct).
- Membership audits.
- Membership management (adds/changes/deletes/downgrades/bridges, etc.).
- Membership program configuration (add/update fitness program and class configurations, inventory adds/adjustments, etc.).
- Daily point of sale reconciliation.
- Inventory management.

Supplies & Equipment Procurement and Preventative Maintenance:

- Capital orders for fitness equipment, furniture, laundry, pro shop, locker rooms, and storage accessories.
- Supply orders for first aid, administrative, environmental, aquatics, promotional, café, massage/spa, locker room and minor fitness equipment.
- Fitness equipment maintenance procedures.
- Administer product warranties.
- Procurement, receipt, and provision of information for Foundation or School District's fixed asset recording.
- Pro Shop includes Bi-Annual Catalog, display and product recommendations, order placement, restocking, inventory management and MSRP.

Sales and Customer Service:

- Talent sourcing and onboarding for sales teams.
- Professional sales training for membership and fitness staff.
- Customer service and member orientation training.
- Monthly meetings with center sales teams.
- Direct to community and employer sales programs.
- Sales budget development, forecasting and planning.
- Monitoring, analysis, and management of day-to-day sales activities via PowerForce CRM.
- Membership engagement programs / surveys / tracking.
- Develop and evaluate member satisfaction surveys, including conducting daily Net Promoter Surveys through use of TRP software.
- Third party membership relationships.
- Electronic guest registration process.

Marketing:

- Consumer analytics and market research.
- Marketing plan development and implementation (global and regional) including grand opening event planning.
- Direct mail and print advertising.
- Management of social media.
- Collateral development.
- Ongoing competitive analysis.
- Member communication management.
- Website development and maintenance.
- Campaign reporting.
- Develop and manage digital ads.
- Website inquiry integration with PowerForce Customer Relations Management

(CRM).

- Digital Asset Management repository of marketing promotions and programs for center team to access.
- Monthly marketing meetings with Center teams.
- Develop and manage Member App, with integration to member management system, virtual programming, class schedule and assessment technology.

Environmental Services:

- Establish and provide daily, weekly, and monthly maintenance checklists and duty expectations.
- Train Team Members on EVS protocols and handling of facility and aquatic concerns (as applicable per location).
- Provide oversight to in-house, and third-party vendors to ensure that daily, weekly and monthly EVS maintenance is adhered to.
- Maintain appropriate inventory for cleaning supplies, gym wipes, towels, and all Center amenities.

Risk Management:

- Facilitate compliance for regulatory agency standards: OSHA, ADA, CDC, and Local Health Departments.
- Development and ongoing compliance with Manager and Foundation or School District's policies and procedures for:
 - Preventative safety practices and standards
 - Emergency response practices and training
- Evaluate and draft general operations contracts including, but not limited to, rentals, off-site services, contractor, unique and licensed programming, customized waivers and templates and contract amendments.
- Document, investigate, analyze, and report on incidents within the Facility.

Information Systems:

- Specification, procurement, installation, management, and support of:
 - Communication circuits
 - Networking hardware, servers, PC's and peripherals (scanners, printers, cameras, cash drawers, copy machines)
 - Telcom/phone system/cell phones
 - Audio visual
- Support of core system applications:
 - Membership management system (Integrated)
 - Membership & resource scheduling
 - Front desk POS
 - POS / credit card processing - EMV
 - EFT Transmittal
 - Member assessment software.

- Team Member management system:
 - Recruiting
 - Payroll, time & attendance
 - Benefits, health & welfare
 - Email and team collaboration tools
 - Office productivity software
 - Member management - check in/check out.
 - Internet kiosk – Member based (as applicable per location).
- Disaster recovery.
- Network and system security.
- Vendor relations & negotiations.
- Training.
- Help Desk support.
- Life cycle management and budgeting.

EXHIBIT B
MANAGEMENT FEES

The Management fee shall be \$100,000 annually or \$8,333 per month. Of the \$100,000 (70%) shall be payable as a base management fee. The remaining (30%) per month (or \$30,000 annually) is considered to be "at risk" based on Manager's performance. Foundation shall pay Manager the "at risk" fee at the measurement periods specified, based upon achieving the following performance measurements:

- A. Resource Stewardship (40% weight) to be measured annually upon completion of the fiscal year.

Obtain or exceed the approved budgeted net operating income (net income before Management Fee and depreciation)

- B. Member Survey (35% weight) – measured annually based on the average daily NPS score.

Achieving a Net Promoter Score (NPS) of 65% or higher.

- C. Mission Stewardship (25%) to be measured annually upon completion of the fiscal year.

- a. Maintain or improve 12-month average per member, per month visits, year over year. (10% weight)
- b. Meet annual member goals established as part of the budget. (15% weight)