

EXHIBIT C
AREA DEVELOPMENT AGREEMENT

ESTRADA STRATEGIES FRANCHISE, INC.

AREA DEVELOPMENT AGREEMENT

Area Developer Name

Development Area

Date

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AREA DEVELOPMENT AGREEMENT

THIS AREA DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into on this _____ day of _____, 200____ (the “**Effective Date**”), by and between:

- ◆ Estrada Strategies Franchise, Inc., a California Corporation whose principal place of business is 3400 Inland Empire Blvd., Suite 101, Ontario, CA 91746 (“**Franchisor**”); and

- ◆ _____ a [resident of] _____
[corporation organized in] [limited liability company organized in] [*select on*], having offices at _____

_____ (“**Area Developer**”).

BACKGROUND

A. Franchisor owns a format and system (the “**System**”) relating to the establishment and operation of a business designed to provide training and behavioral modification services to entrepreneurs, presidents and other top business executives, primarily through continuing educational forums called Estrada Strategies CEO Clubs (ES CEO Club). The ES CEO Clubs operate through a uniform system which has high standards of services, uses quality products, operates under the business format created and developed by Franchisor and Franchisor’s affiliated company Estrada Strategies, LLC. (EE LLC) (the “**Services**”), and which is known as Estrada Strategies CEO Club System (the ES CEO Club); and feature and operate under the Proprietary Marks (as defined below) (each “**ES CEO Club franchise**”).

B. The distinguishing characteristics of the System include standards and specifications for the System; uniform standards, specifications, and procedures for operations; procedures for inventory and control; training and assistance; and marketing and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time.

C. The System is identified by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin as are now designated and may hereafter be designated by Franchisor in writing for use in connection with the System including the mark “ES CEO Club” franchise and other marks (the “**Proprietary Marks**”). The Proprietary Marks are owned by Franchisor.

D. Area Developer desires to obtain certain development rights to open and operate ES CEO Club franchises under the System and the Proprietary Marks, as well as to receive other assistance provided by Franchisor in connection therewith.

NOW THEREFORE, the parties agree as follows:

SECTION 1 - GRANT

1.1 **Grant and Acceptance.** Franchisor grants development rights to Area Developer, and Area Developer undertakes the obligation, according to the terms and conditions of this Agreement, to develop no less than the number of ES CEO Club franchises (the “**Franchised Business**”) as set forth in Exhibit A to this Agreement. In this regard, the parties further agree that:

1.1.1 Each Franchised Business developed by this Agreement will be operated according to a separate ES CEO Club Franchise Agreement (a “**Franchise Agreement**”) that will be executed as outlined in Section 3.4 below.

1.1.2 For each Franchised Business to be developed under this Agreement, Area Developer will execute the Franchise Agreement for such Franchised Business in accordance with the deadlines set forth in the development schedule specified in Paragraph 1 of Exhibit A to this Agreement (the “**Development Schedule**”).

1.1.3 Each Franchised Business developed by this Agreement will be for a specific Designated Marketing Area (“DMA”), which will be designated in the Franchise Agreement that is within in the area described in Paragraph 2 of Exhibit A to this Agreement (the **Development Area**”).

1.2 **Development Area.** Except as otherwise set forth in this Agreement (including, without limitation, the rights retained by Franchisor as described in Section 1.3), during the term of this Agreement, and so long as Area Developer is in compliance with its obligations under this Agreement and all of the Franchise Agreements between Area Developer (including any affiliate of Area Developer), Franchisor will not establish or operate, or license anyone other than Area Developer to establish or operate, a ES CEO Club franchises under the Proprietary Marks and System at any location that is within the Development Area.

1.3 **Franchisor’s Reserved Rights.** Notwithstanding anything to the contrary, Franchisor retains the rights, among others, on any terms and conditions Franchisor deems advisable, and without granting Area Developer any rights:

1.3.1 To own, acquire, establish, and/or operate and license others to establish and operate, ES CEO Club franchises under the System at any location outside the Development Area notwithstanding their proximity to the Development Area or their actual or threatened impact on sales or development of any of the Franchised Business;

1.4 **No Rights to Use the System.** This Agreement is not a Franchise Agreement, and does not grant to Area Developer any right to use the Proprietary Marks or the System or to sell or distribute any Products. Area Developer’s rights to use the Proprietary Marks and System will be granted solely under the terms of the Franchise Agreement.

SECTION 2 - TERM

Unless sooner terminated in accordance with the terms of this Agreement, this Agreement will commence on the date of this Agreement and will expire on the last date set forth in the Development Schedule, as shown in Paragraph 1 of Exhibit A (the “**Expiration Date**”).

SECTION 3 - DEVELOPMENT OBLIGATIONS

3.1 **Time is of the Essence.** Recognizing that time is of the essence, Area Developer will comply strictly with the Development Schedule. Area Developer acknowledges and agrees that the Development Schedule requires that Area Developer have executed and delivered to Franchisor Franchise Agreements for a cumulative number of Franchised Business by the end of the time periods specified in Exhibit A.

3.2 **Identifying and Securing Sites.** If Area Developer chooses to operate from a different commercial location, other than the location of its first franchise; Area Developer must receive written approval of the new location from Franchisor prior to signing any lease or securing the site. The following terms and conditions will apply to each Franchised Business to be developed by this Agreement:

3.3 **Franchise Agreements.** With respect to the Franchise Agreements to be executed for the Franchised Business to be developed according to this Agreement, the following terms and conditions will apply:

3.3.1 The Franchise Agreement for the first Franchised Business to be developed under this Agreement will be the form of Franchise Agreement attached to this Agreement in Exhibit C.

3.3.2 The Franchise Agreement for each subsequent Franchised Business to be developed under this Agreement will be Franchisor's then-current form of Franchise Agreement, the terms of which may differ from the terms of the Franchise Agreement attached to this Agreement including, without limitation, a higher and/or additional fees; only if, however, so long as Area Developer is in compliance with this Agreement, then initial franchise fee will be as set forth in Section 4.3 below, and if the service fee rate is higher for the then-current form of franchise agreement, the service fee rate under the Franchise Agreement that Area Developer executes will be the same as the service fee rate set forth in the form of Franchise Agreement attached to this Agreement in Exhibit C.

3.3.3 Franchisor will permit one or more Franchise Agreements to be executed by entities other than Area Developer; as long as that (a) each such franchisee entity is controlled by, or under common control with, Area Developer, and (b) the Area Developer and all Principals (as defined in Section 9.1 below) of Area Developer requested by Franchisor execute guarantees, guarantying to Franchisor the timely payment and performance of the franchisee's obligations under the Franchise Agreement.

3.3.4 Provided that Area Developer is in compliance with this Agreement, Area Developer (or an affiliate of Area Developer according to Section 3.3.3 above) will execute the Franchise Agreement for such Franchised Business, as outlined in this Section 3.3, Area Developer will thereafter comply with all pre-opening and opening requirements set forth in the Franchise Agreement relating to the Franchised Business.

3.4 **Force Majeure Events.** Area Developer will not be responsible for non-performance or delay in performance occasioned by a "force majeure," which means an act of God, war, civil disturbance, act of terrorism, government action, fire, flood, accident, hurricane, earthquake, or other calamity, strike or other labor dispute, or any other cause beyond the reasonable control of Area Developer; only if, however, force majeure does not include Area Developer's lack of adequate financing. If any delay occurs, any applicable time period by this Agreement will be automatically extended for a period equal to the time lost; only if, however, that Area Developer will make reasonable efforts to correct the reason for such delay and give Franchisor prompt written notice of any such delay.

SECTION 4 - DEVELOPMENT FEE, INITIAL FRANCHISE FEES, AND ROYALTIES

4.1 **Area Development Fee.** In consideration of the development rights granted in this Agreement, upon execution of this Agreement, Area Developer will pay an area development fee ("Area Development Fee") that is equal to the Franchise Fee (as defined in Section 4.3 below) for the first Franchised Business and a deposit of Five Thousand Dollars (\$5,000) for the second and each additional Franchised Business that Area Developer must develop in order to comply with the Development Schedule, the aggregate amount of which is specified in Paragraph 3 of Exhibit A to this Agreement. Receipt of the Area Development Fee is acknowledged by this agreement. The Area Developer acknowledges and agrees that the Area Development Fee is fully earned and nonrefundable in consideration of administrative and other expenses incurred by Franchisor and for the development opportunities lost or deferred as a result of the rights granted in this Agreement to Area Developer, even if Area Developer does not enter into any Franchise Agreements according to this Agreement.

4.2 **Credit Towards Franchise Fee.** If Area Developer is in compliance with its obligations under this Agreement and any other agreement with Franchisor, then on execution of each Franchise Agreement, Franchisor will credit towards the Franchise Fee (which amounts are set forth in Section 4.3 below) for the Franchise Agreement, the portion of the Area Development Fee that was attributable to such Franchised Business. In no circumstances will Franchisor grant credits in excess of the total Area Development Fee paid by Area Developer.

4.3 **Franchise Fees.** Notwithstanding anything to the contrary in any of the Franchise Agreements, the initial franchise fee (the "Franchise Fee") that will be paid by Area Developer for each Franchised Business to be developed according to the Development Schedule will be the following amounts, which will be paid in full on execution of each such Franchise Agreement, less any credit that may be applied according to Section 4.2 above:

First Franchised Business	\$35,000 (Total franchise fee - \$35,000)
Second Franchised Business	\$5,000 (Total franchise fee - \$30,000)
Third and subsequent Franchised Business	\$5,000 (Total franchise fee - \$25,000)

SECTION 5 - Duties of the parties

5.1 **Franchisor's Assistance.** Franchisor will furnish to Area Developer the following:

5.1.1 If we determine that on-site evaluation is appropriate, we will, at no charge to you, provide you with such on-site evaluations as we consider advisable for each Franchised Business to be developed under the Development Schedule.

5.2 **Designated Principal.** If Area Developer is other than an individual, Area Developer will designate, subject to Franchisor's reasonable approval, one Principal (as defined in Section 9.1) who is both an individual person and owns at least a ten percent (10%), of Area Developer, and who will be responsible for general oversight and management of the development of the Franchised Business under this Agreement and the operations of all such Franchised Business open and in operation on behalf of Area Developer (the "**Designated Principal**"). Area Developer acknowledges and agrees that Franchisor will have the right to rely on the Designated Principal to have been given, by Area Developer, the responsibility and decision-making authority regarding the Area Developer's business and operation. In the event the person designated as the Designated Principal, becomes incapacitated, leaves the employ of Area Developer, transfers his/her interest in Area Developer, or otherwise ceases to supervise the development of the Franchised Business, Area Developer will promptly designate a new Designated Principal, subject to Franchisor's reasonable approval.

5.3 **Records and Reports to Franchisor.** Area Developer will, at Area Developer's expense, comply with the following requirements to prepare, and submit to Franchisor at such time that Franchisor may determine the requirement to review such reports, the following reports, financial statements, and other data, which will be prepared in the form and using the standard statements and chart of accounts as Franchisor may prescribe from time to time:

5.3.1 On April 15th of the year following the end of Area Developer's fiscal year, a complete annual financial statement (prepared according to generally accepted accounting principles), on a compilation basis, and if required by Franchisor, such statements will be prepared by an independent certified public accountant.

5.3.2 Such other forms, reports, records, information, and data as Franchisor may reasonably designate.

5.4 **Maintaining Records.** Area Developer will maintain during the term of this Agreement, and will preserve for at least seven (7) years from the dates of their preparation, and will make available to Franchisor at Franchisor's request and at Area Developer's expense, full, complete, and accurate books, records, and accounts in accordance with generally accepted accounting principles.

5.5 **Area Developer to Provide Training.** Area Developer agrees that, notwithstanding any thing to the contrary in any Franchise Agreement, Area Developer will be responsible for conducting the initial training of all required trainees (including without limitation the owners and management personnel) for the third (3rd) and any subsequent Franchised Business developed under this Agreement, in accordance with the requirements and conditions as Franchisor may from time to time establish for the initial training. By no later than the time Area Developer is seeking Franchisor's approval to develop the third (3rd) Franchised Business under this Agreement, Area Developer will have completed to Franchisor's satisfaction all requirements and conditions necessary to obtain Franchisor's approval for Area Developer to conduct such training.

SECTION 6 - DEFAULT AND TERMINATION

6.1 **Automatic Termination.** Area Developer will be deemed to be in default under this Agreement, and all rights granted in this Agreement will automatically terminate without notice to Area Developer, if Area Developer becomes insolvent or makes a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Area Developer or such a petition is filed against and not opposed by Area Developer; if Area Developer

is adjudicated a bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver of Area Developer or other custodian for Area Developer's business or assets is filed and consented to by Area Developer; if a receiver or other custodian (permanent or temporary) of Area Developer's assets or property, or any part of it, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law should be instituted by or against Area Developer; if final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); if Area Developer is dissolved; if execution is levied against any asset of Area Developer or Area Developer's Franchised Business; if suit to foreclose any lien or mortgage against any asset of Area Developer or Area Developer's Franchised Business is instituted against Area Developer and not dismissed within sixty (60) days; or if any asset of Area Developer's or any Franchised Business of Area Developer's will be sold after levy thereupon by any sheriff, marshal, or constable.

6.2 **Termination Upon Notice.** Area Developer will be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted by this Agreement or take any of the actions described in Section 6.5 below, without affording Area Developer any opportunity to cure the default, effective immediately on the provision of notice to Area Developer (in the manner provided under Section 10 in this Agreement), on the occurrence of any of the following events of default:

6.2.1 If the Franchise Agreement for any Franchised Business operated by Area Developer (or an entity affiliated with Area Developer) is terminated.

6.2.2 If Area Developer (or an officer or director of, or a shareholder in, Area Developer (or an entity affiliated with Area Developer) if Area Developer is a corporation, or a general or limited partner of Area Developer, if Area Developer is a partnership) is convicted of a felony, a crime involving moral turpitude, or any other crime or action that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated with them, or Franchisor's interest to them.

6.2.3 If Area Developer or any Principal purports to transfer any rights or obligations under this Agreement or any the assets of Area Developer in a manner that is contrary to the terms of Section 7 of this Agreement.

6.3 **Notice and Opportunity to Cure – For a Missed Deadline.** Failure by Area Developer to meet a deadline under the Development Schedule (a "Missed Deadline") will constitute a default under this Agreement. Franchisor will, for one (1) Missed Deadline, provide Area Developer with a reasonable opportunity to cure such default by Franchisor notifying Area Developer in writing of a new date for the Missed Deadline (without change to any other deadline in the Development Schedule). If Area Developer fails to come into compliance with the Development Schedule by such new deadline, and/or on the occurrence of another Missed Deadline, Franchisor, in its discretion, may terminate this Agreement and all rights granted by this Agreement without affording Area Developer any further opportunity to cure the default, effective immediately on the delivery of written notice to Area Developer (in the manner set forth in Section 10 of this Agreement); or Franchisor, in its discretion, may elect, in lieu of terminating this Agreement, to take any of the actions described in Section 6.5 below.

6.4 **Notice and Opportunity to Cure Other Defaults.** Except as otherwise provided in Sections 6.1, 6.2, and 6.3 above, if Area Developer fails to comply with any material term and condition of this Agreement, such action will constitute a default under this Agreement and, on the occurrence of any such default, Franchisor may terminate this Agreement by giving written notice of termination stating the nature of such default to Area Developer at least thirty (30) days before the effective date of termination; only if, however, that Area Developer may avoid termination by curing the default to Franchisor's satisfaction, and by promptly providing proof of it to Franchisor within the 30-day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement and all rights granted by this Agreement (including but not limited to, the right to develop new Franchised Business) will terminate without further notice to Area Developer effective immediately on the expiration of the thirty (30) day period or such longer period as applicable law may require.

6.5 **Franchisor's Other Options Upon Default.** Franchisor, in its discretion, may elect, in lieu of terminating this Agreement, to use other remedial measures for Area Developer's breach of this Agreement, which

include, but are not limited to: (i) termination of the credit towards Franchise Fees granted in Section 4.2 in this Agreement; (ii) loss of the limited exclusivity, or reduction in the scope of protections, granted to Area Developer under Section 1.2 in this Agreement for the Development Area; (iii) reduction in the scope of the Development Area; (iv) reduction in the number of Franchised Business to be developed by Area Developer; and/or (v) Franchisor's retention of all area development fees paid, or owed, by Area Developer. If Franchisor exercises its right, Franchisor will not have waived its right to, in the case of future defaults, exercise all other rights, and invoke all other terms, that are provided in law and/or set out under this Agreement.

6.6 **No Further Rights.** Upon termination or expiration of this Agreement, Area Developer will have no right to establish or operate any ES CEO Club franchises for which a Franchise Agreement has not been executed by Franchisor at the time of termination or expiration. Franchisor's remedies for Area Developer's breach of this Agreement will include, without limitation, Area Developer's loss of its right to develop additional Franchised Business under this Agreement, and Franchisor's retention of all area development fees paid, or owed, by Area Developer. Upon termination or expiration, Franchisor will be entitled to establish, and to franchise others to establish, ES CEO Club franchises in the Development Area, except as may be otherwise provided under any Franchise Agreement which has been executed between Franchisor and Area Developer or, as permitted under Section 3.4.3 of this Agreement, Area Developer's affiliates.

SECTION 7 - TRANSFER OF INTEREST

7.1 **Franchisor's Rights to Transfer.** Franchisor will have the right to transfer or assign this Agreement and all or any part of its rights or obligations in this Agreement to any person or legal entity, and any designated assignee of Franchisor will become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment. In addition, and without limitation to the foregoing, Area Developer expressly affirms and agrees that Franchisor may sell its assets, its Proprietary Marks, or its System; may sell its securities in a public offering or in a private placement; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring.

7.2 **No Transfers Without Franchisor's Approval.** Area Developer understands and acknowledges that Franchisor has granted the rights in this Agreement in reliance on the business skill, financial capacity, and personal character of Area Developer or the Principals of Area Developer if Area Developer is not an individual. Accordingly, neither Area Developer nor any Principal will sell, assign, transfer, pledge or otherwise encumber any direct or indirect interest in the Area Developer (including any direct or indirect interest in a corporate or partnership Area Developer), the rights or obligations Area Developer under this Agreement, or any material asset of the Area Developer's business, without the prior written consent of Franchisor, which will be subject to Sections 7.3 and 7.4 below and to all of the conditions and requirements for transfers set forth in the Franchise Agreement attached to this Agreement as Exhibit C that Franchisor deems applicable to a proposed transfer under this Agreement.

7.3 **Simultaneous Transfers.** Area Developer understands and acknowledges that any consent to a transfer of this Agreement will, unless waived, be conditioned on, among other factors, the requirement that the proposed transfer of this Agreement is to be made in conjunction with a simultaneous transfer of all Franchise Agreements executed according to this Agreement to the approved transferee.

7.4 **Transfer Fee.** Area Developer will pay a transfer fee in an amount of \$10,000 to compensate Franchisor for its expenses incurred in connection with the transfer. There is no charge if the transferee is a corporation or limited liability company controlled by Area Developer. If Area Developer requests Franchisor to assist in finding a transferee, Area Developer will pay a transfer fee of \$25,000 or six percent (6%) of the selling price of the Area Developer Franchise, whichever is greater; and the \$10,000 transfer fee to cover review, approval and training of the transferee. If a Broker is used to find a transferee, Area Developer will be responsible for paying any Broker fees directly.

7.5 **Transfer to Entity Formed for by Area Developer.** Notwithstanding anything to the contrary in this Section 7, if Area Developer is an individual and seeks to transfer this Agreement to a corporation, partnership,

or limited liability company formed for the convenience of ownership, the conditions of Sections 7.4 will not apply, and Area Developer may undertake such transfer, only if that Area Developer owns one hundred percent (100%) of the equity interest in the transferee entity, and the Area Developer personally guarantees, in a written guaranty satisfactory to Franchisor, the performance of the obligations of the Area Developer under this Agreement.

SECTION 8 - COVENANTS

8.1 **Confidential Information.** Area Developer will at all times preserve in confidence any and all materials and information furnished or disclosed to Area Developer by Franchisor, and will disclose such information or materials only to such of Area Developer's employees or agents who must have access to it in connection with their employment. Area Developer will not at any time, during the term of this Agreement or thereafter, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce such materials or information, in whole or in part, nor otherwise make them available to any unauthorized person.

8.2 **During the Term.** Area Developer specifically acknowledges that, according to this Agreement, Area Developer will receive valuable specialized training and confidential information, which may include, without limitation, information regarding the operational, sales, advertising and promotional methods and techniques of Franchisor and the System. Area Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Area Developer will not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation:

8.2.1 Divert or attempt to divert any business or customer of any ES CEO Club franchises or of any unit under the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks or the System.

8.2.2 Unless released in writing by the employer, employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee or area developer of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment.

8.2.3 Own, maintain, operate, engage in, be employed by, provide any assistance to, or have any more than a one percent (1%) interest in (as owner or otherwise) any Competitive Business (as defined below). A "Competitive Business" will be considered to be any management training or consulting, executive coaching or training and related services similar to ES CEO Club. Furthermore, Area Developer acknowledges and agrees that Area Developer will be considered in default under this Agreement and that this Agreement will be subject to immediate termination as provided in Section 6.2 in this Agreement, if a person in the immediate family (including spouse, domestic partner, parent or child) of Area Developer (or, if Area Developer is other than an individual, each Principal that is subject to these covenants) engages in a Competitive Business that would violate this Section 8.2.3 if such person was subject to the covenants of this Section 8.2.3.

8.3 **After the Agreement and After a Transfer.** Area Developer covenants that, except as otherwise approved in writing by Franchisor, for a continuous uninterrupted period of two (2) years from the date of (a) a transfer permitted under Section 7 above, or (b) expiration of this Agreement ; (c) termination of this Agreement (regardless of the cause for termination); (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to enforcement of this Section 8.3; or (e) any or all of the foregoing, Area Developer will not either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, partnership, corporation, or other entity, own, maintain, operate, engage in, or have any interest in any Competitive Business, which is, or is intended to be (i) located within the Development Area (other than those Franchised Business provided for in the Development Schedule), or makes offers and sales into the Development Area; or (ii) located within a radius of one (1) mile of any other ES CEO Club franchises located anywhere. Provided, however, that this provision will not apply to the operation by Area Developer of any business under the System under a franchise agreement with Franchisor.

8.4 **Exception for Ownership in Public Entities.** Sections 8.2 and 8.3 in this Agreement will not apply to ownership by Area Developer of less than a five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term “publicly-held corporation” refers to a corporation which has outstanding securities that have been registered under the federal Securities Exchange Act of 1934.

8.5 **Personal Covenants.** At the request of Franchisor, Area Developer will obtain and furnish to Franchisor executed covenants similar in substance to those set forth in this Section 8 (including covenants applicable on the termination of a person’s relationship with Area Developer) and the terms of Sections 6 and 7 of this Agreement (as modified to apply to an individual) from any or all of the following persons: (a) the Designated Principal, (b) all managers and other personnel employed by Area Developer who have received or will receive training and/or other confidential information; (c) all officers, directors, and Principals who have or will receive training or access to confidential information, or who are or may be involved in the operation or development of the Franchised Business. Every covenant required by this Section 8.5 will be in a form approved by Franchisor, including specific identification of Franchisor as a third-party beneficiary of such covenants with the independent right to enforce them.

8.6 **Covenants as Independent Clauses.** The parties agree that each of the foregoing covenants will be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 8 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an un-appealed final decision to which Franchisor is a party, Area Developer expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 8.

8.7 **Franchisor’s Right to Reduce Scope of the Covenants.** Area Developer understands and acknowledges that Franchisor will have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 8.2 and 8.3 in this Agreement, or any portion of it, without Area Developer’s consent, effective immediately on receipt by Area Developer of written notice of it; and Area Developer agrees that it will comply forthwith with any covenant as so modified, which will be fully enforceable notwithstanding the terms of Section 15 in this Agreement.

8.8 **Covenants Survive Claims.** Area Developer expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, will not constitute a defense to the enforcement by Franchisor of the covenants in this Section 8. Area Developer agrees to pay all costs and expenses (including reasonable attorneys’ fees) incurred by Franchisor in connection with the enforcement of this Section 8.

8.9 **Compliance with Laws.** Area Developer represents and warrants to Franchisor that neither Area Developer (including, without limitation, any and all of its employees, directors, officers and other representatives), nor any of its affiliates or the funding sources for either is a person or entity designated with whom Franchisor, or any of its affiliates, are prohibited by law from transacting business.

SECTION 9 - CORPORATE, LIMITED LIABILITY COMPANY, OR PARTNERSHIP AREA DEVELOPER

9.1 **List of Principals.** If Area Developer is a corporation, limited liability company, or partnership, each owner of beneficial interest in Area Developer (each a “Principal”), and the interest of each Principal in Area Developer, will be identified in Exhibit B to the Agreement. Area Developer will maintain a list of all Principals and immediately furnish Franchisor with an update to the information contained in Exhibit B on any change, which will be made only in compliance with Section 7 above.

9.2 **Guaranties.** Such Principals as Franchisor may request will execute a guaranty, indemnification, and acknowledgment of Area Developer’s obligations under this Agreement in the form attached to this Agreement as Exhibit D. As set forth in Section 5.2 above, the Designated Principal will at all times have at least a ten percent (10%) interest in Area Developer.

9.3 **Corporations and Limited Liability Companies.** If Area Developer is a corporation or limited liability company, Area Developer will comply with the following requirements:

9.3.1 Area Developer will be newly organized and its governing documents will at all times provide that its activities are confined exclusively to developing and operating the Franchised Business.

9.3.2 Area Developer will, on request of Franchisor, promptly furnish to Franchisor copies of Area Developer's Articles of incorporation, bylaws, Articles of organization, operating agreement and/or other governing documents, and any amendments to the documents, including the resolution of the Board of Directors or members authorizing entry into this Agreement.

9.3.3 Area Developer will maintain stop-transfer instructions against the transfer on its records of any equity securities; and each stock certificate or issued securities of Area Developer will conspicuously endorse on its face a statement, in a form satisfactory to Franchisor, which references the transfer restrictions imposed by this Agreement; only if, however, that the requirements of this Section 9.3.3 will not apply to a publicly-held corporation.

9.4 **Partnerships and Limited Liability Partnerships.** If Area Developer or any successor to or assignee of Area Developer is a partnership or limited liability partnership, Area Developer will comply with the following requirements:

9.4.1 Area Developer will be newly organized and its partnership agreement will at all times provide that its activities are confined exclusively to developing and operating the Franchised Business.

9.4.2 Area Developer will furnish Franchisor with a copy of its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments to the documents.

9.4.3 The partners of the partnership will not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner.

SECTION 10 – NOTICES

Any and all notices required or permitted under this Agreement will be in writing and will be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, will be deemed to have been given at the date and time of receipt or rejected delivery.

SECTION 11 - PERMITS AND COMPLIANCE WITH THE LAWS

11.1 **Compliance with Laws.** Area Developer will comply with all federal, state, and local laws, rules and regulations, and will timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business contemplated under this Agreement.

11.2 **Notice of Actions.** Area Developer will notify Franchisor in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation or financial condition of Area Developer and/or any Franchised Business established under this Agreement.

SECTION 12 - INDEPENDENT CONTRACTOR AND INDEMNIFICATION

12.1 **No Fiduciary Relationship.** Area Developer is an independent contractor. Franchisor and Area Developer are completely separate entities and are not fiduciaries, partners, joint ventures, or agents of the other in any sense and neither will have the power to bind the other. No act or assistance given by either party to the other according to this Agreement will be construed to alter the relationship.

12.2 **Public Notice.** During the term of this Agreement, Area Developer will hold itself out to the public as an independent contractor operating the business according to an area development agreement with Franchisor. Area Developer agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of the fact in a conspicuous place in Area Developer's offices, the content of which Franchisor reserves the right to specify.

12.3 **No Assumption of Liability.** Nothing in this Agreement authorizes Area Developer to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and that Franchisor will in no event assume liability for, or be deemed liable by this Agreement as a result of, any such action; nor will Franchisor be liable by reason of any act or omission of Area Developer in Area Developer's operations by this Agreement, or for any claim or judgment arising therefrom against Area Developer or Franchisor.

12.4 **Indemnification.** Area Developer will indemnify and hold Franchisor, Franchisor's owners and affiliates, and their respective officers, directors, and employees (the "Indemnitees") harmless against any and all causes of action, claims, losses, costs, expenses, liabilities, litigation, damages or other expenses (including, but not limited to, settlement costs and attorneys' fees) arising directly or indirectly from, as a result of, or in connection with Area Developer's operation of the business contemplated by this Agreement (notwithstanding any claims that the Indemnitees are or were negligent). Area Developer agrees that with respect to any threatened or actual litigation, proceeding or dispute which could directly or indirectly affect any of the Indemnitees, the Indemnitees will have the right, but not the obligation, in their discretion, to: (i) choose counsel, (ii) direct, manage and/or control the handling of the matter; and (iii) settle on behalf of the Indemnitees, and/or Area Developer, any claim against the Indemnitees. All vouchers, canceled checks, receipts, receipted bills or other evidence of payments for any such losses, liabilities, costs, damages, charges or expenses of whatsoever nature incurred by any Indemnitees will be taken as prima facie evidence of Area Developer's obligation by this Agreement.

SECTION 13 - APPROVALS AND WAIVERS

13.1 **Approval Requests.** Whenever this Agreement requires the prior approval or consent of Franchisor, Area Developer will make a timely written request to Franchisor, and such approval or consent will be in writing. Franchisor will respond to Area Developer's timely requests in a reasonably timely and prompt manner.

13.2 **Non-waiver.** No failure of Franchisor to exercise any power reserved to it by this Agreement, or to insist on strict compliance by Area Developer with any obligation or condition by this Agreement, and no custom or practice of the parties in variance with the terms of this Agreement, will constitute a waiver of Franchisor's right to demand exact compliance with the terms of this Agreement. Waiver by Franchisor of any particular default by Area Developer will not be binding unless in writing and executed by the party sought to be charged and will not affect or impair Franchisor's right with respect to any subsequent default of them or of a different nature; nor will any delay, waiver, forbearance, or omission of Franchisor to exercise any power or rights arising out of any breach or default by Area Developer of any of the terms, conditions, or covenants of this Agreement, affect or impair Franchisor's rights nor will such constitute a waiver by Franchisor of any right by this Agreement or of the right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payment(s) due to it by this Agreement will not be deemed to be a waiver by Franchisor of any preceding breach by Area Developer of any terms, covenants or conditions of this Agreement.

SECTION 14 - SEVERABILITY AND CONSTRUCTION

14.1 **Severable Parts**. Except as expressly provided to the contrary in this Agreement, each portion, section, part, term, and/or provision of this Agreement will be considered severable; and if, for any reason, any section, part, term, and/or provision in this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such will not impair the operation of, or have any other effect on, such other portions, sections, parts, terms, and/or conditions of this Agreement as may remain otherwise intelligible; and the latter will continue to be given full force and effect and bind the parties of this Agreement; and the invalid portions, sections, parts, terms, and/or conditions will be deemed not to be a part of this Agreement.

14.2 **Terms Surviving this Agreement**. Any provision or covenant in this Agreement which expressly or by its nature imposes obligations beyond the expiration, termination or assignment of this Agreement (regardless of cause for termination), or assignment will survive such expiration, termination.

14.3 **No Rights on Third Parties**. Except as expressly provided to the contrary in this Agreement, nothing in this Agreement is intended, nor will be deemed, to confer on any person or legal entity other than Area Developer, Franchisor, officers, directors, shareholders, agents, and employees of Franchisor, and such successors and assigns of Franchisor as may be contemplated by Section 15 in this Agreement, any rights or remedies under or by reason of this Agreement.

14.4 **Full Scope of Terms**. Area Developer expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the terms of this Agreement any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an un-appealed final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order.

14.5 **Franchisor's Application of its Rights**. Franchisor will have the right to operate, develop and change the System in any manner that is not specifically precluded by this Agreement. Whenever Franchisor has reserved in this Agreement a right to take or withhold an action, or are deemed to have a right and/or discretion to take or withhold an action, or to grant or decline to grant Area Developer a right to take or omit an action, except as otherwise expressly and specifically provided in this Agreement, Franchisor may make its decision or exercise its rights, on the basis of the information readily available to Franchisor, and its judgment of what is in its best interests and/or in the best interests of the Franchisor's franchise network, at the time its decision is made, without regard to whether: (i) other reasonable or even arguably preferable alternative decisions could have been made by Franchisor; (ii) the decision or action of Franchisor will promote its financial or other individual interest; (iii) Franchisor's decision or the action it take applies differently to Area Developer and one or more other franchisees or Franchisor's company-owned operations; or (iv) Franchisor's decision or the exercise of its right or discretion is adverse to Area Developer's interests. In the absence of an applicable statute, Franchisor will have no liability to Area Developer for any such decision or action. Franchisor and Area Developer intend that the exercise of Franchisor right or discretion will not be subject to limitation or review. If applicable law implies a covenant of good faith and fair dealing in this Agreement, Franchisor and Area Developer agree that such covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement and that this Agreement grants Franchisor the right to make decisions, take actions and/or refrain from taking actions not inconsistent with Area Developer's rights and obligations by this Agreement.

14.6 **Captions Only for Convenience**. All captions in this Agreement are intended solely for the convenience of the parties, and none will be deemed to affect the meaning or construction of any provision of this Agreement.

SECTION 15 - ENTIRE AGREEMENT

This Agreement, the attachments to this Agreement, and the documents referred to in this Agreement constitute the entire Agreement between Franchisor and Area Developer concerning the subject matter of this Agreement, and supersede any prior agreements, no other representations having induced Area Developer to execute this Agreement. Except for those permitted to be made unilaterally by Franchisor by this Agreement, no amendment, change, or variance from this Agreement will be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

SECTION 16 - APPLICABLE LAW AND DISPUTE RESOLUTION

16.1 **Governing Law.** This Agreement takes effect on its acceptance and execution by Franchisor, and will be interpreted and construed under the laws of the State of California. In the event of any conflict of law, the laws of California will prevail, without regard to, and without giving effect to, the application of California conflict of law rules. Nothing in this Section 16.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of California or of any other state to which it would not otherwise be subject.

16.2 **Non-Binding Mediation.** Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided below). Any such mediation will be non-binding and will be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 16.2 will not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation. Mediation by this Agreement will be concluded within forty five (45) days of Area Developer's receipt of the notice specifying the designated mediator or such longer period as may be agreed on by the parties in writing. All aspects of the mediation process will be treated as confidential, will not be disclosed to others, and will not be offered or admissible in any other proceeding or legal action whatever. Franchisor and Area Developer will each bear its own costs of mediation, and each will bear one-half the cost of the mediator or mediation service.

16.3 **Arbitration.** Franchisor and Area Developer agree that, except for controversies, disputes, or claims related to or based on improper use of the Marks or Confidential Information, all controversies, disputes, or claims between Franchisor and Area Developer's affiliates, and Franchisor's and their respective shareholders, members, officers, directors, agents, and/or employees, and Area Developer (and/or Area Developer's owners, guarantors, affiliates, and/or employees) arising out of or related to:

- (1) this Agreement or any other agreement between Area Developer and Franchisor;
- (2) Franchisor's relationship with Area Developer;
- (3) the validity of this Agreement or any other agreement between Area Developer and

Franchisor; or

- (4) any System Standard;

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association in the United States ("AAA"). The arbitration proceedings will be conducted by one arbitrator and, except as this Subsection otherwise provides, according to the AAA's then current rules. All proceedings will be conducted at a suitable location chosen by the arbitrator which is within a five (5) mile radius of Franchisor's then current principal place of business. All matters relating to arbitration will be governed by the United States Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Judgment on the arbitrator's award may be entered in any court of competent jurisdiction.

The arbitrator has the right to award or include in his or her award any relief which he or she deems proper, including, without limitation, money damages (with interest on unpaid amounts from the date due), specific performance, injunctive relief, and attorneys' fees and costs (as allowable under this Agreement or

applicable law), provided that the arbitrator may not declare any Mark generic or otherwise invalid or, except as expressly provided in Subsection 16.6. below, award any punitive, exemplary or multiple damages against either party (Franchisor and Area Developer by this agreement waiving to the fullest extent permitted by law, except as expressly provided in Subsection 16.6. below, any right to or claim for any punitive, exemplary or multiple damages against the other).

Franchisor and Area Developer agree to be bound by the terms of any limitation on the period of time in which claims must be brought under applicable law or this Agreement, whichever expires earlier. Franchisor and Area Developer further agrees that, in any arbitration proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the United States Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim which is not submitted or filed as required is forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either Area Developer or Franchisor.

Franchisor and Area Developer agree that arbitration will be conducted on an individual, not a class-wide, basis and that an arbitration proceeding between Franchisor and Franchisor's affiliates, and Franchisor's and their respective shareholders, officers, directors, agents, and/or employees, and Area Developer (and/or Area Developer's owners, guarantors, affiliates, and/or employees) may not be consolidated with any other arbitration proceeding between Franchisor and any other person.

Despite Franchisor's and Area Developer's agreement to arbitrate, Franchisor and Area Developer each have the right in a proper case to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction; only if, however, that Franchisor and Area Developer must contemporaneously submit Franchisor's dispute for arbitration on the merits as provided in this Subsection.

16.4 The terms of this Subsection are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

16.5 **No Rights Exclusive of Other Rights.** No right or remedy conferred on or reserved to Franchisor or Area Developer by this Agreement is intended to be, nor will be deemed, exclusive of any other right or remedy provided in this Agreement or permitted by law or equity, but each will be cumulative of every other right or remedy.

16.6 **Waiver of Jury Trial.** Franchisor and Area Developer irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Area Developer and Franchisor, or Area Developer's activities under this Agreement, brought by either party of this Agreement against the other, whether in mediation, or a legal action, will be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or such claim or action will be barred.

16.7 **Waiver of Punitive Damages.** Franchisor and Area Developer by this agreement waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other.

16.8 **Injunctive Relief.** Nothing in this Agreement contained will bar the right of Franchisor to obtain injunctive relief against threatened conduct that will cause it loss or damages under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

SECTION 17 - ACKNOWLEDGEMENTS

17.1 **Area Developer's Investigation of the Business Possibilities.** Area Developer acknowledges that it has conducted an independent investigation of the business of developing and operating ES CEO Club franchises, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent on the ability of Area Developer (or, if Area Developer is a corporation,

partnership or limited liability company, the ability of its principals) as (an) independent businessperson (s). Franchisor expressly disclaims the making of, and Area Developer acknowledges that it has not received, any warranty or guaranty, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

17.2 **Receipt of UFOC and Complete Agreement.** Area Developer acknowledges that it received a complete copy of this Agreement, the attachments to this Agreement, and agreements relating to this Agreement, if any, at least five (5) business days before the date on which this Agreement was executed. Area Developer further acknowledges that it received the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" at least ten (10) business days before the date on which this Agreement was executed or any payment by Area Developer for the rights granted under this Agreement.

17.3 **Area Developer Read the Agreement and Consulted.** Area Developer acknowledges that it has read and understood this Agreement, the attachments to this Agreement, and agreements relating to this Agreement, if any, and that Franchisor has accorded Area Developer ample time and opportunity to consult with advisors of Area Developer's own choosing about the potential benefits and risks of entering into this Agreement.

17.4 **No Conflicting Obligations.** Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.

IN WITNESS WHEREOF, the parties of this Agreement have duly executed and delivered this Agreement in duplicate on the day and year first above written.

Estrada Strategies Franchise, Inc.
Franchisor

By: _____
Name: _____
Title: _____

Franchisee

By: _____
Name: _____
Title: _____

Address for Notices:

Estrada Strategies Franchise, Inc.
3400 Inland Empire Blvd., Suite 101
Ontario, CA 91764
(909) 476-3510
Attn: Department of Franchising

Franchisee

By: _____
Name: _____
Title: _____

Franchisee

By: _____
Name: _____
Title: _____

Address for Notices:

Telephone: _____
Fax: _____
Attn: _____

STATE OF)
) SS:
COUNTY OF)

Be it remembered, that on this ____ day of _____, 20__, before me, the subscriber, a Notary Public in and for said State, personally appeared of _____, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer and for and on behalf of said corporation, acknowledged the signing and execution of said instrument, and that the signing and execution of said instrument is his free and voluntary act and deed as such officer, and the free and voluntary act and deed of said corporation, for the uses and purposes in said instrument mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

Notary Public

My Commission Expires:

ESTRADA STRATEGIES FRANCHISE, INC.
AREA DEVELOPMENT AGREEMENT
EXHIBIT A
DATA SHEET

1. Development Schedule (see Section 1.1): Area Developer will execute Franchise Agreements for the development and operation of _____ () Franchised Business, within the Development Area in accordance with the following Development Schedule:

Minimum Cumulative Number
of Franchise Agreements for
Franchised Business to be Operating
Within the Development Area

By this Date

Total: _____

2. Development Area (see Section 1.1): The Development Area will be the following: _____

3. Area Development Fee (see Section 4.1): The Area Development Fee will be \$ _____.

Initial: _____ Date: _____

Initial: _____ Date: _____

FRANCHISOR

AREA DEVELOPER

**ESTRADA STRATEGIES FRANCHISE, INC.
 AREA DEVELOPMENT AGREEMENT
 EXHIBIT B
LIST OF PRINCIPALS & DESIGNATED PRINCIPAL**

The following identifies all of Area Developer's Principals (as defined in Section 9.1 of the Area Development Agreement)

Name of Principal	Address	Interest (%) with description
		Total: 100%

AREA DEVELOPER'S DESIGNATED PRINCIPAL

The following identifies Area Developer's Designated Principal (as defined in Section 5.2 of the Area Development Agreement)

Name and Title	Address, telephone number, and e-mail address	Interest (%) (with description) if any

**ESTRADA STRATEGIES FRANCHISE, INC.
AREA DEVELOPMENT AGREEMENT
EXHIBIT C
FORM OF FRANCHISE AGREEMENT**

See Exhibit B to the UFOC