

EXHIBIT C

Multi-Unit Agreement

LIBERTY FITNESS HOLDINGS, LLC

MULTI-UNIT AGREEMENT

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Multi-Unit AGREEMENT

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LIBERTY FITNESS HOLDINGS, LLC
Multi-Unit AGREEMENT

THIS MULTI-UNIT AGREEMENT (the "**Agreement**") is made and entered into on this _____ day of _____, 200__ ("**Effective Date**") by and between:
LIBERTY FITNESS HOLDINGS, LLC, a Delaware limited liability company with offices at 1701 Directors Blvd., Suite 110, Austin, Texas 78744 ("**Franchisor**"); and

_____, a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at ("**Developer**").

RECITALS:

A. WHEREAS, Franchisor owns a format and system relating to the establishment and operation of businesses operating in buildings that bear Franchisor's interior and/or exterior trade dress (a "**Club**"), under the Proprietary Marks (as defined below), and specializing in offering thirty-minute fitness services using adjustable hydraulic strength training and aerobic cardiovascular equipment and exercise programs, and fitness programs primarily directed to women ("**Services**"), as well as the sale of associated proprietary and/or private label products and services, if and when developed, prepared for sale in the system (the "**Products**");

B. WHEREAS, the distinguishing characteristics of the "Liberty Fitness" system include, without limitation, equipment layouts, signage, distinctive interior and exterior design and accessories, Services, Products, exercise equipment, procedures for operations; quality and uniformity of products and services offered; procedures for management and inventory control; training and assistance; and advertising and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time (the "**System**");

C. WHEREAS, Franchisor identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the marks "Liberty Fitness" and "Liberty Fitness Club" and logo, and such other trade names, service marks, and trademarks as are now designated (and may hereinafter be designated by Franchisor in writing) for use in connection with the System (the "**Proprietary Marks**");

D. WHEREAS, Franchisor continues to develop, use, and control the use of such Proprietary Marks in order to identify for the public the source of services and products marketed thereunder and under the System, and to represent the System's high standards of quality, appearance, and service;

E. WHEREAS, Franchisor grants to qualified persons franchises to own and operate Clubs offering Products and Services authorized and approved by Franchisor and utilizing Franchisor's System and Proprietary Marks; and

F. WHEREAS, Developer wishes to obtain certain rights to develop Clubs under System and wishes to enter into this Agreement, and to obtain franchises from Franchisor, for that purpose.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other party set forth in this Agreement, and for other good and valuable consideration the sufficiency and receipt of which is acknowledged, agree as follows:

1. **GRANT**

1.1 Franchisor hereby grants to Developer the right (and Developer hereby accepts the obligation), pursuant to the terms and conditions of this Agreement, to develop either three (3) or six (6) Clubs in the Development Area, as indicated in Exhibit A. In this regard, the parties further agree that:

1.1.1 The Clubs shall be developed by Developer pursuant to the development schedule set forth in Paragraph 2 of Exhibit A, attached hereto (the “**Development Schedule**”);

1.1.2 Each Club developed under this Agreement shall be established and operated pursuant to a separate Liberty Fitness Holdings, LLC Franchise Agreement (a “**Franchise Agreement**”) that shall be executed at the same time as this Agreement, as provided in Section 3.1 below; and

1.1.3 Each Club developed under this Agreement shall be located in the area that is specified in Paragraph 1 of Exhibit A to this Agreement (the “**Development Area**”).

1.2 The rights granted under this Agreement are not exclusive, and as a result, Franchisor retains all rights, including but not limited to the following:

1.2.1 Franchisor shall have the right to establish, and license others to establish, Clubs at any Institutional Facility, Co-Branded Location, or non-traditional facility, within or outside the Development Area, no matter how close those Clubs are to any Club operated by Developer (except that those Clubs will not be within the “**Protected Territory**” set out in Section 1.2 of any Franchise Agreements signed by Developer);

1.2.2 Franchisor shall have the right to acquire and operate any business or Clubs of any kind, whether located within or outside the Development Area, and no matter how close those business(es) or Club(s) may be to any Club operated by Developer; and/or

1.2.3 Franchisor shall have the right to use and license the use of the Proprietary Marks and other marks in connection with the offer, sale, and/or distribution of any product or service (including but not limited to the Products and Services), directly or indirectly, from any location or to any purchaser (including, but not limited to, sales made at retail locations, mail order, and on the Internet), so long as such sales are not conducted from a Club operated within the “**Protected Territory**” set out in Section 1.2 of any Franchise Agreements signed by Developer.

1.3 This Agreement is not a franchise agreement, and only sets the framework for the parties to enter into franchise agreements. This Agreement does not grant to Developer any right to use in any manner Franchisor’s Proprietary Marks or System.

1.4 Developer shall have no right under this Agreement to license others to use in any manner the Proprietary Marks or System.

2. **DEVELOPMENT FEE**

There is no development fee due under this Agreement.

3. **DEVELOPMENT OBLIGATIONS**

3.1 Upon execution of this Agreement, Developer shall also execute and deliver to Franchisor a Franchise Agreement for each of the three (3) or six (6) Clubs to be developed under this Agreement. The Franchise Agreement shall be in the form attached to this Agreement at Exhibit D, as amended by this Section 3.1, as follows:

3.1.1 In order to implement the terms of the Franchise Agreement, Section 2.1 of the Franchise Agreement, addressing the term of each of the three (3) or six (6) Franchise Agreements signed by Developer pursuant to this Agreement, shall be amended to read as follows:

“The term of this Agreement shall expire at the end of ten (10) years from the date that the Club first opens for business (the “Initial Term”), unless this Agreement is sooner terminated in accordance with the provisions.”

3.1.2 If Developer elects to develop three (3) Clubs, as indicated in Exhibit A, Section 4.1 of each Franchise Agreement, addressing the Initial Franchise Fee, shall be amended so that the amount of the Initial Franchise Fee for the three (3) Clubs shall be reduced by a total of \$10,500 (\$3,500 per franchise agreement), allocated as follows:

For this Franchise Agreement	The Initial Franchise Fee in Section 4.1 of the form franchise agreement is	The reduced Initial Franchise Fee (notwithstanding any change to that fee in the interim) shall be:
First franchise agreement	\$30,600	\$30,600
Second franchise agreement	\$30,600	\$30,600
Third franchise agreement	\$30,600	\$20,100
Total	\$91,800	\$81,300

- 3.1.3 If Developer elects to develop six (6) Clubs, as indicated in Exhibit A, Section 4.1 of each Franchise Agreement, addressing the Initial Franchise Fee, shall be amended so that the amount of the Initial Franchise Fee for the six (6) Clubs shall be reduced by a total of \$39,000 (\$6,500 per franchise agreement), allocated as follows:

For this Franchise Agreement	The Initial Franchise Fee in Section 4.1 of the form franchise agreement is	The reduced Initial Franchise Fee (notwithstanding any change to that fee in the interim) shall be:
First franchise agreement	\$30,600	\$30,600
Second franchise agreement	\$30,600	\$30,600
Third franchise agreement	\$30,600	\$30,600
Fourth franchise agreement	\$30,600	\$17,600
Fifth franchise agreement	\$30,600	\$17,600
Sixth franchise agreement	\$30,600	\$17,600
Total	\$183,600	\$144,600

- 3.2 Each Club shall be located at a site proposed by Developer and approved by Franchisor, within the Development Area, under the terms and conditions stated in the Site Selection Addendum that is appended as Exhibit B to the Franchise Agreement (the "Site Selection Addendum").
- 3.3 Recognizing that time is of the essence, Developer agrees to satisfy the Development Schedule. Failure by Developer to adhere to the Development Schedule, shall constitute a default under this Agreement as provided in Section 6.2 hereof.

4. TERM

The term of this Agreement and all rights granted hereunder shall expire on the last date specified in the Development Schedule, unless this Agreement is earlier terminated in accordance with the terms set out in this Agreement.

5. DUTIES OF THE PARTIES

- 5.1 For each Club developed under this Agreement Franchisor shall furnish to Developer the following:
- 5.1.1 Site selection guidelines, including Franchisor's minimum standards for a location for the Club, and such site selection counseling and assistance as Franchisor may deem advisable.
- 5.1.2 Such on-site evaluation as Franchisor may deem advisable in response to Developer's request for site approval; provided, however, that Franchisor shall not provide on-site evaluation for any proposed site prior to the receipt of all information required with respect to a proposed site under the Site Selection Addendum.

5.2 Developer accepts the following obligations:

5.2.1 If Developer is a corporation or an LLC, then it shall comply, except as otherwise approved in writing by Franchisor, with the following requirements throughout the term of this Agreement:

5.2.1.1 Developer shall furnish Franchisor with its Articles of Incorporation, Bylaws, other governing documents, any other documents Franchisor may reasonably request, and any amendments thereto.

5.2.1.2 Developer shall confine its activities, and its governing documents, if any, shall at all times provide that its activities are confined, exclusively to the management and operation of the business contemplated hereunder, including the establishment and operation of the Clubs to be developed hereunder.

5.2.1.3 Developer shall maintain stop transfer instructions against the transfer on its records of any voting securities; and shall issue no certificates for voting securities upon the face of which the following printed legend does not legibly and conspicuously appear:

The transfer of this stock is subject to the terms and conditions of a Multi-Unit Agreement with Liberty Fitness Holdings, LLC, dated _____. Reference is made to the provisions of the said Multi-Unit Agreement and to the Articles and Bylaws of this Corporation.

5.2.1.4 Developer shall maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Developer and shall furnish the list to Franchisor upon request.

5.2.1.5 Such owners of a beneficial interest in the corporation as Franchisor may request shall execute a guarantee of the performance of Developer's obligations under this Agreement in the form attached hereto as Exhibit B.

5.2.2 If Franchisee is a partnership (general or limited), a limited liability partnership, or some other form of entity that is not addressed under Section 5.2.1 above (a "**partnership**"), then it shall comply, except as otherwise approved in writing by Franchisor, with the following requirements throughout the term of this Agreement:

5.2.2.1 Developer shall furnish Franchisor with its partnership agreement, operating agreement, and/or organizational documents, as well as such other documents as Franchisor may reasonably request, and any amendments thereto.

5.2.2.2 Developer shall prepare and furnish to Franchisor, upon request, a list of all general and limited partners, and/or members, in Developer.

5.2.2.3 Such partners in the partnership, or such members in the partnership, as Franchisor may request shall execute a guarantee of the performance of Developer's obligations under this Agreement in the form attached hereto as Exhibit B.

5.2.3 Developer shall at all times preserve in confidence any and all materials and information furnished or disclosed to Developer by Franchisor, and shall disclose such information or

materials only to such of Developer's employees or agents who must have access to it in connection with their employment. Developer shall not at any time, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person.

5.2.4 Developer shall comply with all requirements of federal, state, and local laws, rules, and regulations. To the extent that the requirements of said laws are in conflict with the terms of this Agreement or other instructions of Franchisor, Developer shall: (a) comply with said laws; and (b) immediately provide written notice describing the nature of such conflict to Franchisor.

5.2.5 Franchisor shall have the right to require Developer to employ one or more district managers (who shall be individuals reasonably acceptable to Franchisor) to supervise the day to day operations of Developer's Clubs. Any such district managers shall be required to attend and successfully complete (to Franchisor's reasonable satisfaction) such training course as Franchisor may reasonably require.

6. **DEFAULT**

6.1 Developer shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Developer, if Developer shall become insolvent or makes a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by Developer or such a petition is filed against and not opposed by Developer; or if Developer is adjudicated a bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of Developer or other custodian for Developer's business or assets is filed and consented to by Developer; or if a receiver or other custodian (permanent or temporary) of Developer's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Developer; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless unappealed or a supersedeas bond is filed); or if Developer is dissolved; or if execution is levied against Developer's business or property; or if suit to foreclose any lien or mortgage against the premises or equipment of any Club developed hereunder is instituted against Developer and not dismissed within thirty (30) days; or if the real or personal property of Developer shall be sold after levy thereupon by any sheriff, marshal, or constable.

6.2 If Developer fails to meet its obligations under the Development Schedule, such action shall constitute a default under this Agreement, upon which Franchisor, in its discretion, may terminate this Agreement and all rights granted hereunder without affording Developer any opportunity to cure the default, effective immediately upon the delivery of written notice to Developer (in the manner set forth in Section 9 of this Agreement).

6.3 Except as otherwise provided in Sections 6.1 and 6.2, above, if Developer fails to comply with any material term and condition of this Agreement, or fails to comply with the terms and conditions of any Franchise Agreement or other Multi-Unit Agreement between the Developer (or a person or entity affiliated with or controlled by the Developer) and Franchisor, such action shall constitute a default under this Agreement. Upon the occurrence of any such default, Franchisor may terminate this Agreement by giving written notice of termination stating the nature of such default to Developer at least fifteen (15) days prior to the effective date of

termination; provided, however, that Developer may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the fifteen-day period (or such longer period as applicable law may require). 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 hereunder (including but not limited to, the right to develop any new Clubs) will terminate without further notice to Developer, effective immediately upon the expiration of the fifteen (15) day period (or such longer period as applicable law may require).

- 6.4 In lieu of termination, Franchisor shall have the right to reduce or eliminate all or only certain rights of Developer under this Agreement; and if Franchisor exercises said right, Franchisor shall not have waived its right to, in the case of future defaults, exercise all other rights, and invoke all other provisions, that are provided in law and/or set out under this Agreement.
- 6.5 Upon termination or expiration of this Agreement, Developer shall have no right to establish or operate any Clubs for which a Franchise Agreement has not been executed by Franchisor at the time of termination. Thereafter, Franchisor shall be entitled to establish, and to license others to establish, Clubs in the Development Area (except as may be otherwise provided under any Franchise Agreement that has been executed between Franchisor and Developer).
- 6.6 No default under this Multi-Unit Agreement shall constitute a default under any Franchise Agreement between the parties hereto.
- 6.7 No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or equity.

7. **TRANSFERS**

- 7.1 Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.
- 7.2 If Developer is a corporation, partnership, or other form of entity, then each principal of Developer ("Principal"), and the interest of each Principal in Developer, is identified in Exhibit C hereto. Any person or entity which owns a direct or indirect interest in Developer may be designated as a Principal by Franchisor in its sole discretion, and Exhibit C shall be so amended automatically upon notice thereof to Developer.
- 7.3 Franchisor shall have a continuing right to designate as a Principal any person or entity which owns a direct or indirect interest in Developer.
- 7.4 Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Developer, and that Franchisor has granted the rights described in this Agreement in reliance on Developer's or Developer's Principals' business skill, financial capacity, and personal character. Accordingly:
- 7.4.1 Developer shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and obligations of the Developer under this Agreement; or (b) any material asset of Developer.

- 7.4.2 If Developer is a corporation, Developer shall not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities shall become a Principal under this Agreement, if so designated by Franchisor.
- 7.4.3 If Developer is a partnership or LLC, the partners of the partnership or members of the LLC shall not, without the prior written consent of Franchisor, admit additional general partners or managing members, remove a general partner or managing member, or otherwise materially alter the powers of any general partner or managing member. Each general partner or member of a partnership or LLC shall automatically be deemed a Principal of Developer.
- 7.4.4 A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Developer as shown in Exhibit C.
- 7.5 Franchisor shall not unreasonably withhold any consent required by Section 7.4; provided, if Developer proposes to transfer its obligations hereunder or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Developer, Franchisor shall have absolute discretion to require any or all of the following as conditions of its approval:
- 7.5.1 The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Developer and Franchisor or its affiliates, and federal, state, and local laws and rules;
- 7.5.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Developer; and, if the obligations of Developer were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor;
- 7.5.3 After the transfer, the Principals of the Developer shall meet Franchisor's educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the business of Developer, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the business;
- 7.5.4 If a proposed transfer would result in a change in control of the Developer, at Franchisor's option, the Developer shall execute, for a term ending on the expiration date of this Agreement the form of Multi-Unit Agreement then being offered to new System Developers, and such other ancillary agreements required by Franchisor for the business contemplated hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement;
- 7.5.5 The transferor shall remain liable for all of the obligations to Franchisor in connection with this Agreement that arose prior to the effective date of the transfer, and any

covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;

- 7.5.6 At Developer's expense, one Principal designated by Franchisor shall successfully complete all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require;
- 7.5.7 Developer shall pay a transfer fee of Two Thousand Five Hundred Dollars (\$2,500) in addition to the transfer fees required under the Franchise Agreements (unless all six Clubs are already developed, in which case there will be no transfer fee under this Agreement). The transfer fee shall be paid to Franchisor for Franchisor's legal, accounting, training, and other expenses incurred in connection with the transfer;
- 7.5.8 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Section 8.2 and Section 8.3 of this Agreement; and
- 7.5.9 Developer shall have paid Franchisor all of remaining installments of the Development Fee, if any, that Developer has not yet paid to Franchisor under Section 2.2 above.

7.6 Right of First Refusal.

- 7.6.1 If Developer or any Principal desires to accept any *bona fide* offer from a third party to purchase Developer, any material assets of Developer, or any direct or indirect interest in Developer, Developer or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor.
- 7.6.2 Any material change in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 7.6 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 7, with respect to a proposed transfer.
- 7.6.3 In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they shall attempt to appoint a mutually acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Developer, which two appraisers will, in turn, promptly designate a third appraiser; all three appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Developer. The cost of any such appraisal shall be shared equally by

Franchisor and Developer. If Franchisor elects to exercise its right of first refusal, it shall have the right to set off all amounts due from Developer, and one-half of the cost of the appraisal, if any, against any payment to the Seller.

- 7.7 Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.
- 7.8 Upon the permanent disability of any Principal with a controlling interest in Developer, Franchisor may, in its sole discretion, require such interest to be transferred to a third party in accordance with the conditions described in this Section 7 within six (6) months after notice to Developer. "Permanent Disability" shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) months from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician selected by Franchisor upon examination of such person or, if such person refuses to be examined, then such person shall automatically be deemed permanently disabled for the purposes of this Section 7.8 as of the date of refusal. Franchisor shall pay the cost of the required examination.
- 7.9 Upon the death or permanent disability of any Principal of Developer, such person or his representative shall promptly notify Franchisor of such death or claim of permanent disability. Any transfer upon death or permanent disability shall be subject to the same terms and conditions as any *inter vivos* transfer.
- 7.10 Franchisor's consent to a transfer which is the subject of this Section 7 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.
- 7.11 If Developer or any person holding any interest (direct or indirect) in Developer becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of Developer, Developer's obligations and/or rights hereunder, any material assets of Developer, or any indirect or direct interest in Developer shall be subject to all of the terms of this Section 7, including without limitation the rights set forth in Sections 7.4, 7.5, and 7.6 above.
- 7.12 All materials for an offering of stock or partnership interests in Developer or any affiliate of Developer which are required by federal or state law shall be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by Developer or any affiliate of Developer shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the securities of Developer or Developer's affiliates; and Franchisor's review of any offering shall be limited solely to the relationship between Franchisor and Developer and any subsidiaries and affiliates, if applicable. Franchisor may, at its option, require the offering materials to contain a written statement prescribed by Franchisor concerning the limitations stated in the preceding

sentence. Developer (and the offer or if not Developer), the Principals, and all other participants in the offering must fully indemnify Franchisor, its subsidiaries, affiliates, successor, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, Developer shall pay Franchisor a non-refundable fee of Seven Thousand Five Hundred Dollars (\$7,500) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering. Developer shall give Franchisor written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 7.12 commences. Any such offering shall be subject to all of the other provisions of this Section 7, including without limitation those set forth in Sections 7.4, 7.5, and 7.6; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to Franchisor's approval as to the structure and voting control of the offeror (and Developer, if Developer is not the offeror) after the financing is completed.

8. COVENANTS

- 8.1 Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer (or one (1) designated management employee who will assume primary responsibility for the operations of Developer and shall have been previously approved in writing by Franchisor) shall devote full time, energy, and best efforts to the management and operation of the business contemplated hereunder.
- 8.2 Developer specifically acknowledges that, pursuant to this Agreement, Developer will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership corporation or entity:
- 8.2.1 Divert or attempt to divert any business or customer of the Club or of any Club using 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 Franchisor's Proprietary Marks and 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 developer of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment.
- 8.3 Developer covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Club; and shall not for a continuous uninterrupted period of one (1) year from the date of: (a) a transfer permitted under Section 7 above; (b) expiration or termination of this Agreement (regardless of the cause for termination); or (c) 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 the enforcement of this Section; either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any business that is the

same as or similar to the Club and which business is, or is intended to be, located within the greater of: (i) the Development Area; and (ii) a ten (10) mile radius from the location of any then-operating Club.

- 8.4 Section 8.3 above shall not apply to ownership by Developer of less than 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**" shall be deemed to refer to a corporation which has securities that have been registered under the federal Securities Exchange Act of 1934.
- 8.5 At Franchisor's request, Developer shall require and obtain execution of covenants similar to those set forth in Sections 7 and 8 (as modified to apply to an individual) from any or all of the following persons: Developer's Principals and senior level management personnel. The covenants required by this Section 8.5 shall be in the form provided in Exhibit E to this Agreement. Failure by Developer to obtain execution of a covenant required by this Section 8.5 shall constitute a default under Section 6.3 hereof.
- 8.6 The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 8 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, 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 Developer understands and acknowledges that Franchisor shall 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 thereof, without Developer's consent, effective immediately upon receipt by Developer of written notice thereof; and Developer agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 13 hereof.
- 8.8 Developer expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 8. 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 Developer acknowledges that Developer's violation of the terms of this Section 8 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Developer accordingly consents to the issuance of an injunction prohibiting any conduct by Developer in violation of the terms of this Section 8.

9. **NOTICES**

Any and all notices required or permitted under this Agreement shall be in writing and shall 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, shall be deemed to have been given at the date and time of receipt or rejected delivery.

10. PERMITS AND COMPLIANCE WITH LAWS

- 10.1 Developer shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business contemplated under this Agreement.
- 10.2 Developer shall 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 Developer and/or any Club established pursuant to this Agreement.

11. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- 11.1 It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them, that Developer shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.
- 11.2 At all times during the term of this Agreement, Developer shall hold itself out to the public as an independent contractor operating pursuant to this Agreement. Developer agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place in the Developer's offices, the content of which Franchisor reserves the right to specify.
- 11.3 It is understood and agreed that nothing in this Agreement authorizes 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 shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Franchisor be liable by reason of any act or omission of Developer in Developer's operations hereunder, or for any claim or judgment arising therefrom against Developer or Franchisor.
- 11.4 Developer shall indemnify and hold Franchisor, Franchisor's owners and affiliates, and their respective officers, directors, employees, and agents, harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with Developer's operation of the business contemplated hereunder, as well as the costs, including attorneys' fees, of defending against them.

12. APPROVALS AND WAIVERS

- 12.1 Whenever this Agreement requires Franchisor's prior approval or consent, Developer shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing.
- 12.2 Developer acknowledges and agrees that Franchisor makes no warranties or guarantees upon which Developer may rely, and assumes no liability or obligation to Developer, by providing any

waiver, approval, consent, or suggestion to Developer in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

- 12.3 No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Developer under any of the terms, provisions, covenants, or conditions of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power as against Developer, or as to subsequent breach or default by Developer. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Developer of any terms, provisions, covenants, or conditions of this Agreement.

13. ENTIRE AGREEMENT AND AMENDMENT

This Agreement and the exhibits referred to herein constitute the entire, full, and complete Agreement between Franchisor and Developer concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Developer to execute this Agreement. No amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

14. SEVERABILITY AND CONSTRUCTION

- 14.1 Except as expressly provided to the contrary herein, each portion, section, part, term, and/or provision of this Agreement shall be considered severable; and if, for any reason, any section, part, term, and/or provision herein 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 shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement.
- 14.2 Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Developer, Franchisor, Franchisor's officers, directors, and employees, and such of Developer's and Franchisor's respective successors and assigns as may be contemplated (and, as to Developer, permitted) by Section 7 hereof, any rights or remedies under or by reason of this Agreement.
- 14.3 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 hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unenforceable in a 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 order.
- 14.4 All capitalized terms not defined herein shall have the meaning ascribed to them in the Franchise Agreement.
- 14.5 All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

14.6 All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.

15. **APPLICABLE LAW**

15.1 This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State of Delaware, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Delaware choice of law rules). Nothing in this Section 15.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Delaware to which this Agreement would not otherwise be subject.

15.2 The parties agree that any action brought by Developer against Franchisor in any court that is not subject to the mediation and arbitration requirements set forth in Section 15.7, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Developer in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 15.2 shall not be construed as preventing either party from removing an action from state to federal court. Developer hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

15.3 No right or remedy conferred upon or reserved to Franchisor or Developer by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

15.4 Nothing herein contained shall bar Franchisor's right 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.

15.5 Franchisor and 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, whether or not there are other parties in such action or proceeding. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Developer and Franchisor, or Developer's operation of the business contemplated hereunder, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred.

15.6 Franchisor and Developer hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

15.7 Mediation and Arbitration.

a. If a dispute arises out of or relates to this Multi-Unit Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith

to settle the dispute by mediation at a mutually agreed upon location within the state and jurisdiction of Liberty Fitness Holdings' headquarters, currently Travis County, Texas, administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, as described in Section 24.8.b, below.

b. Any controversy or claim arising out of or relating to this Multi-Unit Agreement, or the breach thereof, which cannot be settled by negotiation or mediation shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This arbitration provision shall be limited to the parties to this Multi-Unit Agreement, and shall not apply to resolution of the claims of multiple complainants or a class of complainants. Any arbitration proceeding under this Multi-Unit Agreement shall take place at a mutually agreed upon location within the state and jurisdiction of Liberty Fitness Holdings' headquarters, currently Travis County, Texas. Notwithstanding this provision, we retain the right to seek equitable, emergency or temporary injunctive relief in a court of law in situations where our Marks or our other intellectual property is being misused, infringed upon, or otherwise violated.

16. ACKNOWLEDGMENTS

- 16.1 Developer acknowledges that it has conducted an independent investigation of the business contemplated hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Developer and if a corporation, partnership, or LLC, its owners as independent businesspersons. Franchisor expressly disclaims the making of, and Developer acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.
- 16.2 Developer acknowledges that it received a complete copy of this Agreement and the Exhibits hereto, with all of the blank lines herein filled in, at least five (5) business days prior to the date on which this Agreement was executed. Developer further acknowledges that it received the uniform franchise offering circular required by the Federal Trade Commission Franchise Rule, 16 C.F.R. Part 436, at least ten (10) business days prior to the date on which this Agreement was executed.
- 16.3 Developer acknowledges that it has read and understood this Agreement, the Exhibits hereto, and agreements relating thereto, if any, and that Franchisor has accorded Developer ample time and opportunity to consult with advisors of Developer's own choosing about the potential benefits and risks of entering into this Agreement.
- 16.4 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.
- 16.5 Developer acknowledges that it shall have sole and complete responsibility for the choice of the locations at which Clubs will be operated; that Franchisor has not (and shall not be deemed to have, even by Franchisor's approval of the sites that are part of the Territory or that will become the locations at which Clubs will be operated) given any representation, promise, or guarantee of

Developer's success at the locations; and that Developer shall be solely responsible for its own success at the Clubs.

- 16.6 Although Franchisor retains the right to establish and periodically modify System standards, which Developer has agreed to maintain in the operation of the business contemplated hereunder, Developer retains the right and sole responsibility for the day-to-day management and operation of the Clubs and the implementation and maintenance of system standards in the business contemplated hereunder.
- 16.7 Developer acknowledges that Franchisor may modify the offer of its franchises and Multi-Unit Agreements to other parties in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.
- 16.8 Developer acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon Developer's ability as an independent businessperson, his/her active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors. Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated hereby.
- 16.9 Franchisor expressly disclaims the making of, and Developer acknowledges that it has not received nor relied upon, any warranty or guaranty, express or implied, as to the revenues, profits or success of the business venture contemplated by this Agreement.

[signature page to follow]

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

Liberty Fitness Holdings, LLC
Franchisor

By: _____

Name: _____

Developer

Title: _____

By: _____

Name: _____

Title: _____

Address for Notices:

Liberty Fitness Holdings, LLC
1701 Directors Blvd.
Suite 110
Austin, TX 78744
Fax: (760)930-2001
Attn: President

Address for Notices:

Telephone: _____
Fax: _____
Attn: _____

**LIBERTY FITNESS HOLDINGS, LLC
MULTI-UNIT AGREEMENT**

**EXHIBIT A
DEVELOPMENT AREA AND DEVELOPMENT SCHEDULE**

1. Number of Clubs. Developer shall develop the following number of Clubs. Please circle and initial one of the following choices:

_____ Three (3) Clubs

_____ Six (6) Clubs

2. Development Area. All Clubs developed under this Multi-Unit Agreement shall be located within the following boundaries:

3. Development Schedule. Recognizing that time is of the essence, Developer agrees to satisfy the development schedule set forth below:

By (Date)	Cumulative Total Number of Clubs Which Developer Shall Have Open and in Operation (either 3 or 6)
Six (6) months from the date of this Agreement	One (1)
Fifteen (15) months from the date of this Agreement	Two (2)
Twenty-four (24) months from the date of this Agreement	Three (3)
Thirty-three (33) months from the date of this Agreement	Four (4)
Forty-two (42) months from the date of this Agreement	Five (5)
Sixty (60) months from the date of this Agreement	Six (6)

Initialed:

Developer: _____

_____ Franchisor: _____

**LIBERTY FITNESS HOLDINGS, LLC
Multi-Unit AGREEMENT**

EXHIBIT B GUARANTEE

As an inducement to Liberty Fitness Holdings, LLC ("Franchisor") to execute the Liberty Fitness Holdings, LLC Multi-Unit Agreement between Franchisor and _____ ("Developer") Dated _____, 200__ (the "Agreement"), the undersigned hereby agree to defend, indemnify and hold Franchisor, Franchisor's affiliates, and their respective officers, directors, employees, and agents harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of investigation, court costs, and arbitration fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Developer to perform any obligation of Developer under the Agreement, any amendment thereto, or any other agreement executed by Developer referred to therein.

The undersigned hereby acknowledge and agree to be individually bound by all of the covenants contained in Section 8 of the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with Section 15 of the Agreement. This Guarantee shall be interpreted and construed under the laws of the State of Delaware. In the event of any conflict of law, the laws of Delaware shall prevail (without regard to, and without giving effect to, the application of Delaware conflict of law rules).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement.

Guarantor(s)

Signed: _____ (Seal)
(In his/her individual capacity)

Printed Name: _____
Home Address: _____

Signed: _____ (Seal)
(In his/her individual capacity)

Printed Name: _____
Home Address: _____

Signed: _____ (Seal)
(In his/her individual capacity)

Printed Name: _____
Home Address: _____

Signed: _____ (Seal)
(In his/her individual capacity)

_____ Printed
Name: _____
Home Address: _____

**LIBERTY FITNESS HOLDINGS, LLC
MULTI-UNIT AGREEMENT**

**EXHIBIT C
LIST OF PRINCIPALS**

Name of Principal	Home Address	Interest (%)

Initialed:

Developer: _____

Franchisor: _____

**LIBERTY FITNESS HOLDINGS, LLC
MULTI-UNIT AGREEMENT**

**EXHIBIT D
FRANCHISE AGREEMENT**

The form of Franchise Agreement currently offered by Franchisor is attached.

LIBERTY FITNESS HOLDINGS, LLC
MULTI-UNIT AGREEMENT
EXHIBIT E
NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("Agreement") is made _____ day of _____, 200_____, by and between _____ (the "Developer"), and _____, who is a Principal, manager, supervisor, partner, or a person in a managerial position with, Developer (the "Manager").

RECITALS:

WHEREAS, Liberty Fitness Holdings, LLC ("LFH"), as franchisor, and as the result of the expenditure of its time, skill, effort and money have developed and own a unique system (the "System") relating to the establishment and operation of businesses operating in buildings that bear Franchisor's interior and/or exterior trade dress (a "Club"), under the Proprietary Marks (as defined below), and specializing in offering thirty-minute fitness services using adjustable hydraulic strength training and aerobic cardiovascular equipment and exercise programs, and fitness programs primarily directed to women ("Services"), as well as the sale of associated proprietary and/or private label products and services, if and when developed, prepared for sale in the system (the "Products"), and which Clubs utilize LFH's System and Proprietary Marks (defined below), all of which LFH may periodically change, improve, and/or further develop;

WHEREAS, LFH identifies Clubs by the LIBERTY FITNESS CLUB and LIBERTY FITNESS marks and such other proprietary marks as LFH may periodically designate in writing (together, the "Proprietary Marks");

WHEREAS, LFH and Developer have executed a Multi-Unit Agreement ("Multi-Unit Agreement") granting Developer the right to develop one or more Clubs and, ultimately, to sign Franchise Agreements to operate Clubs, at which Clubs Developer (acting as the "Franchisee" under the Franchise Agreement) to distribute the Products and other ancillary products approved by LFH and use the Proprietary Marks in connection therewith under the terms and conditions of the Multi-Unit Agreement;

WHEREAS, the Manager, by virtue of his or her position with Developer, will gain access to certain of LFH's Confidential Information, as defined herein, and must therefore be bound by the same confidentiality and non-competition agreement that Development is bound by.

IN CONSIDERATION of these promises, Manager's employment with Developer, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. Confidential Information. Manager shall not, during the term of the Multi-Unit Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised thereunder which may be communicated to Manager or

of which Manager may be apprised by virtue of Developer's operation under the terms of the Multi-Unit Agreement. Any and all information, knowledge, know-how, and techniques which LFH designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Developer can demonstrate came to its attention prior to disclosure thereof by LFH; or which, at or after the time of disclosure by LFH to Developer, had become or later becomes a part of the public domain, through publication or communication by others.

2. Covenants Not to Compete.

(a) Manager specifically acknowledges that, pursuant to the Multi-Unit Agreement, and by virtue of its position with Developer, Manager will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of LFH and the System.

(b) Manager covenants and agrees that during the term of the Multi-Unit Agreement, except as otherwise approved in writing by LFH, Manager shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

(i) Divert or attempt to divert any business or customer of the Club or of any Club using 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 LFH's Proprietary Marks and the System.

(ii) Employ or seek to employ any person who is at that time employed by LFH, Developer, any other franchisee, master franchisee, developer, or development agent, or otherwise directly or indirectly induce such person to leave his or her employment; or

(iii) Either directly or indirectly for him/herself or on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Club.

(c) Manager covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by LFH, Manager shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity.

Manager shall not own, maintain, operate, engage in, or have any interest in any business that is same as or similar to the Club and which business is (or is intended to be) located within a five (5) mile radius of either the Approved Location or any other Club operating at the time that the obligations under this commence.

(d) As used in this Agreement, the term "Post-Term Period" shall mean a continuous uninterrupted period of one (1) year from the date of: (a) a transfer permitted under Section 7 of the Multi-Unit Agreement; (b) expiration or termination of the Multi-Unit Agreement (regardless of the cause for termination); (c) termination of Manager's employment with Developer; and/or (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 the enforcement of this Agreement; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity).

3. Injunctive Relief. Manager acknowledges that any failure to comply with the requirements of this Agreement will cause LFH irreparable injury, and Manager agrees to pay all court costs and

reasonable attorney's fees incurred by LFH in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

4. Severability. All agreements and covenants contained herein are severable. If any of them, or any part or parts of them, shall be held invalid by any court of competent jurisdiction for any reason, then the Manager agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect LFH's and/or Developer's legitimate business needs as permitted by applicable law and public policy. In so doing, the Manager agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5. Delay. No delay or failure by the LFH or Developer to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided herein, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6. Third-Party Beneficiary. Manager hereby acknowledges and agrees that LFH is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly with Developer.

IN WITNESS WHEREOF, the Developer and the Manager attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on this _____ day of _____, 200__.

DEVELOPER

MANAGER

By: _____ By: _____

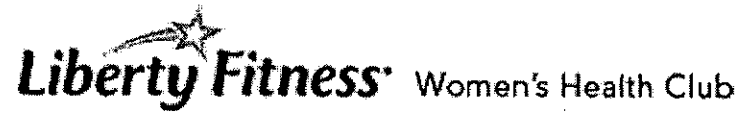
Name: _____ Name: _____

Title: _____ Title: _____

EXHIBIT D

Area Development Agreement

***THE FOLLOWING LIBERTY FITNESS AREA DEVELOPMENT AGREEMENT IS NOT
OFFERED IN THE STATE OF ILLINOIS***



LIBERTY FITNESS
DEVELOPMENT AGREEMENT

between

Liberty Fitness Holdings, LLC

and

Developer

LIBERTY FITNESS AREA DEVELOPMENT AGREEMENT

THIS AREA DEVELOPMENT AGREEMENT (“ADA”) is made this _____ day of _____, 20____, by and between Liberty Fitness Holdings, LLC, a Delaware limited liability company doing business as “Liberty Fitness”, with principal offices located in Austin, Texas (“Liberty Fitness Holdings”); and _____, a [resident of _____] a corporation / limited liability company with principal offices in _____ (“Developer”).

RECITALS:

WHEREAS, Liberty Fitness Holdings owns a format and system relating to the establishment and operation of businesses operating in buildings that bear Liberty Fitness Holdings interior and/or exterior trade dress (a “Club”), under the Proprietary Marks (as defined below), and specializing in offering thirty-minute fitness services using proprietary adjustable hydraulic strength training and aerobic cardiovascular equipment and exercise programs, and fitness programs primarily directed to women (“Services”), as well as the sale of associated proprietary and/or private label products and services, if and when developed, prepared for sale in the system (the “Products”);

WHEREAS, the distinguishing characteristics of the “Liberty Fitness” system include, without limitation, equipment layouts, signage, distinctive interior and exterior design and accessories, Services, Products, exercise equipment, procedures for operations; quality and uniformity of products and services offered; procedures for management and inventory control; training and assistance; and advertising and promotional programs; all of which may be changed, improved, and further developed by Liberty Fitness Holdings from time to time (the “Liberty Fitness System”);

WHEREAS, Liberty Fitness Holdings identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including the federally registered trademark “LIBERTY FITNESS®”, US Patent and Trademark Office Registration Number 2,768,972, and trademarks as are now designated (and may hereinafter be designated by Liberty Fitness Holdings in writing) for use in connection with the System (the “Proprietary Marks”);

WHEREAS, Liberty Fitness Holdings continues to develop, use, and control the use of such Proprietary Marks in order to identify for the public the source of services and products marketed thereunder and under the System, and to represent the System’s high standards of quality, appearance, and service;

WHEREAS, Developer desires to obtain certain options to be franchised by Liberty Fitness Holdings to establish and operate a number of Liberty Fitness System clubs, and to assist in the recruitment and training of prospective franchisees, as well as the development and establishment of a certain number of Liberty Fitness franchised businesses to be owned by third-party franchisees in the Development Territory described in this ADA.

IN CONSIDERATION of the foregoing recitals and of the agreements, representations, and covenants herein contained, Liberty Fitness Holdings and Developer agree as follows:

I. GRANT

A. Liberty Fitness Holdings hereby grants to Developer, pursuant to the terms and conditions of this ADA, options to obtain franchises to establish and operate up to _____ () Liberty Fitness System clubs, and to use solely in connection therewith the Liberty Fitness System, within the territory set forth in Attachment A-1 to this ADA (the "Development Territory"). Developer agrees that it shall develop at least one (1) Liberty Fitness club under this provision, and Developer shall determine in its discretion how many additional options to exercise up to a total of six options.

Each Liberty Fitness System club shall be operational pursuant to a franchise agreement to be entered into by Developer and Liberty Fitness Holdings, the form of which franchise agreement is incorporated herein by reference and attached hereto as Attachment B (the "Franchise Agreement").

B. Liberty Fitness Holdings hereby grants to Developer, pursuant to the terms and conditions of this ADA, the right to serve as the area representative of the Liberty Fitness System in the Development Territory, recruiting and qualifying prospective franchisees to join the Liberty Fitness System and providing specified services to all franchisees in the Development Territory, in exchange for the payments provided in this ADA. The minimum performance as an area representative shall be to establish and assist in opening for business _____ () Liberty Fitness clubs to be owned and operated by third party franchisees within _____ () years after the date of execution of this ADA, and pursuant to the development schedule set forth in Section III.A and attached hereto as Attachment A-2 (the "Development Schedule").

C. Except as otherwise provided in this ADA, Liberty Fitness Holdings shall not establish, nor license anyone other than Developer to establish, a Liberty Fitness System club in the Development Territory during the term of this ADA.

D. This ADA is not a franchise agreement, and Developer shall have no right to use in any manner any Proprietary Marks by virtue hereof.

E. Developer shall have no right under this ADA to license others.

II. AREA DEVELOPMENT FEE, INITIAL FRANCHISE FEES, ROYALTIES

A. Developer shall pay to Liberty Fitness Holdings upon execution of this ADA, an Area Development Fee as set forth in Attachment A-2. With the exception of a portion of the Area Development Fee related to the one initial franchise fee for the required development under Section I.A, the Area Development Fee shall be fully earned by Liberty Fitness Holdings upon execution of this ADA, for administrative and other expenses incurred by Liberty Fitness Holdings and for the development opportunities lost or deferred as a result of the exclusivity granted herein.

B. Franchisee shall pay to Liberty Fitness Holdings no initial franchise fee for the single franchise required to be developed under this ADA, or for any options that Developer may choose to exercise pursuant to Section III.A of this ADA; all such initial franchise fees are hereby waived.

C. Developer shall share in the revenue received by Liberty Fitness Holdings generated from the grant and operation of third-party franchises established and operated in the Development Territory, as follows:

1. Developer shall receive _____ percent (____%) of all net initial franchise fees paid to Liberty Fitness Holdings by third-party franchisees in the Development Territory. The term "net initial franchise fees" means all initial franchise fees received from franchisees who will locate and operate in the Development Territory less any sales or brokerage commissions that Liberty Fitness Holdings has approved in advance of a transaction.
2. Developer shall receive _____ percent (____%) of monthly royalty fee income, including membership revenues and non-membership revenues, as those terms are defined in the Franchise Agreement and Liberty Fitness Operations Manual, received from third-party franchisees located and operating in the Development Territory, excluding royalty fees paid by Developer for its own franchised Liberty Fitness System clubs.
3. Liberty Fitness Holdings shall reconcile accounts and remit payments to Developer under this ADA on a regular monthly basis, as franchisee fee payments are received. Developer shall execute all necessary documents for the electronic transfer of funds into and from Developer's bank accounts. All payments to Developer shall be based on funds actually received by Liberty Fitness Holdings, and Developer's account shall be adjusted appropriately to reflect refunds made or broker commissions paid, if any. The parties shall consult one another prior to Liberty Fitness Holdings making a decision regarding a refund of fees or payment of a broker's commission on a franchise grant.

III. DEVELOPMENT OBLIGATIONS

A. 1. Developer shall open the one required club franchise during calendar year 20____, and may, in its determination, exercise up to _____ () additional options to establish the number of clubs granted in Section I.A. As described in Section II.B all initial fees related to these franchises are waived; provided that Developer shall pay all expenses associated with the development, equipment purchase, and build-out of those businesses, including training personnel; and provided further that Developer shall pay in full and on a timely basis all royalties and advertising contributions required under the terms of each Franchise Agreement.

2. Developer shall exercise each option granted herein only by executing a Franchise Agreement and commencing construction for a Liberty Fitness System club to be operated at an approved location set forth in each Franchise Agreement within the Development Territory.

B. The parties agree that they will endeavor to establish, through ownership by third-party franchisees, a total of _____ () franchised Liberty Fitness clubs in the Development Territory during the _____ () years following the date of execution of this ADA, and in strict conformance with the Development Schedule attached hereto as Attachment A-2. Developer shall undertake all reasonable efforts, at its own expense, to recruit and qualify sufficient prospective franchisees to meet this objective. Developer shall, at its own expense, advertise, solicit, screen, and evaluate prospective franchisees in the Development Territory, and present qualified prospects to Liberty Fitness Holdings for consideration. Developer shall use only the forms, procedures, and qualification standards as Liberty Fitness shall approve for use in the Liberty Fitness System, and as may be included in the Area Development Operations Manual. Qualification shall include a credit check and background check undertaken at Developer's expense. Developer agrees to advertise in order to generate interest in the Liberty Fitness program, spending at least \$3,000 each month, and agrees that all such advertising will be approved in advance by Liberty Fitness Holdings as to content and media placement. The minimum advertising expense of \$3,000 per month is subject to an increase to reflect an increased cost of business that shall not exceed the CPI index (the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100). All franchise grants shall be made by Liberty Fitness Holdings; and all fee payments by franchisees shall be made directly to Liberty Fitness Holdings. Developer is not authorized under any circumstances to grant franchise rights in the Liberty Fitness System or otherwise commit to a particular prospect that Liberty Fitness Holdings will grant a franchise.

IV. TERM AND RENEWAL

A. Unless sooner terminated in accordance with terms of this ADA, the term of this ADA shall be ten (10) years. Developer shall have the right to renew this ADA for an additional term of ten (10) years subject to the following conditions, all of which must be met prior to renewal:

1. Developer shall give Liberty Fitness Holdings written notice of Developer's election to renew not less than six (6) months nor more than twelve (12) months prior to the end of the initial term;
2. Developer shall have maintained or exceeded the development requirements pursuant to Sections I.A and I.B above;
3. Developer shall not be in default of any provision of this ADA, as it may be amended, or any other agreement between Developer and Liberty Fitness Holdings or its subsidiaries and affiliates; and, in Liberty Fitness Holdings' reasonable judgment, Developer shall have substantially complied with all the terms and conditions of this ADA, such other agreements, as well as the operating standards prescribed by Liberty Fitness Holdings during the term of this ADA;
4. Developer shall have satisfied all monetary obligations owed by Developer to Liberty Fitness Holdings and its subsidiaries and affiliates and shall have timely met those obligations throughout the term of this ADA;
5. Developer shall execute Liberty Fitness Holdings' then-current form of development agreement, which agreement shall supersede this ADA in all respects (except with respect to the renewal provisions thereof, which shall not supersede this Section IV.A), and the terms of which may differ from the terms of this ADA, including, without limitation, different performance requirements as to the number of franchises to be developed in the Development Territory; provided, however, that the Development Territory and the fee sharing structure shall not be changed in the renewal form of agreement;
6. Developer shall execute a general release, in a form prescribed by Liberty Fitness Holdings, of any and all claims against Liberty Fitness Holdings and its subsidiaries and affiliates, and their respective officers, directors, agents, and employees;
7. Developer and its personnel shall comply with Liberty Fitness Holdings' then-current qualification and training requirements; and
8. Developer shall pay a renewal fee equal to Twenty-Five Thousand Dollars (\$25,000) for the right to obtain a renewal term. The renewal fee is subject to an increase to reflect an increased cost of business that shall not exceed the CPI index (the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100).

V. DUTIES OF THE PARTIES

A. Liberty Fitness Holdings shall furnish to Developer the following:

1. A training program that is designed for Area Developers in the Liberty Fitness System. This program shall take place over up to 10 business days on a schedule that is mutually agreed upon, and shall take place at Liberty Fitness Holdings' headquarters in Austin, Texas or such other location as Liberty Fitness Holdings may specify. There shall be no fees assessed for this training program; provided that Developer shall pay all travel, meals, and lodging expenses associated with attending training. Liberty Fitness Holdings shall also provide a supplemental training program for Developer of up to 5 business days in duration on a schedule that is mutually agreed upon; and will take place at Developer's offices in the Development Territory. There shall be no fees assessed for this supplemental training; provided that Liberty Fitness Holdings shall pay all travel, meals, and lodging expenses of its employees associated with providing supplemental training.
2. Site selection guidelines, including Liberty Fitness Holdings' minimum standards of a location for a Liberty Fitness System club, and such site selection counseling and assistance as Liberty Fitness Holdings may deem advisable.
3. Such on-site evaluation as Liberty Fitness Holdings may deem advisable in response to Developer's requests for site approval.
4. Liberty Fitness Holdings shall forward to Developer all prospective franchisee leads that are generated on the Internet or by other means where the lead is located in the Development Territory or interested in a location in the Development Territory. If a franchise grant results from any such lead, Developer shall pay to Liberty Fitness Holdings a lead referral fee of \$350. The lead referral fee is subject to an increase to reflect an increased cost of business that shall not exceed the CPI index (the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100).

B. Developer accepts the following obligations:

1. Developer shall comply with all terms and conditions set forth in this ADA, and shall follow the forms and procedures presented in the Area Development Operations Manual.
2. Developer shall undertake to solicit, screen, and evaluate prospective franchisees for the Liberty Fitness System in the Development Territory, and shall purchase advertising in that effort, as required under Section III.B hereof. Developer shall, at Liberty Fitness Holdings' direction, provide disclosure documents to prospective franchisees prepared by Liberty Fitness Holdings in compliance with applicable franchising rules. Developer

shall comply in all respects with the applicable laws relating to the presentation of franchise investments.

3. Developer shall provide ongoing support services to all franchisees in the Development Territory, and Liberty Fitness Holdings shall review the services delivered by Developer and determine the adequate level of support. Providing franchisee support services will require visiting all open clubs in the Development Territory on a regular basis, holding meetings of franchisees in the Development Territory, providing training, inspections to assure the quality of service being provided by franchisees, guidance, and advice. The parties acknowledge that all new franchisees shall attend the five-day initial training program offered at Liberty Fitness Holdings headquarters, but that Developer may be called on to deliver incidental support training during franchisee meetings in the Development Territory.

4. Developer shall at all times preserve in confidence any and all materials and information furnished to Developer by Liberty Fitness Holdings, and shall disclose such information or materials only to such of its employees or agents who must have access to it in connection with their employment. Developer shall not at any time, without Liberty Fitness Holdings' prior written consent, copy, duplicate, record, or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person.

5. Developer shall, at its own expense, assist franchisees in the Development Territory in all aspects of their starting-up new franchised clubs. Start-up assistance includes providing site evaluation, site evaluation visits where appropriate and/or directed by Liberty Fitness Holdings, and attendance and opening assistance at grand openings. If requested by Developer, Liberty Fitness Holdings agrees to provide a training representative for the grand opening at a new club in the Development Territory, subject to staff availability. Liberty Fitness Holdings provides a training representative at a grand opening for a new club in the Development Territory, Developer shall assume the reasonable daily training fees and out-of-pocket expenses related to travel, lodging, and meals of the representative. Liberty Fitness Holdings shall present an invoice to Developer for its share of all such expenses. All site evaluation must use Liberty Fitness site evaluation forms and follow the procedures set forth in the Area Development Operations Manual and must be provided as Liberty Fitness Holdings may deem appropriate; provided, however, that Liberty Fitness Holdings shall not provide site evaluation review for any proposed site prior to the receipt of a completed Site Submission Form for such site prepared by Developer. Liberty Fitness Holdings shall provide one (1) site evaluation review at no charge to Developer for each club developed and owned by Developer. For any additional site evaluation review or an on-site evaluation visit, if requested, for each club, Developer shall pay a reasonable evaluation fee as determined by Liberty Fitness Holdings, and shall reimburse Liberty Fitness Holdings for all reasonable expenses incurred by Liberty Fitness Holdings in connection

with such evaluation reviews or on-site evaluations, including, without limitation, the costs of travel, lodging, and meals.

C. The terms and conditions of the Site Selection Addendum to the Franchise Agreement shall govern club site selection where applicable.

VI. DEFAULT

A. The options and territorial exclusivity granted to Developer in this ADA have been granted in reliance on Developer's representations and assurances, among others, that the conditions set forth in Sections I. and III. of this ADA will be met by Developer in a timely manner.

B. Liberty Fitness Holdings in addition to all other remedies which it has at law or in equity shall have the absolute right immediately to terminate this ADA upon notice in writing to Developer upon the occurrence of any of the following events:

1. A court having jurisdiction shall enter a decree or order for relief in respect of the Developer in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Developer or for any substantial part of its property, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days.

2. Developer shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Developer or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due or shall take any action in furtherance of any of the foregoing.

3. If Developer is convicted of a felony, or a crime involving moral turpitude, or commits any other crime or offense that is likely, in the sole opinion of Liberty Fitness Holdings, to affect adversely the Liberty Fitness System, the Proprietary Marks, the goodwill associated therewith, or Liberty Fitness Holdings' interests therein, or if Developer engages in conduct which reflects materially and unfavorably upon the operation and reputation of Liberty Fitness Holdings or the Liberty Fitness System.

C. If Developer fails to comply with any of the terms or conditions of this ADA, fails to comply with the terms or conditions of any individual Franchise Agreement between Developer and Liberty Fitness Holdings, fails to meet in any club the high operational standards set forth in the Liberty Fitness Confidential Operations Manual described in the Franchise Agreement, or makes or attempts to make a transfer or assignment in violation of Section VII. hereof, such action shall

constitute a default under this ADA. Upon such default, Liberty Fitness Holdings may terminate this ADA only by giving written notice of termination stating the nature of such default to Developer at least sixty (60) days prior to the effective date of termination; provided, however, that Developer may avoid termination by immediately initiating a remedy to cure such default, curing it to Liberty Fitness Holdings' satisfaction, and by promptly providing proof thereof to Liberty Fitness Holdings within the sixty-day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this ADA shall terminate without further notice to Developer effective immediately upon the expiration of the sixty (60) day period or such longer period as applicable law may require.

D. Upon termination of this ADA, all remaining options shall be null and void, and Developer shall cease serving as an area representative providing support services to franchisees in the Development Territory. Developer shall have no right to establish or operate any Liberty Fitness System clubs for which a Franchise Agreement has not been executed by Liberty Fitness Holdings. Liberty Fitness Holdings shall be entitled to establish, and to license others to establish, Liberty Fitness System clubs in the Development Territory, except as may be otherwise provided under any Franchise Agreement that has been executed between Developer and Liberty Fitness Holdings. No default under this ADA shall constitute a default under any Franchise Agreement between the parties hereto.

E. No right or remedy herein conferred upon or reserved to Liberty Fitness Holdings is exclusive of any other right or remedy provided or permitted by law or equity.

VII. TRANSFERABILITY

A. Liberty Fitness Holdings shall have the right to transfer all or any part of its rights or obligations herein to any person or legal entity.

B. Developer understands and acknowledges that the rights and duties set forth in this ADA are personal to Developer and are granted in reliance upon the personal qualifications of Developer or, in the case of a corporate Developer, the principal officers and shareholders who will actively and substantially participate in the operation of Developer's business. Developer has represented to Liberty Fitness Holdings that Developer is entering into this ADA with the intention of complying with its terms and conditions and not for the purpose of resale of the developmental rights hereunder.

C. Neither Developer nor any partner or shareholder thereof shall, directly or indirectly sell, pledge, assign, or transfer any interest in this ADA or in Developer without the prior written approval of Liberty Fitness Holdings. Developer agrees that any attempt to assign or transfer any interest in Developer or in this ADA without Liberty Fitness Holdings' prior written approval shall be null and void and shall be a material default of this ADA.

D. Liberty Fitness Holdings may require, prior to giving its written approval to any assignment hereunder, that (a) the assignee or principal officers, directors or shareholders of a

corporate assignee or the partners of a partnership assignee demonstrate that they have the skills, qualifications and economic resources necessary in Liberty Fitness Holdings' judgment, to conduct the business contemplated by this ADA; (b) Developer shall have timely and fully complied with all of the obligations to Liberty Fitness Holdings under this ADA and of any Franchise Agreement between Developer and Liberty Fitness Holdings; (c) the assignee and the principal shareholders of the assignee in the case of a corporate assignee assumes in writing all of the obligations of the Developer under this ADA; (d) a transfer fee of Fifteen Thousand Dollars (\$15,000) is paid to Liberty Fitness Holdings. The transfer fee is subject to an increase to reflect an increased cost of business that shall not exceed the CPI index (the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100).

E. Liberty Fitness Holdings' Right of First Refusal

If Developer receives from a third person and desires to accept a *bona fide* written offer to purchase this ADA, Liberty Fitness Holdings or its nominee shall have the option, exercisable within thirty (30) days after receipt of written notice, a copy of such offer, and the other information set forth in this Section VII.E., to purchase this ADA on the same terms and conditions as offered by said third party. In order that Liberty Fitness Holdings may have information sufficient to enable it to determine whether to exercise its option, Developer shall deliver to Liberty Fitness Holdings any financial statements requested by Liberty Fitness Holdings and such other information about the business and operations of Developer as Developer has provided to said third party. In the event Liberty Fitness Holdings elects to purchase the seller's interest, closing on such purchase must occur within sixty (60) days from the date of notice to the seller of the election to purchase by Liberty Fitness Holdings. Any material change in the terms of the offer prior to the closing of the sale to such third party shall constitute a new offer, subject to the same rights of first refusal by Liberty Fitness Holdings or its nominee as in the case of an initial offer. Failure by Liberty Fitness Holdings to exercise the option afforded by this Section VII.E. shall not constitute a waiver of any other provisions of this ADA, including all of the requirements of this Section VII with respect to a proposed transfer.

F. Liberty Fitness Holdings' Repurchase Rights

Liberty Fitness Holdings reserves the right on its own behalf and that of any new franchisor that is a successor in interest or Liberty Fitness Holdings itself if purchased by new owners to repurchase all rights under this ADA on the following terms and under the following conditions: The repurchase described in this Section VII.F may not be exercised until a date that is more than two (2) years after the date of execution of this ADA. The repurchase rights may be exercised only in the event that all or substantially all of the interests of Liberty Fitness Holdings are transferred to new owners, and only if the new owner and/or the new Liberty Fitness Holdings entity advises Developer in writing that it wishes to exercise the repurchase rights under this Section VII.F. The successor in interest to Liberty Fitness Holdings may, at its option and determination, repurchase all rights under this ADA, with the exception of the franchised businesses owned and operated by Developer, which shall not be subject to repurchase under this provision. The purchase price shall be determined by an independent evaluation organization

selected by mutual agreement of the parties; and in the event the parties cannot agree upon an valuation firm, the parties shall each select a valuation firm and those two valuation firms shall together select a valuation firm to be used by the parties for valuation. The multiples used for the valuation of the Developer rights shall not exceed the valuation multiples used in the acquisition of the Liberty Fitness Holdings by the successor. The parties agree that the purchase price under any circumstances shall not be less than \$ _____, regardless of the amount of the independent valuation.

VIII. COVENANTS

A. Developer covenants that, except as otherwise approved in writing by Liberty Fitness Holdings, Developer shall not, during the term of this ADA, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Club; and shall not for a continuous uninterrupted period of twenty-four (24) months from the date of: (a) a transfer permitted under Section VII, above; (b) expiration or termination of this ADA (regardless of the cause for termination); or (c) 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 the enforcement of this Section VIII.A; either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any persons, partnership, or corporation, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Liberty Fitness System Club and which business is, or is intended to be, located within a five (5) mile radius of an Approved Location of any Liberty Fitness System Club or within a five-mile radius of any Club then-operating under the System. This Section VIII.A shall not apply to ownership by Developer of less than one percent (1%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this ADA, the term "publicly-held corporation" shall be deemed to refer to a corporation which has securities that have been registered under the federal Securities Exchange Act of 1934.

B. The parties agree that the foregoing covenants shall be construed as independent of any other covenant or provision of this ADA. If all or any portion of a covenant in Section VIII.A. is held unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Liberty Fitness Holdings is a party, Developer expressly agrees to be bound by any lesser covenant subsumed with 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 Section VIII.A.

C. Developer understands and acknowledges that Liberty Fitness Holdings shall have the right, in its sole discretion, to reduce the scope of any covenant or portion thereof set forth in Section VIII.A. without Developer's consent, effective immediately upon receipt by Developer of written notice thereof.

IX. NOTICES

Any and all notices required or permitted under this ADA shall be in writing and shall be personally delivered or mailed, by certified mail, by depositing the same in the United States mail, postage prepaid, to the respective parties at the following addressed unless and until a different address has been designated by written notice to the other party:

Notices to Liberty Fitness Holdings:

Chief Executive Officer
Liberty Fitness Holdings, LLC
1701 Directors Blvd.
Suite 110
Austin, TX 78744

Notices to Developer:

Notice shall be deemed given at the date and time of receipt.

X. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

A. It is understood and agreed by the parties hereto that this ADA does not create a fiduciary relationship between them, that nothing in this ADA is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. Each party to this ADA is an independent contractor, and neither shall be responsible for the debts or liabilities incurred by the other.

B. Developer shall hold himself out to the public to be an independent contractor operating pursuant to this ADA. Developer agrees to make such actions as shall be necessary to that end.

C. Developer understands and agrees that nothing in this ADA authorizes it to make any contract, agreement, warranty, or representation on Liberty Fitness Holdings' behalf, or to incur any debt or other obligation in Liberty Fitness Holdings' name, and that Liberty Fitness Holdings assumes no liability for, nor shall be deemed liable by reason of, any act or omission of Developer in its conduct of the business licensed by this ADA, or any liabilities, claims, actions, suits, costs, expenses (including reasonable attorneys' fees) or judgments arising therefrom. Developer shall indemnify and hold Liberty Fitness Holdings harmless against any and all such liabilities, claims, actions, suits, costs, expenses (including reasonable attorneys' fees) or judgments arising directly or indirectly from, as a result of, or in connection with Developer's operations hereunder.

XI. APPROVALS

A. Whenever this ADA requires the prior approval or consent of Liberty Fitness Holdings, Developer shall make a timely written request to Liberty Fitness Holdings therefor, and, except as otherwise provided herein, any approval or consent granted shall be in writing.

B. Liberty Fitness Holdings makes no warranties or guaranties upon which Developer may rely and assumes no liability or obligation to Developer or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent, or services to Developer in connection with this ADA, or by reason of any neglect, delay, or denial of any request therefor.

XII. NON-WAIVER

No failure of Liberty Fitness Holdings to exercise any power reserved to it in this ADA or to insist upon compliance by Developer with any obligation or condition in this ADA, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Liberty Fitness Holdings' rights to demand exact compliance with the terms of this ADA. Waiver by Liberty Fitness Holdings of any particular default shall not affect or impair Liberty Fitness Holdings' right in respect to any subsequent default of the same or of a different nature, nor shall any delay, forbearance, or omission of Liberty Fitness Holdings to exercise any power or right arising out of any breach or default by Developer of any of the terms, provisions, or covenants of this ADA, affect or impair Liberty Fitness Holdings' rights, nor shall such constitute a waiver by Liberty Fitness Holdings of the rights hereunder or rights to declare any subsequent breach or default.

XIII. GENERAL PROVISIONS

A. Governing Law; Attorney Fees; Venue for Disputes; Mediation and Arbitration.

1. Governing Law; Attorney Fees; Venue for Disputes. This ADA and all obligations created hereunder shall be deemed contracts made under the laws of the state of Delaware and shall be governed and construed in accordance with the laws of such state without regard to the principle of conflict of laws. In the event of any dispute arising under this ADA not subject to mediation and arbitration, the parties consent to the exclusive jurisdiction of courts within state and jurisdiction of Liberty Fitness Holdings headquarters, currently Travis County, Texas, and agree that venue shall be laid in such jurisdiction. In the event of any dispute between the parties not subject to mediation and arbitration, all reasonable costs and attorney fees including fees on any appeal, incurred by the prevailing party in such litigation shall be determined by the Court and assessed against the non-prevailing party.

2. Mediation and Arbitration.

a. If a dispute arises out of or relates to this ADA, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation at a mutually agreed upon location within the state and jurisdiction of Liberty Fitness Holdings' headquarters, currently Travis County, Texas, administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, as described in Section XIII.A.2.b, below.

b. Any controversy or claim arising out of or relating to this ADA, or the breach thereof, which cannot be settled by negotiation or mediation shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This arbitration provision shall be limited to the parties to this ADA, and shall not apply to resolution of the claims of multiple complainants or a class of complainants. Any arbitration proceeding under this ADA shall take place at a mutually agreed upon location within the state and jurisdiction of Liberty Fitness Holdings' headquarters, currently Travis County, Texas. Notwithstanding this provision, we retain the right to seek equitable, emergency or temporary injunctive relief in a court of law in situations where our Marks or our other intellectual property is being misused, infringed upon, or otherwise violated.

B. Entire Agreement and Amendment. This ADA and the exhibits referred to herein constitute the entire, full, and complete agreement between Liberty Fitness Holdings and Developer concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Developer to execute this ADA. Except for those permitted to be made unilaterally by Liberty Fitness Holdings hereunder, no amendment, change, or variance from this ADA shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

C. Cumulative Remedies. Any specific right or remedy set forth in this ADA, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth herein or allowed or allowable by law.

D. Captions. All captions in this ADA are intended solely for convenience of the parties, and shall not be deemed to affect the meaning or construction of any provision hereof.

E. Gender. All references herein to gender and number shall be construed to include such other gender and number as the context may require.

F. Successors. This ADA shall be binding upon all of the parties hereto, their respective heirs, executors, administrators, personal representatives, successors and assigns.

G. Counterparts. This ADA may be executed in several counterparts each of which shall be deemed an original.

H. Additional Documents. Developer agrees to execute, acknowledge and deliver to Liberty Fitness Holdings and to procure the execution, acknowledgement and delivery to Liberty Fitness Holdings of any additional documents or instruments that Liberty Fitness Holdings may reasonably require to fully effectuate and carry out the provisions of this ADA.

I. Time of the Essence. Time shall be of the essence throughout the term of this ADA.

XIV. DISCLAIMER

A. Developer acknowledges that the success of the business venture contemplated by this ADA involves substantial business risks and will be largely dependent upon the ability of the Developer as an independent businessman. Liberty Fitness Holdings expressly disclaims the making of, and Developer acknowledges it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this ADA.

B. Developer acknowledges that it has received, read and understood this ADA and the Attachments hereto.

IN WITNESS WHEREOF, Liberty Fitness Holdings and Developer have executed this ADA intending to be legally bound as of the day and year first above written.

Liberty Fitness Holdings, LLC
a Delaware limited liability company

By: _____
Linda L. Burzynski, President

Date: _____

WITNESS:

Date: _____

“Developer”

By: _____
Printed Name: _____
Its: _____]
Date: _____

WITNESS:

Printed Name: _____

Date: _____

ATTACHMENT A-1

DEVELOPMENT TERRITORY

The Development Territory granted under Section I.A. of this ADA shall be as follows, and may be described further by an attached map highlighting the following boundaries:

ATTACHMENT A-2

I. The number of Liberty Fitness System clubs to be established in the Development Territory is as follows: up to _____ () clubs (with a minimum of one club to be opened in 200__) shall be established by Developer in the Development Territory, and Developer shall sign a unit franchise agreement for each of these clubs. Developer shall recruit, qualify, and present to Liberty Fitness Holdings prospective franchisees who will open a minimum of _____ () Liberty Fitness clubs in the Development Territory within _____ () years after the date of execution of this ADA, in compliance with the Development Schedule set forth below.

II. The Area Development Fee described in Section II.A. is \$ _____.

III. The date of execution of this ADA is: _____, 200__. The term of this ADA shall expire on the date that is 10 years following its execution date.

IV. Development Schedule for third-party franchisees:

Calendar year	Cumulative Number of Clubs to Be Operating by the End of Each Calendar Year

ATTACHMENT B

The Franchise Agreement incorporated by reference in Section I.A. of this ADA follows.

ADA Liberty Fitness Form 121405.doc

EXHIBIT E

LIST OF ADMINISTRATORS

We intend to register this offering circular as a "franchise" in some or all of the following states, in accordance with the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

<p>CALIFORNIA Commissioner of Corporations Department of Corporations 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 876-7500 (866) 275-2677 (toll free)</p>	<p>MARYLAND Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360</p>
<p>HAWAII Commissioner of Securities Department of Commerce & Consumer Affairs 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 548-2021</p>	<p>MICHIGAN Consumer Protection Div., Franchise Section Attn: Kathryn A. Barron 670 G. Mennen Williams Building Lansing, Michigan 48913 (517) 373-7117</p>
<p>ILLINOIS Robert Tingler, Esq. Chief, Franchise Division 500 South Second Street Springfield, Illinois 62706 (217) 782-4465</p>	<p>MINNESOTA Commissioner of Commerce Department of Commerce 85 7th Place East, Suite 500 St. Paul, Minnesota 55101 (651) 296-4026</p>
<p>INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681</p>	<p>NEW YORK Bureau of Investor Protection and Securities New York State Department of Law 120 Broadway, 23rd Floor New York, New York 10271 (212) 416-8211</p>
<p>NORTH DAKOTA Securities Department State Capitol Bismarck, North Dakota 58505 (701) 224-4712</p>	<p>VIRGINIA Director, Securities and Retail Franchising Div. State Corporation Commission 1300 East Main Street Richmond, Virginia 23219 (804) 371-9051</p>
<p>RHODE ISLAND Department of Business Regulation Suite 232 233 Richmond Street Providence, Rhode Island 02903-4232 (401) 277-3048</p>	<p>WASHINGTON Department of Financial Institutions General Administration Building 150 Israel Road, 3rd Floor Tumwater, Washington 98501 (360) 902-8760</p>
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