

**Exhibit "F"**

**AREA REPRESENTATIVE AGREEMENT**

BUTTERFLY FITNESS, INC.

AREA REPRESENTATIVE AGREEMENT

TABLE OF CONTENTS

<u>1. DEFINITIONS.....</u>	<u>1</u>
<u>2. GRANT OF RIGHTS: RESPONSIBILITIES: DEVELOPMENT</u>	<u>2</u>
<u>3. TERM</u>	<u>3</u>
<u>4. ASSISTANCE PROVIDED BY FRANCHISOR</u>	<u>4</u>
<u>5. FEES</u>	<u>5</u>
<u>6. THE MARKS</u>	<u>6</u>
<u>7. REPRESENTATIVE'S OBLIGATIONS</u>	<u>6</u>
<u>8. MANUALS AND CONFIDENTIAL INFORMATION</u>	<u>8</u>
<u>9. COVENANTS</u>	<u>9</u>
<u>10. TRANSFER AND ASSIGNMENT</u>	<u>10</u>
<u>11. DEFAULT AND TERMINATION</u>	<u>12</u>
<u>12. POST TERM RIGHTS, OBLIGATIONS AND COVENANTS</u>	<u>14</u>
<u>13. INSURANCE</u>	<u>14</u>
<u>14. TAXES, PERMITS AND INDEBTEDNESS</u>	<u>15</u>
<u>15. INDEMNIFICATION AND INDEPENDENT CONTRACTOR</u>	<u>15</u>
<u>16. WRITTEN APPROVALS, WAIVERS, AND AMENDMENT</u>	<u>16</u>
<u>17. ENFORCEMENT AND ARBITRATION</u>	<u>16</u>
<u>18. NOTICES</u>	<u>17</u>
<u>19. GOVERNING LAW</u>	<u>17</u>
<u>20. SEVERABILITY AND CONSTRUCTION</u>	<u>17</u>
<u>21. ACKNOWLEDGEMENTS</u>	<u>18</u>
<u>EXHIBIT 1 - REPRESENTATIVE'S OFFICE OF AREA REPRESENTATIVE</u>	
<u>EXHIBIT 2 - TERRITORY AND INITIAL AREA FEE</u>	
<u>EXHIBIT 3 - DEVELOPMENT SCHEDULE</u>	
<u>EXHIBIT 4 - INDIVIDUAL CONFIDENTIALITY AND NON-COMPETITION</u>	
<u>EXHIBIT 5 - PERSONAL GUARANTY AGREEMENT</u>	

**BUTTERFLY FITNESS, INC.**  
**AREA REPRESENTATIVE AGREEMENT**

**TABLE OF CONTENTS**

1.	PARTIES AND RECITALS	1
2.	GRANT OF REGIONAL FRANCHISE	2
3.	TERM	3
4.	ASSISTANCE PROVIDED BY FRANCHISOR	3
5.	FEES	4
6.	LICENSED MARKS	5
7.	REPRESENTATIVE'S OBLIGATIONS	6
8.	REGIONAL FRANCHISE MANUAL	9
9.	COVENANTS	9
10.	TRANSFER AND ASSIGNMENT	11
11.	DEFAULT AND TERMINATION	13
12.	POST TERM RIGHTS, OBLIGATIONS AND COVENANTS	15
13.	INSURANCE	15
14.	TAXES, PERMITS AND INDEBTEDNESS	16
15.	INDEMNIFICATION AND INDEPENDENT CONTRACTOR	16
16.	WRITTEN APPROVALS, WAIVERS, AND AMENDMENT	17
17.	ENFORCEMENT AND ARBITRATION	17
18.	NOTICES	18
19.	GOVERNING LAW	18
20.	SEVERABILITY AND CONSTRUCTION	19
21.	ACKNOWLEDGEMENTS	19
	EXHIBIT 1 LOCATION OF AREA REPRESENTATIVE	
	EXHIBIT 2 DESCRIPTION OF TERRITORY AND DEVELOPMENT FEE	
	EXHIBIT 3 DEVELOPMENT SCHEDULE	
	EXHIBIT 4 GUARANTY OF REPRESENTATIVE'S UNDERTAKINGS	
	EXHIBIT 5 SPOUSAL CONSENT	

## 1. PARTIES AND RECITALS

(a) This Representative Agreement ("Agreement") is made this \_\_\_\_\_ day of 200\_\_\_\_~~This Area Representative Agreement (this "Agreement") is made this day of 20\_\_\_\_\_ (the "Effective Date"),~~ by and between Butterfly Fitness, Inc., a California corporation, with its principal place of business at 2404 San Ramon Boulevard, Suite 200, San Ramon, CA 94583 ("Franchisor"), and \_\_\_\_\_ with a place of business at \_\_\_\_\_ ("Representative").

~~(b) Franchisor owns or has the sole and exclusive right to license certain trade names, trademarks, service marks, logos, symbols and/or other indicia of origin including BUTTERFLY LIFE (U.S. registration No. 2923967), the Butterfly design (U.S. Application Serial No. 76 538329), and other registered and unregistered trademarks as may be specified by Franchisor in the future (the "Licensed Marks"). In connection therewith, Franchisor has developed a plan and system relating to the operation of distinctively styled fitness, health and weight loss centers which system includes assistance in site evaluation and selection, equipment selection and layout, accounting methods, merchandising, advertising, sales and promotional techniques, personnel training, and other matters relating to the operation and promotion of such centers (the "BUTTERFLY LIFE System"). Franchisor grants franchise owners the right to operate BUTTERFLY LIFE centers ("Unit(s)") under the BUTTERFLY System pursuant to an agreement (the "Unit Franchise Agreement"), which may be modified by Franchisor from time to time in its sole discretion.~~

~~(c) Representative desires, upon the terms and conditions set forth herein, to obtain the right and obligation to act as the Franchisor's authorized representative in actively promoting the sale of BUTTERFLY unit franchises within the territory specified in Exhibit "2" hereto and in providing services with respect to such unit franchises (the "Franchised Business").~~

### Recitals

1. ~~Franchisor has made a substantial investment of money, time and effort to obtain acknowledgment~~knowledge and to develop a ~~distinctive fitness center system (hereinafter called the "System") under which fitness and nutritional programming, variable resistance strength equipment, nutritional weight loss supplements, and other consumer products are sold to the public from fitness centers which are operated with a uniform business format, standards, methods, procedures, merchandising, advertising, techniques and designs and identified to the public under the trademarks, service marks and logotype for the trade name "Butterfly Life."~~the System with the Marks. Franchisor owns or has the sole and exclusive right to license the Marks.

2. ~~Franchisor grants to qualified persons franchises to own and operate fitness centers ("Butterfly Life Centers") to sell products and services authorized and approved by the Franchisor utilizing the System and the Licensed Marks.~~

3. ~~Representative has applied to the Franchisor for a franchise to operate for an area representative agreement to assist in the development and ongoing management of a number of Butterfly Life regional franchise Centers utilizing the Marks, and such application has been approved by the Franchisor in reliance upon all the representations and statements made by the Representative to the Franchisor including, without limitation, the financial resources of the Representative.~~

4. ~~Representative understands and acknowledges the importance of the Franchisor's high and uniform standards of quality and service and the necessity of operating the Butterfly Life Centers in conformity with the Franchisor's standards and qualifications~~System.

5. Representative has reviewed this Agreement, the Butterfly Life Franchise Offering Circular, and other materials related to the Franchisor's Butterfly Life franchises and related matters and has independently investigated and become familiar with the scope of the System-related materials, and declares that it possesses the requisite knowledge and skill to operate a franchise.

6. Representative represents that it has conducted any independent investigations it felt necessary. Representative recognizes that the business risks inherent in owning and operating a Butterfly Life franchise and regional franchise, and that the success of the Representative is dependent upon the Representative's efforts.

7. Representative acknowledges that it has not received or relied upon any ~~guarantee~~ guaranty, expressed or implied, as to the revenues, profits, or success of the Butterfly Life or regional franchise contemplated by this Agreement; and further acknowledges that there have been no representations by the Franchisor or its agents, employees or representatives that are contrary or in addition to the terms enunciated in of this Agreement.

## 1. DEFINITIONS

For purposes of this Agreement, any term or phrase not defined herein shall have the meaning set forth in the Franchise Agreement.

"Butterfly Life Center" or "Center" means a Butterfly Life center using the Butterfly Life System pursuant to a Franchise Agreement. "Center" includes any smaller Butterfly Life (Light) Centers.

"Confidential Information" means all information disclosed by one party to the other party that has been designated as proprietary or confidential or that, by the nature of circumstances surrounding the disclosure, reasonably ought to be treated as proprietary or confidential. Confidential Information of Franchisor shall include any manuals and all information related to the System. Confidential Information shall not include any information that is a matter of public knowledge through no fault of the receiving party.

"Continuing Monthly Fees" is defined in Section 4(g) of this Agreement

"Franchise Agreement" means a franchise agreement for the operation of a Center in a Franchisee's Territory using the Marks and the Butterfly Life System.

"Franchisee" means a person or legal entity that operates a Butterfly Life Center, pursuant to a Franchise Agreement.

"Representative's Office" means the office of that Area Representative uses to fulfill its duties under this Agreement, as described in Exhibit 1 to this Agreement.

"Manuals" means on or more documents, whether embodied in electronic or other media, or any Intranet or password protected portion of the Internet, containing confidential procedures, systems, data marketing materials, specifications, standards, forms and methods, as modified, deleted or supplemented, all of which are owned by Franchisor.

"Marks" means trade names, trademarks, service marks, logos, trade dress, decor and other commercial symbols now and in the future associated with the Butterfly Life System, anywhere in the world, all of which are and will remain Franchisor's property, including currently Butterfly Life (U.S.

registration No. 2923967), the Butterfly design (U.S. Application Serial No. 76-538329), Butterfly Life, or other registered and unregistered trademarks to be specified by Franchisor in the future.

"System" means the system of franchising, opening, or operating distinctively styled fitness, health and weight loss Centers at which nutritional programming, variable resistance strength equipment, and related products and services are sold from Centers. The Centers are operated with a uniform business format, standards, methods, procedures, merchandising, advertising, techniques, designs, Confidential Information, video works, books, and other copyrighted materials, and Manuals, and identified by the Marks.

"Territory" means Representative's exclusive territory, as described in Exhibit 2 to this Agreement, and subject to the conditions, exceptions and reserved rights contained in this Agreement.

~~(k) Upon complete execution of this Agreement, Representative and Franchisor hereby agree that any prior Area Development Agreements between Representative and Franchisor, if any, are hereby amended, restated and replaced in their entirety by this Area Representative Agreement; provided, however, any franchise agreements between Franchisor and Representative shall not be superseded by this Agreement. Representative hereby releases Franchisor, its representatives, agents, successors and assigns from any and all claims or obligations, known or unknown, under, resulting or arising from such Area Development Agreement.~~

## 2. GRANT OF REGIONAL FRANCHISE RIGHTS; RESPONSIBILITIES; DEVELOPMENT

~~(a) The location of Representative's office shall be that location described on Exhibit "1". Subject to all of the terms and conditions hereof of this Agreement, Franchisor hereby grants to Representative the exclusive right to act as Franchisor's authorized representative solely within the territory described on Exhibit "2" which is attached hereto and made a part hereof by reference (the "Granted Territory"). In consideration of the rights granted in this Agreement, representative from the Representative's Office within the Territory. Representative shall solicit the sale of BUTTERFLY Butterfly unit franchises and refer prospective unit franchise owners to Franchisor, who shall in its sole discretion determine the qualifications and suitability of each applicant and who shall have the sole discretion to elect to execute all Unit Franchise Agreements with such prospective BUTTERFLY franchise owners. In addition to its right and obligation to market and solicit the sale of BUTTERFLY unit franchises within the Granted Territory, Representative shall be responsible for discharging Franchisees to Franchisor, and shall discharge Franchisor's obligations to its unit franchise owners within the Granted Territory pursuant to each Unit Franchise Agreement and to this Agreement between Franchisor and such unit franchise owner. Subject to the provisions hereof of this Agreement, Franchisor agrees that it shall not, during the Initial Term (as hereinafter defined) of this Agreement or any renewals thereof, not to authorize any other party to act as Franchisor's representative within the Granted Territory, while this Agreement is in effect. Representative acknowledges and agrees that Franchisor may at any time designate others as representatives of the BUTTERFLY System with respect to any area other than the Granted Territory. The rights and obligations herein granted to Representative are sometimes referred to as the "Regional Franchise." System outside the Territory.~~

~~(b) Representative acknowledges and agrees that it shall solely be responsible for any registrations, filings or other documentation necessary for Representative to act as a franchise broker to the extent required by law within the Granted Territory, as well as supervising Unit Franchisees in the Granted Territory.~~

~~(c) Representative acknowledges and agrees that the territorial rights granted hereunder are subject to Representative's timely compliance with the will comply with development schedule (the~~

~~“Development Schedule attached hereto”) as set forth in Exhibit “3.3 to this Agreement. If: (i) Representative fails to meet the Development Schedule set forth in Exhibit “3,” development schedule and fails to cure such noncompliance within sixty (60) days after Franchisor's written's notice thereof, or (ii) one of the Termination Events occurs; Representative shall forfeit any further right to solicit the sale of BUTTERFLY System Unit Franchise Agreements in the Granted Territory, in which event Franchisor may license or grant to any third party the right to solicit the sale of and service additional BUTTERFLY Units within the Granted Territory and/or undertake to do so itself of such noncompliance. Franchisor may terminate this Agreement. In such event, Representative shall forfeit its rights to receive any portion of the initial franchise fees provided by Paragraphs 5(b) or any other fees under Section 54 of this Agreement with respect to any Units which may be sold by Franchisor or such third persons within the Granted Territory. Representative shall not continue cease to service franchises or solicit further sales immediately upon termination of this Agreement for any reason.~~

~~(d) (d) Representative shall be subject to the same exceptions to its territorial rights as contained in any applicable unit Franchise Agreement, including the right of Franchisor to sell products and services bearing the Marks in channels of distribution other than the Centers, and to appoint representatives and locate Centers outside the Territory. Franchisor may only operate and license fitness centers within the Territory if they are not operated under the Marks and are not designed primarily for women. Franchisor retains the sole right to market on the Internet, including all use of Web sites, domain names, URLs, linking, advertising, and co-branding arrangements. Representative will provide Franchisor content for Franchisor's Internet marketing, and sign Franchisor's Intranet and Internet usage agreements, if any. Franchisor also retains the sole right to use the Licensed Marks on the Internet, including on Web sites, as domain names, directory addresses, metatags, and in connection with linking, advertising, co-branding, and other arrangements. Franchisor retains the right to approve any linking or other use of Franchisor's Web site. Representative may shall not establish a presence on the Internet except as Franchisor may specify, and only with without Franchisor's prior written consent. Representative must follow Franchisor's policies concerning data collection and privacy, if any.~~

~~(e) Franchisor will in its sole judgment determine whether a franchise should be granted to any prospective Franchisee in the Territory, using Franchisor's then current form of Franchise Agreement. Representative may not grant franchises or subfranchises, and may not sell or enter into contracts with Franchisees, which is the exclusive right of Franchisor.~~

### 3. 3. TERM

~~(a) This Agreement shall take effect upon its execution by all parties hereto (the “become effective as of the Effective Date”) and, unless previously terminated pursuant to Paragraph 11 hereof its term shall extend for five (5) and have a term of five years from the Effective Date (the “Initial Term”).~~

~~(b) Representative may renew this Agreement for up to four successive terms of five years each, subject to the following conditions:~~

~~(b) Provided (i) Representative is not in default under 12 months prior to the expiration of then current term of this Agreement or any other agreement with Franchisor at any time during the last twelve (12) months of the Initial Term or any successive term, as applicable, Representative may, at its option, upon delivery of written notice and payment of a renewal fee equal to 20% of the Initial Development Fee, renew the Regional Franchise upon the expiration of the Initial Term for successive terms of five (5) years, each in accordance with Franchisor's then current terms and conditions for granting renewal which may include execution of a new and modified agreement, with a revised form of development schedule and such additional terms as Franchisor may reasonably require. Representative shall exercise its option to renew by giving~~

~~Franchisor written notice of Representative's election to renew not less than twelve (12) months nor more than eighteen (18) months prior to the expiration of the Initial Term or any additional term or any of Franchisor's affiliates;~~

~~(e) Franchisor may elect to terminate the remaining Initial or Renewal Term if any one of the Termination Events occurs.~~

~~Upon the Representative's failure to correct such Termination Event after 60 days prior notice, Franchisor may elect to deliver an amount equal to 50% of the "continuing monthly fees" (from the Granted Territory pursuant to this Agreement) actually paid to Franchisor during the twelve months immediately preceding the Termination Event (as specified in Franchisor's notice) as final and full payment to Representative of all rights under this Representative Agreement and all of Representative's rights to continuing monthly amounts or other consideration under this Agreement shall terminate as of delivery of such payment.~~

~~(ii) Representative provides written renewal election to Franchisor at least 12 months but not more than 18 months prior to the expiration of then current term;~~

~~Upon termination of this Agreement for any reason, any rights to future payment by Franchisor to Representative shall terminate.~~

~~(iii) Representative shall execute a then current form of area representative agreement, which may vary in material aspects from this Agreement including a revised development schedule; and~~

~~(iv) Representative pays a renewal fee equals to 20% of the then current initial area fee.~~

#### 4. ASSISTANCE PROVIDED BY FRANCHISOR

~~(a) Prior to Representative's commencement of business, Franchisor or its designee shall provide Representative with such of the following as will from time to time be made available to similarly situated representatives of Franchisor information and materials:~~

~~(i) Information with respect to preliminary plans, layouts, and standards and specifications for all fixtures, furnishings, signs, equipment and leasehold improvements for use in developing standard BUTTERFLY Units the Butterfly Life Center;~~

~~(ii) ~~Such information as Franchisor may have~~ Information concerning possible sources of fixtures, furnishings, signs, equipment, leasehold improvements, and other products and services available in connection with the operation of the Units Butterfly Life Center;~~

~~(iii) Training and orientation in the sale of BUTTERFLY Unit Butterfly franchises, including, ~~without limitation,~~ sales techniques and procedures and disclosure requirements; and~~

~~(iv) If Franchisor develops a Regional Franchise Manual (as hereinafter defined, if and when available) which may be amended from time to time by Franchisor in its sole discretion, one set shall be delivered to Representative.~~

~~(iv) Manuals.~~

~~(b) Franchisor, in conjunction with all other representatives of the BUTTERFLY System, if any, shall continue its efforts to Representatives, and Franchisees shall maintain standards of quality, appearance, service and cleanliness prescribed by Franchisor at all units, thereby protecting and enhancing for the System, in order to protect and enhance the public image and reputation of the~~



~~BUTTERFLY System and the demand for the products and services provided thereunder, and to that end using the System.~~ Franchisor, may, in its sole discretion, provide Representative with the following:

(i) Approximately two (2) weeks of training (and such additional time as Franchisor may deem necessary) in the operation of the ~~Franchised Business for Representative Center.~~ Such training shall be conducted exclusively by Franchisor or its designee at a site to be designated by Franchisor, ~~provided, however that,~~ Representative shall pay all costs and living expenses ~~during and in connection with such training.~~

(ii) Sales support in connection with the marketing and sale of ~~BUTTERFLY System the Butterfly~~ franchises as Franchisor may provide to all others ~~determined by Franchisor to be similarly situated to Representative (Representatives.~~ Sales support may be provided via conference calls, email, video communication, or other electronic forms of communication). Franchisor reserves the right to assess a fee for additional assistance provided at Representative's request ~~in connection with the marketing and sale of franchises if, if such assistance,~~ in Franchisor's reasonable judgment, ~~such assistance~~ discretion, exceeds reasonable levels of sales support or as levels specified in the ~~Regional Franchise Manual: Manuals.~~

(iii) Copies of any disclosure documents that Representative shall use in connection with the sale of ~~Unit Franchises~~ unit franchises in the ~~Granted Territory for purpose~~ purposes of complying with state or federal laws and regulations affecting the sale of franchises; any applicable laws.

(iv) Periodic individual or group counseling in the operation and supervision of the ~~Units, Centers, to be~~ rendered in person, by seminar, or by newsletters or bulletins as Franchisor may deem appropriate;

(v) Advice concerning operating problems, new techniques or operating methods disclosed by reports submitted to or inspections made by Franchisor or other representatives, ~~as Franchisor may deem appropriate and.~~

(vi) Assistance as Franchisor may deem reasonably required, including advice and guidance with respect to new and improved methods of operation or business procedure developed by Franchisor, use of the ~~Regional Franchise Manual~~ Manuals, management materials, promotional materials, advertising formats and the ~~Licensed Marks.~~

## 5. 5. FEES

(a) ~~In consideration of the execution of this Agreement,~~ Representative agrees ~~to~~ shall pay Franchisor a ~~Development Fee~~ an initial area fee in the amount of \$100,000 for a 10 ~~Unit Territory~~ Centers territory, \$175,000 for a 25 ~~Unit Territory~~ Centers territory, and \$250,000 for a 50 ~~Unit~~ Centers territory, ~~respectively.~~

(b) ~~During the term of this Agreement, Franchisor agrees to pay Representative the following fees for Units licensed to operate within Representative's Granted Territory while Representative's rights of exclusivity hereunder are in effect.~~ The initial area fee is to be paid in full upon the signing of this Agreement, and is fully earned and non-refundable. For accounting and financial reporting, the initial area fee shall be allocated as follows:

(i) 10% to the initial training program conducted at our headquarters or training facility (to be completed on the last day of training, which will be within 180 days after the Effective Date):

(ii) 10% to other pre-opening services conducted from our headquarters (to be completed 90 days after the last day of training):

(iii) 80% to the grant of the Territory (to be completed as of the Effective Date and the initial area fee is paid).

(c) Franchisor's initial services to Representative do not vary based on the number of unit franchises sold or open because Franchisor's services to new Franchisees are also paid for by future Franchisee payments.

(d) Representative shall not solicit sales and shall not be entitled to receive the income commission on any initial unit franchisee fees or royalties from the sale of any unit franchise not located in Representative's Granted Territory outside the Territory.

Fifty percent (50%) of each initial franchise fee actually paid to Franchisor by franchise owners who execute a Unit Franchise Agreement to operate BUTTERFLY System Units within the Granted Territory, other than any Unit Franchise Agreement with Representative or its affiliates ("Unit Owners").

(e) During the Term of this Agreement, Franchisor agrees to (i) Franchisor shall pay to Representative who have an Agreement for at least 50 Units a recurring administration fee equal a fee based upon the initial and ongoing fees received from Franchisee-owned Centers in the Territory as follows:

(i) 50% of initial franchise fee received by Franchisor from Franchisees within the Territory, except for such fee received from Representative or its affiliates for Centers owned by Representative or its affiliates.

(ii) For Representative who is committed to open at least 50 Centers, an on-going administration fee that equals to the lesser of: (i) \$400 per month per Unit Owner, Center; or (ii) forty percent (40%) of the designated "continuing monthly fees" actually paid by and collected from such Unit Owners (and not subject to impound or reserve) by Franchisor 40% of the Continuing Monthly Fees received by Franchisor from Franchisees within the Territory during the preceding calendar month. If Representative has an Agreement for 25 Units, Representative shall be paid a recurring

(iii) For Representative who is committed to open less than 50 Centers, an on-going administration fee equal that equals to the lesser of: (i) \$300 per month per Unit Owner, or (ii) thirty percent (30%) of the continuing monthly fees collected from such Unit Owners. If Representative has an Agreement for 10 Units, Representative shall be paid a recurring administration fee equal to the lesser of: (i) \$300 per month per Unit Owner, or (ii) thirty percent (30%) of the continuing monthly fees collected from such Unit Owners. 1) \$300 per month per Center, or (2) 30% of the Continuing Monthly Fees received by Franchisor from Franchisees within the Territory.

(f) The administration fee shall not be paid for any Unit Franchise Units Centers owned directly or indirectly by Representative and shall only be paid based on Unit Owners who are or were licensed to operate Units within Representative's Granted Territory while Representative's rights of exclusivity hereunder were in effect. Representative shall not solicit sales or attempt to support more than the Maximum number of units specified Centers as set forth on the Development Schedule, Exhibit 3.

(g) For purposes of this Agreement, the "Continuing monthly fees" shall be limited to Monthly Fees" means the monthly fixed amount (or royalty fee based on a percentage of gross sales, if specified in

the applicable franchise agreement) paid by the specified Butterfly Unit franchise owners to Franchisor; ~~shall not include or royalty fee received by Franchisor from Franchisees within the Territory pursuant to the Franchise Agreements, excluding any renewal and transfer fees paid to Franchisor by such Butterfly Unit Franchise owners during the Term of this Agreement, under sections 3(b) and 10(e)(ii); and shall not include Franchisees, or any~~ advertising fees, cost reimbursements, training fees or other fees required to be paid by such franchise owners under their respective Unit Franchisees pursuant to the Franchise Agreements.

(dh) Unless otherwise provided, all fees and other amounts due to Representative hereunder ~~under this Agreement~~ shall be paid ~~on or before~~ by the twentieth (20th) day of the calendar ~~each~~ month following the calendar month to which they relate, ~~accompanied by a statement stating the fees due to Representative for each Unit within the Granted Territory with detailed breakdown statements from Franchisor.~~

(e) ~~Franchisor shall have the discretionary right to apply all payments from Unit Franchise Owners in such order and~~ Franchisor may set off any payments received from a Franchisee against any amounts owed, ~~as Franchisor may designate from time to time by such Franchisee.~~

(fi) Representative shall be responsible or pay (and Franchisor may set off against any amounts owing to Representative) 50% of any ~~expenses or costs of collecting such continuing monthly fees collection expenses in connection with the Continuing Monthly Fees.~~

(k) ~~Franchisor will waive the initial franchise fee for the first Center opened by Representative, if Representative has committed to a 50-Center area representative Territory under this Agreement, and Representative is at the time of signing that first Franchise Agreement in full compliance with this Agreement.~~

## 6. 6- LICENSED THE MARKS

Representative ~~hereby~~ covenants and agrees with Franchisor that:

(a) Representative shall not represent in any manner that it has acquired any ownership rights in the ~~Licensed Marks by virtue of this Agreement or its use of the Licensed Marks.~~

(b) Representative shall not use any of the ~~Licensed Marks or marks which that~~ are or may be confusingly similar to the Marks in its own corporate, partnership or business name.

(c) Any and all goodwill associated with the ~~BUTTERFLY System and identified by the Licensed Marks (including all future distinguishing characteristics, improvements and additions to or associated with the BUTTERFLY System) Marks~~ is Franchisor's property and shall inure directly and exclusively to the benefit of Franchisor, and no monetary amount shall be assigned as attributable to any goodwill associated with Representative's use of the ~~Licensed Marks~~ upon the expiration or termination of this Agreement.

(d) Any use of the ~~Licensed Marks other than as expressly authorized by this Agreement, Marks~~ without Franchisor's prior written consent, is an infringement of Franchisor's rights ~~therein in such Marks.~~ Representative's right to use the ~~Licensed Marks granted herein does not extend beyond Marks under this Agreement shall terminate immediately upon~~ the termination or expiration of this Agreement.

(e) Representative shall not subfranchise or represent to any third parties party that it has the right to subfranchise Butterfly Units Life Centers or the ~~Licensed Marks.~~

## 7. 7- REPRESENTATIVE'S OBLIGATIONS

~~Franchisor shall establish for all representatives and franchise owners, and Franchisor and Representative shall maintain~~ cause Franchisees in the Granted Territory for all franchise owners operating under the BUTTERFLY System, to maintain the standards of quality, appearance and operation of the System established by Franchisor. Representative acknowledges that it is essential to the preservation of the integrity of the Licensed Marks, indicia and goodwill of Franchisor, that Representative maintain and adhere to the standards, procedures and policies hereinafter described, and as may be altered or amended by Franchisor from time to time in Franchisor's sole discretion. For the purpose of enhancing the public image and reputation of the businesses operating under the BUTTERFLY System and for the purpose of increasing the demand for services and products provided by franchise owners and Franchisor, Franchisor and Representative agreed described in this Agreement and the Manuals. Representative hereby agrees as follows:

(a) Representative ~~agrees to~~ shall comply with all BUTTERFLY ~~the~~ System rules, regulations, policies and standards which are by their terms mandatory, including, without limitation, those contained in the Confidential Operating Manual and Regional Franchise Manual Manuals. Representative shall operate the business licensed under this Agreement solely in the manner and pursuant to the standards prescribed herein, in the Regional Franchise Manual or in this Agreement, the Manuals or other written materials provided by Franchisor to Representative.

(b) Representative shall be actively and personally involved in the operation of the ~~Franchised Business and shall conform to the standards specified by Franchisor~~ business.

(c) Representative shall maintain in stock minimum order amounts of all standard advertising and marketing materials ~~promoting for~~ the BUTTERFLY System as Franchisor may require ~~from time to time~~, and shall use only business stationery, marketing materials, advertising materials, printed materials or forms ~~which have been approved in advance in writing by Franchisor~~.

(d) Representative shall actively promote and solicit the sale of BUTTERFLY System ~~unit franchises and to that end, the Butterfly franchise~~. Representative shall use its best efforts to assure that the Granted Territory is fully developed as rapidly as possible with operating BUTTERFLY Units, in accordance with the Development Schedule attached hereto as Exhibit "3" and Franchisor's policies, standards and guidelines as set forth from time to time in the Regional Franchise Manual develop the Territory as provided in this Agreement and to verify that franchisees comply with the Manuals. Representative shall suspend any and all sales efforts in the event that Franchisor notifies Representative that applicable franchise registration, permits, renewal or amendment is pending or otherwise suspended. Representative shall provide such assistance and information as Franchisor may request ~~in order to adequately disclose the relationship of Representative and Franchisor in accordance with all disclosure laws and regulations relating to the sale of unit franchise agreements and shall obtain all licenses and/or to prospective franchisees as required by applicable law. Representative shall obtain any licenses and registrations necessary to solicit the sale of BUTTERFLY System franchises~~ perform its obligations under this Agreement. Representative agrees to maintain and provide to Franchisor accurate written records of any and all contacts ~~or~~ and dealings with prospective franchise owners as may be required in the Regional Franchise Manual and by the terms of any state or federal law or regulation affecting franchise sales or the franchise relationship in order that Representative may validly solicit and Franchisor validly sell Unit Franchise Agreements in the Granted Territory to potential prospects of the BUTTERFLY System, and as Franchisor may otherwise request Franchisees within the Territory.

(e) Representative shall ~~in such form and manner as may be specified in the Regional Franchise Manual, notify the public that Representative is operating the Franchised Business licensed hereunder as an authorized~~ present itself to the public as an area representative of Franchisor and

~~shall operate the Representative's business pursuant to this Agreement and identify its business location Representative's Office in the manner specified by Franchisor in the Regional Franchise Manual in the Manuals.~~

~~(f) At Franchisor's option, Representative shall act as Franchisor's representative in the Granted Territory in discharging one or more of to discharge Franchisor's obligations to its franchise owners pursuant to any Unit the Franchisees under the relevant Franchise Agreement Agreements, including, without limitation, to provide the provision of site selection assistance, opening assistance, continuing training, supervision, advice and guidance with respect to operations, business procedures and compliance with any regulation, requirement, standard or policy of the BUTTERFLY System, as may be required from time to time in the then current form of Unit Franchise Agreement applicable to any franchise owner. Representative shall promptly respond to inquiries or complaints of franchise owners within the Granted Territory and provide to all franchise owners within the Granted Territory any supervisory and management assistance, training and support deemed reasonably necessary by Franchisor in order to assist franchise owners within the Granted Territory in complying with any rule, regulation, requirement or policy of Franchisor including, without limitation, all of the following: standard of the System, except as may be directed by Franchisor in writing.~~

~~(g) Representative shall promptly respond to inquiries or complaints of the Franchisees within the Territory and provide such Franchisees with supervisory and management assistance, training and support that may be reasonably required by Franchisor, including:~~

~~(i) Post-opening assistance of three or more days for each Franchisee within the Territory as required by the Franchise Agreement.~~

~~(ii) Any follow-up or remedial training requested by such Franchisees or required by Franchisor or Representative.~~

~~(iii) On-going training that may be required by Franchisor pursuant to Franchise Agreement.~~

~~(iv) Representative shall be responsible for the three or more days of assistance provided to each franchisee on or immediately after the opening of each unit franchise within the Granted Territory as required by the terms of the respective unit franchise agreement. Representative shall also provide any follow up or remedial training requested by such franchisee or deemed necessary by Franchisor or Representative. Representative shall also monitor, promote and be responsible for continuing training of all franchise owners in the Granted Territory which may be required by Franchisor pursuant to the terms of such unit franchise agreements. In addition, Representative agrees to make available to franchise owners in the Granted Territory such Any training and continuing education and support in the operation of BUTTERFLY Units as Butterfly Life Centers that Franchisor may require from time to time in the Regional Franchise Manual. Unless otherwise permitted by Franchisor, all such training shall be conducted by Representative at a BUTTERFLY Unit Center approved by Franchisor.~~

~~(v) Subject to Franchisor's site approval and authorization, Representative shall assist franchise owners in connection with evaluating and selecting sites, site selection by Franchisees and the development of each Unit in Center within the Granted Territory to assure that each Unit conforms to Franchisor's then current specifications for BUTTERFLY Units. Prior to the opening of each such Unit, Representative shall assist the franchise owner in the marketing, promotion, advertising and grand opening of each Unit in the manner prescribed by Franchisor for comparable BUTTERFLY System Units. Centers.~~

~~(vi) Pre-opening assistance in the marketing, promotion, advertising of the Center and assistance for the grand opening of each Center in the Territory that may be required by Franchisor.~~

~~(vii) Representative shall inspect~~Inspection of each UnitCenter within the Granted Territory ~~not less than~~at least once every quarter and ~~report the results of such inspections~~preparation of inspection reports on forms provided by Franchisor (which may detail each franchise owner's compliance with BUTTERFLY System rules, regulations and policies and the presentation by the franchise owner of the Licensed Mark)required by Franchisor. Failure by a material number of ~~Unit Franchise Owners~~Franchisees in the Territory to comply with requirements of the System will constitute a material default of Representative under this Agreement.

~~(viii) Representative shall assure that all unit franchise owners within the Granted Territory provide all of those products and services as Franchisor may, from time to time, require and only those which Franchisor may approve and not thereafter disapprove as meeting its~~Compliance of Franchisor's uniform quality standards and specifications and ~~which are provided in conformity with the Confidential Operating Manual and each franchise owner's Unit Franchise Agreement~~the Manuals and the Franchise Agreements by Franchisees in the Territory in providing the Butterfly related products and services.

~~(ix)~~ Marketing, promoting and monitoring the System within the Territory.

~~(x)~~ Monitoring and cooperating in the enforcement by Franchisor of all Franchise Agreements for Franchisees within the Territory.

~~(xi) Representative shall market, promote and monitor the BUTTERFLY System within the Granted Territory and must attend at its own expense one (1) time per~~Attendance in-person at a meeting as Franchisor may require at Representative's own expense four times ever year, at a location to be designated by Franchisor, ~~a meeting as Franchisor may require of comparable representatives of Franchisor.~~

~~(vi) Representative shall monitor and cooperate in the enforcement by Franchisor of all Unit Franchise Agreement obligations for franchise owners located in the Granted Territory.~~

~~(xii) Representative shall attend~~Attendance of all quarterly and annual meetings of ~~Butterfly~~Franchisees and any other special meetings called by Franchisor for ~~franchisees~~Franchisees in the ~~Granted~~ Territory.

~~(g)-(h)~~ In order to assist Representative in promoting the BUTTERFLY System, Franchisor may, ~~from time to time,~~ prepare and make available to ~~franchise owners~~Franchisees within the ~~Granted~~ Territory, directly or through Representative, advertising, marketing or promotional materials relating to the sale and operation of ~~BUTTERFLY~~Butterfly Life Centers and System-unit franchises. Representative shall use its best efforts to promote and encourage the display of such materials by all ~~franchise owners~~Franchisees within the ~~Granted~~ Territory.

~~(h)-(i)~~ Representative shall use only advertising and promotional materials and programs ~~promoting~~provided or approved by Franchisor to promote the sale and operation of ~~BUTTERFLY franchises that are provided by Franchisor or approved in advance, in writing by Franchisor, and registered with appropriate regulatory agencies. Butterfly Life Centers and comply with all applicable franchise registration requirements.~~ Representative agrees to cooperate with and assist Franchisor in the implementation of such advertising programs as Franchisor may, ~~in its sole discretion, from time to time~~ deem necessary or desirable.

~~(i)~~ Franchisor's may withdraw its approval of any advertising or promotional materials or programs ~~may be withdrawn at any time, Under such circumstances, and~~ Representative shall immediately thereafter ~~cease the~~to use and/or display of any materials or programs for which Franchisor's approval ~~has~~have been withdrawn, and ~~will, Representative shall also, at its own expense, cause the cessation of use and removal of any such items~~Franchisees in the Territory to cease the use of and remove any such

~~materials~~ or programs ~~from the Units in the Granted Territory~~. Franchisor may recommend prices, set ~~the~~ maximum prices, and determine pricing strategy of local, regional and national advertising and marketing programs ~~each~~ to the extent permitted by applicable law.

(i) In addition, ~~(k) Franchisor will~~ may at its option organize ~~a~~ the marketing program ~~in the Representative's state which involves television advertisements and three~~ in the Territory of one or more in-person seminars that invite potential franchisees Franchisees to attend to find out more about Butterfly Life Franchises. ~~The Franchisor will plan the first of the three seminars and the Representative will be required to attend and assist in all three of the seminars. Franchisor will pay for the television advertisements, marketing materials and seminar expenses for the first seminar. The~~ franchises. If so, Representative and Franchisor will equally share the costs of ~~the television advertisements, marketing materials and other seminar expenses for the second and third seminars. The Representative will be responsible for and must plan and arrange to hold (subject to final approval by Franchisor) the second seminar within 30 days after the first seminar and the third seminar within 30 days after the second seminar. (For example, if there are three area representatives sharing a seminar, Franchisor and each area representative will pay 25%.)~~ All advertisements and marketing materials must be approved in advance by ~~the Franchisor. The Representative shall pay its share of all costs upon presentment of invoices by the Franchisor.~~ Franchisor will attempt to direct seminar marketing efforts to an audience that includes potential leads in the ~~Representative's Granted Territory, but such marketing or the seminars shall not be solely directed to the Granted Territory~~

## 8. MANUALS AND CONFIDENTIAL INFORMATION

### 8. REGIONAL FRANCHISE MANUAL

(a) In order to protect the reputation and goodwill of the ~~BUTTERFLY~~ Butterfly Life Centers and ~~the~~ System and to maintain high standards of operation ~~of the System under the Licensed Marks,~~ Representative shall conduct its business in accordance with the Manuals and various written instructions and operating manuals, whether embodied in paper, electronic or other media (hereinafter and previously referred to as the "Regional Franchise Manual"), including such amendments thereto, as Franchisor may publish from time to time, all of which Representative acknowledges belong solely to Franchisor ~~that Franchisor may publish. The Manuals and written instruction shall be Franchisor's sole property and shall be on loan from Franchisor to Representative during the term of this Agreement. When any provision in this Agreement requires that Representative comply with any standard, specification or requirement of Franchisor, unless otherwise indicated, such standard, specification or requirement shall be such as is set forth in this Agreement or as may, from time to time, be set forth by Franchisor in the Regional Franchise Manual.~~

(b) Representative shall ~~at all times~~ use its best efforts to keep the ~~Regional Franchise Manual and any other manuals, materials, goods and information created or used by Franchisor and designated for confidential use within the BUTTERFLY System and the information contained therein as~~ Franchisor's Confidential Information confidential and shall limit ~~the access to~~ of its employees of Representative to the Manuals and Confidential Information on a need to know basis. Representative acknowledges that the unauthorized use or disclosure of Franchisor's ~~confidential information or trade secrets may constitute a violation of state and/or federal laws and~~ Confidential Information will cause irreparable injury to Franchisor and that damages ~~are will not be~~ are will not be an adequate remedy. Representative accordingly covenants that it shall not ~~at any time, without Franchisor's prior written consent, by any means, in whole or in part,~~ disclose, use, permit the use thereof (except as may be required by applicable law or as authorized by this Agreement) to use, copy, duplicate, record, transmit or otherwise reproduce such information, ~~by any means, in whole or in part, or otherwise make the same available to any unauthorized person or source. Any and all information, knowledge and know-how not generally known about the BUTTERFLY System and Franchisor's products, services, standards, procedures, techniques and such other information or~~

~~material as Franchisor may designate as confidential shall be deemed confidential for purposes of this Agreement. Confidential Information, or otherwise make such Confidential Information available to any third party, unless with Franchisor's prior written consent or as required by applicable law.~~

~~(c) Representative understands and acknowledges that Franchisor may, from time to time, revise the contents of the Regional Franchise Manual to implement new or different requirements for the operation of the Representative's business and that of franchise owners operating under the BUTTERFLY System. Representative expressly agrees to comply with all such changed requirements which are by their terms mandatory; provided that such requirements shall also be applied in a reasonably nondiscriminatory manner to comparable businesses operated under the BUTTERFLY System. The implementation of such requirements by representatives and franchise owners may require the expenditure of reasonable sums of money by representatives or by franchise owners and Franchisees shall comply with the Manuals, which may be revised by Franchisor, and Representative shall be responsible for all expenses related to the implementation of any requirements pertaining to Representative contained in the Manuals.~~

~~(d) Representative understands and acknowledges that Franchisor may from time to time, in an effort to further develop the BUTTERFLY System, implement new ideas, methods or strategies in BUTTERFLY Units/Centers, which may be located in territories other than the Granted Territory, for the purpose of evaluation or otherwise, and that such implementation shall not be deemed discriminatory.~~

~~(e) It is Representative's responsibility to keep its copy of the Regional Franchise Manual current and up to date and, in the event of any dispute as to the contents thereof, the terms and dates of the master copy thereof maintained by Franchisor at its principal place of business shall be controlling.~~

## 9. COVENANTS

~~(a) During the term of this Agreement, Representative, its shareholder(s) and any guarantor(s) hereof covenant, individually and its owners and guarantors hereby covenant, jointly and severally:~~

~~(i) To use its (full time and) best efforts in recommending to market and promoting the sale of BUTTERFLY franchises, in operating any Unit owned by Representative as a franchise owner, and in promoting the BUTTERFLY System, products and services;~~

~~(ii) Not to engage, as an owner, operator, or in any managerial capacity, in any health, fitness, or weight loss business, except as contemplated by this Agreement and such Unit-Franchise Agreements as between Representative and Franchisor;~~

~~(iii) To comply with all laws and regulations affecting the offer or sale of franchises and persons engaged in the sale of BUTTERFLY franchises as franchise sales agents and/or brokers;~~

~~(iv) Not to make any representations or earnings claims not authorized by Franchisor's approval;~~

~~(v) Not to accept any funds from any unit franchise owner;~~

~~(vi) To conduct sales solicitation activities strictly in accordance with the standards and requirements established by Franchisor;~~



(vii) ~~Not~~ not to represent, offer, or sell any other franchises or business opportunities;  
and

(viii) ~~Not~~ not to employ or seek to employ any person(s) who ~~are~~ is at the time employed by Franchisor, or directly or indirectly induce ~~any~~ such person(s) to leave ~~their~~ his employment with Franchisor.

(b) In the event this Agreement ~~expires, is terminated, expires or is not renewed, or if Representative assigns or transfers its interest herein to any person or entity, Representative, its shareholder(s) and guarantor(s) covenant, individually or assigned by Representative, Representative and its owners and guarantors hereby each covenant~~ for a period of three (3) ~~two~~ years after such expiration or termination ~~hereafter~~ not to engage, as an owner, operator, or in any managerial capacity, in any similar or competitive business (including, without limitation, any business specializing in the fitness, health or weight loss business) within the ~~Granted Territory or to otherwise, and not to represent, sell, or offer, or market any other franchise or marketing system, other than pursuant to any BUTTERFLY Unit Franchise Agreement to which Representative, such guarantor or shareholder is a party.~~

(c) During the term of this Agreement and thereafter, Representative covenants not to communicate or transmit, directly or indirectly, divulge to, or use for its benefit or the benefit of any other person or legal entity, any trade secrets which are proprietary to Franchisor or any information, knowledge or know-how deemed confidential under Paragraph 8 hereof, except as permitted by Franchisor in writing. The protection granted hereunder shall be in addition to and not in lieu of all other protections for such trade secrets and confidential information as may otherwise be afforded at law or equity any Confidential Information, without Franchisor's approval.

(d) To the extent permitted by law, Representative agrees to execute non-compete agreements with all of its employees and independent contractors ~~of Representative which shall to prohibit competition such persons from competing~~ in fitness, health and weight loss centers by such parties during their employment or contractual relationship with Representative and for a period of three (3) ~~two~~ years thereafter within the ~~Granted Territory~~. Representative shall be responsible for ~~ensuring the enforceability of enforcing~~ such non-compete agreements in conformity with the respective jurisdiction(s) ~~in the Granted Territory; provided that any.~~ Any deviation from the terms enumerated ~~herein in this Agreement~~ to insure ~~such the enforceability of such non-compete agreements~~ shall be subject to the prior written approval of Franchisor. Representative agrees ~~and understands~~ that the rights granted under this Agreement to Representative are personal to Representative. Prior to employing any person or entering into any contract that will carry out or assist in the exercise of Representative's ~~rights~~ obligations under this Agreement, Representative shall obtain Franchisor's written consent to use such employee or independent contractor.

(e) The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. Franchisor may ~~unilaterally, at any time, in its sole discretion,~~ revise any of the covenants in this ~~Paragraph 9 so as to reduce the obligations of Section at any time without Representative's consent.~~ Should any part of these restrictions be found to be unenforceable by virtue of its scope in terms of area, business activity prohibited or length of time, and should such part be capable of being made enforceable by reduction of any or all thereof; Representative and Franchisor agree that the same shall be enforced to the fullest extent permissible under ~~the applicable~~ law. Representative further ~~expressly~~ agrees that the existence of any claim 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 ~~Paragraph 9, Section.~~

## 10. 10. TRANSFER AND ASSIGNMENT

(a) ~~Franchisor shall have the right to may transfer all or any part of its rights or obligations herein to any person or entity, including to any competitor of Franchisor which agrees to assume Franchisor's obligations hereunder, including a competitor of Franchisor under this Agreement to any person without Representative's consent.~~

(b) ~~Representative understands and acknowledges that the rights and duties created by this Agreement are personal to Representative, and that Franchisor has granted this Regional Franchise in reliance on many factors, including, without limitation, the individual or collective character, skill, aptitude and business and financial capacity of Representative and Representative's principals. Accordingly, neither without Franchisor's prior written consent, Representative nor any person owning any direct or indirect equity interest therein, shall, without Franchisor's prior written consent in Representative if Representative is an entity, shall not, directly or indirectly, sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any of its interest in under this Agreement or any portion or aspect thereof, or any equity or voting interest in Representative. Any such purported assignment occurring by operation of law or otherwise, including any assignment by a trustee in bankruptcy, Any assignment or transfer without Franchisor's prior written consent shall be a material default of this Agreement.~~

(c) ~~Representative understands and acknowledges the vital importance of the performance of Representative to the market position and overall image of Franchisor. Representative also recognizes acknowledges the many subjective factors that comprise the process by which Franchisor selects a suitable representative. The consent of Franchisor to a proposed transfer by Representative of any interest in this Regional Franchise shall remain a subjective determination and shall include, but not be limited to, at Franchisor's sole discretion, subject to the following conditions:~~

(i) ~~The proposed transferee meets the Franchisor's standards of qualification then applicable with respect to all new area representative applicants for similar BUTTERFLY System regional franchises and in Franchisor's sole discretion Butterfly franchise and has the ability to discharge Representative's obligations to franchise owners within the Granted the Franchisees in Territory;~~

(ii) ~~The proposed transfer is at a price and upon such terms and conditions as that Franchisor, in its sole judgment, shall deem deems reasonable;~~

(iii) ~~As of the effective date of the proposed transfer, all obligations of Representative hereunder and under this Agreement and any other agreements between Representative and with Franchisor are have been fully satisfied; and~~

(iv) ~~As of the effective date of the proposed transfer, all obligations of the proposed transferee to the Franchisor (if any) must be fully satisfied; and have been fully satisfied.~~

(v) ~~As of the effective date of the proposed transfer, Franchisor shall have forwarded to Representative its approval, granted in its sole discretion, of the proposed transfer to the proposed transferee~~

(d) Franchisor may require, as a condition of its approval of any proposed transfer, satisfaction of the requirements set forth in Paragraph 10(e) in the event of the following Section 9(e) if:

(i) ~~If the proposed transfer, alone or together with any and all other previous, simultaneous and/or proposed transfers, would have the effect of reducing to less than fifty one~~

~~percent (51%) the percentage of voting or equity interest owned in Franchise Owner in the Franchisee by the initial equity owners as identified in Exhibit "2" hereto, 4 to this Agreement; or,~~

(ii) ~~If Representative is a natural person and the proposed transfer, alone or together with any and all other simultaneous and/or proposed transfers, would have the effect of reducing Representative's voting or equity interest in this Regional Franchise the Representative's business under this Agreement to less than fifty one percent (51%).~~

(e) ~~The In addition to any requirements for all such transfers under paragraph 10(d) are all of the following: provided in this Section 9.~~

(i) ~~Representative must cause the provide prospective transferee to be provided with the any of Franchisor's current form of disclosure document required by the Federal Trade Commission's Trade Regulation Rule on Franchising and/or other applicable franchise registration/disclosure laws, and receipt for same shall be delivered to Franchisor, provided, however, Franchisor shall not be liable for any representations other than those contained in any applicable law, and provide Franchisor with proof of delivery of such disclosure document.~~

(ii) ~~There Representative shall have been paid pay to Franchisor, together with the application for consent to the transfer, the transfer fee equal to twenty percent (20%) of the Development Fee specified in section 5(a), above then current initial area fee.~~

(iii) ~~The transferor Representative shall have executed execute a general release under seal where required, in a form satisfactory to Franchisor, of to release Franchisor from any and all claims against Franchisor, its parent, subsidiaries, affiliates and their officers, directors, attorneys, shareholders, and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state, and local laws, rules, and ordinances arising out of, or connected in connection with, the Representative's performance of this Agreement.~~

(iv) ~~The prospective transferee shall enter into a written assignment, under seal where required, and in a form satisfactory to Franchisor, assuming and agreeing to discharge all of Representative's obligations under the then current form of area representative agreement, which may have terms different from this Agreement.~~

(v) ~~The prospective transferee shall demonstrate to Franchisor's sole satisfaction that it meets all of Franchisor's requirements for becoming a representative, including, without limitation, that it meets Franchisor's managerial and business standards then in effect for similarly situated representative, possesses a good moral character, business reputation, and satisfactory credit rating; will comply with all instruction and training requirements of Franchisor, and has the aptitude and ability to operate the Franchised Business (as may be evidenced by prior related business experience or otherwise) Representative's business.~~

(vi) ~~The prospective transferee and/or its designated managerial personnel shall have completed, to Franchisor's satisfaction, the training then required of similarly situated BUTTERFLY System representatives and unit Butterfly franchise owners representative and Franchisees.~~

(vii) ~~The prospective transferee shall obtain all licenses and/or registrations necessary to sell BUTTERFLY System unit franchises perform its obligation under Franchisor's then current form of area representative agreement.~~

(f) Upon the death or mental incompetency ~~(as reasonably determined by an independent third party such as a licensed doctor)~~ of any person with any direct or indirect interest in Representative, the executor, administrator, or personal representative of such person shall transfer his interest to a third party approved by Franchisor within six months after the death or incompetency. Such transfers shall be subject to the same conditions as any *inter vivos* transfer. If the heirs or beneficiaries of any such person are unable to meet the conditions in ~~Paragraph 10~~ Section 9(e) hereof~~above~~, Franchisor may terminate this Agreement.

(g) Franchisor's Right of First Refusal. If Representative or any person or entity holding any direct or indirect interest in Representative or this Agreement desires to sell or transfer for value, either an interest in this Agreement or in Representative, Representative shall first notify Franchisor in writing of such intention and offer to sell or transfer such interest to Franchisor upon the same terms and conditions set forth in such notice, net of any applicable real estate and/or business brokerage commissions, or the cash equivalent thereof, at Franchisor's option. If Franchisor and Representative cannot agree within ~~30~~ 60 days of such notice on the terms and conditions of such sale or transfer, or if Franchisor notifies Representative that it ~~does elects~~ does not want to acquire such interest, Representative may sell or transfer such interest to a bona fide third party, provided that such sale or transfer is made (1) within 120 days after the expiration of any offer to Franchisor, ~~that such sale or transfer is made~~; (2) at a net price and on terms no more favorable than those offered in writing to Franchisor, ~~that~~; and (3) subject to all applicable requirements of Paragraph 10 hereof are met in this Section 9. Failure of Franchisor to exercise the option ~~afforded by provided in this Paragraph 10~~ Section 9(g) shall not constitute a waiver of any other provision of this Agreement, including all requirements of this Section ~~10, 9~~ with respect to a proposed transfer.

(h) Franchisor's consent to a transfer of any interest in Representative shall not constitute a waiver of any claims it may have against ~~the transferring party~~ Representative, nor shall it be deemed a waiver of Franchisor's right to demand ~~exact~~ compliance with ~~anyall~~ all of the terms of ~~this Agreement by the~~ and conditions contained in this Agreement by the prospective transferee.

## 11. 11.      **DEFAULT AND TERMINATION**

~~(a) Representative may be deemed in default and Franchisor may, at its option, and without waiving its rights hereunder or any other rights available at law or in equity, including its rights to damages, terminate this Agreement and all of Representative's rights hereunder effective immediately upon the earlier of: the date Franchisor gives written notice of termination, upon such other date as may be set forth in such notice of termination, or in those instances enumerated below, automatically upon the occurrence of, or the lapse of the specified period following, an event of default. The occurrence of any one or more of the following events shall constitute an event of default and grounds for termination of this Agreement by Franchisor:~~

(a) This Agreement is automatically terminated upon the occurrence of the following events:

~~(i) Automatically, if~~ Representative becomes insolvent or makes a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by Representative, or such a petition is filed against and consented to by Representative, or if a bill in equity or other proceeding for the appointment of a receiver of Representative or other custodian for Representative's business or assets is filed and consented to by Representative, or if a receiver or other custodian (permanent or temporary) of Representative's assets or property, or any part thereof, is appointed, or if a final judgment in excess of \$50,000 remains unsatisfied or of record for 60 days or longer (unless a bond is filed other steps are taken to effectively stay entitlement of such judgment in the relevant jurisdiction).

(ii) ~~If Representative makes, or has made, any materially false statement or report to Franchisor in connection with this Agreement or application therefore.~~

(iii) ~~If there~~There is any violation of any transfer and assignment provision contained in ~~Paragraph 10~~Section 9 of this Agreement.

(iv) ~~If Representative receives from Franchisor two (2)~~three or more notices to cure the same or similar defaults or violations of this Agreement during any ~~twelve (12)~~month period.

(v) ~~If Representative fails, for a period of fifteen (15) days after notification of non-compliance by appropriate authority to comply with any law or regulation applicable to the operation of the Franchised Business.~~

(v) (vi) ~~If Representative violates any covenant of confidentiality or non-disclosure contained in Paragraph 8 of this Agreement or otherwise discloses, uses, permits the use of, copies, duplicates records, transmits or otherwise reproduces any manuals, materials, goods or information created or used by Franchisor and designated for confidential use within the BUTTERFLY System without Franchisor's prior approval~~Section 7 of this Agreement.

(vi) ~~If Representative or any person owning an interest in Representative is convicted of a felony, a crime of moral turpitude, or any other crime or offense relating to the operation of the Franchised Business~~Representative's business.

(b) Franchisor may terminate this Agreement immediately upon written notice to Representative if:

~~(viii) If (i) Representative fails to perform or breaches any covenant, obligation, term, condition, warranty or certification herein or fails to operate the Franchised Business as specified by Franchisor in the Regional Franchise Manual and fails to cure such non-compliance or deficiency within thirty (30) days after Franchisor's written notice thereof, or (ii) Representative breaches this Agreement and fails to cure such breach within 30 days after Franchisor's written notice thereof.~~

(ii) Representative breaches this Agreement and fails to cure such breach within 30 days after Franchisor's written notice thereof.

~~(ix) If (iii) Representative defaults on any other agreement with Franchisor and such default is not cured in accordance with the terms of such other agreement.~~

~~(x) If (iv) Representative fails to obtain or has revoked any license or registration necessary to sell BUTTERFLY System franchises and fails to cure such non-compliance within 30 days after written notice from Franchisor or appropriate authority.~~

~~(xi) If (v) Representative fails to obtain or maintain insurance coverage specified in this Agreement and fails to cure such non-compliance within 30 days after written notice from Franchisor.~~

~~(b)(c) Representative may not terminate this Agreement prior to the expiration of its term except through legal process resulting from Franchisor's breach of this Agreement or otherwise with Franchisor's consent. In the event that Representative shall claim that Franchisor has failed to meet any obligation under this Agreement, Representative shall provide Franchisor with written notice of such claim, within one (1) year of its occurrence, specifically enumerating all alleged deficiencies and providing Franchisor with an~~

~~opportunity to cure, which shall in no event be less than thirty (30) days from the date of receipt of such notice by Franchisor from Representative.~~

~~(e) (d)~~ Notwithstanding any other provision of this ~~Paragraph 11, Section 10,~~ termination of this Agreement as a result of Representative's default or otherwise shall not operate to terminate any Unit Franchise Agreement to which Representative is a party, if Representative is in full compliance with the terms and provisions of such ~~agreement(s)~~ Franchise Agreement.

~~(d)~~ Additionally, the (e) Each of following events, ~~each shall constitute~~ a "Termination Event"; ~~shall have occurred if:~~

~~(4i)~~ Representative fails to provide timely remedial and follow up training to franchisees consistent with guidelines designated Franchisees as required by Franchisor;

~~(2ii)~~ Representative fails to provide a minimum of ~~three~~five days of pre-opening assistance to each ~~franchise owner in~~Franchisee within the ~~Granted Territory;~~

~~(3iii)~~ If Representative misuses or makes any unauthorized use of the ~~Licensed~~ Marks or any other identifying characteristic of the System, or otherwise materially impairs the goodwill associated ~~therewith~~with the Marks or the System, or the Franchisor's rights ~~thereinto~~the Marks or the System;

~~(4iv)~~ If Representative discloses to a third party any ~~Proprietary Information or other confidential information learned from the Franchisor or relating to the System; or if Representative uses or permits to be used any such information or secret, unique or confidential procedure or other element of the System in a fitness center or business other than the Butterfly Life Center; or if Representative breaches any duty of confidentiality imposed on Representative in this Agreement or otherwise by law; Confidential Information without Franchisor's prior written consent or otherwise violates confidentiality requirements set forth in this Agreement;~~

~~(5v)~~ If ~~a~~Δ material number of ~~Unit Franchise Owner~~the Franchisees in the ~~Granted Territory fail to conform to System~~the standards of the System;

~~(6vi)~~ If Representative fails to supervise ~~Unit Franchise Owner~~the Franchisees in the ~~Granted Territory~~ or fails to visit each such ~~Owner~~Franchisee in the Territory at least once ~~each~~every quarter; or

~~(5vii)~~ If Representative is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is ~~reasonably likely,~~ in the Franchisor's sole judgment, ~~to may~~ affect adversely the System, the ~~Licensed Marks,~~ the goodwill associated ~~therewith~~the System or the Marks, or Franchisor's rights ~~therein~~in the System or Marks.

~~(f)~~ In the event of occurrence of a Termination Event, in addition to its other remedies and options, Franchisor may at its option:

(i) terminate this Agreement if Representative fails to correct such Termination Event within 60 days after receiving written notice from Franchisor of such Termination Event; and

(ii) deliver an amount equal to 50% of the Continuing Monthly Fees actually received by Franchisor during the 12 months immediately preceding the Termination Event as a final and

full payment to Representative for its rights under this Agreement. All of Representative's rights to the Continuing Monthly Fees or other consideration under this Agreement shall terminate as of delivery of such payment.

(g) Upon termination of this Agreement, any rights to future payment by Franchisor to Representative shall terminate.

## 12. 12.- POST TERM RIGHTS, OBLIGATIONS AND COVENANTS

(a) Upon the expiration or termination of this Agreement ~~for any reason~~, Representative shall immediately:

(i) ~~Cease~~cease to be the ~~authorized representative~~Representative of Franchisor in the ~~Granted Territory~~;

(ii) ~~Pay~~pay all sums owing to Franchisor ~~(Upon termination for any default by Representative, such sums shall include actual damages, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Franchisor as a result of the default.);~~

(iii) ~~Return~~return to Franchisor the ~~Regional Franchise Manual and all trade secrets, confidential materials and other property owned by Franchisor.~~Manuals and all Confidential Information. Representative shall retain no copy or record of ~~any of the foregoing~~the Manuals or Confidential Information, provided, ~~however,~~ that Representative may retain its copy of this Agreement, any materials necessary to operate a ~~Unit~~Center under an existing Unit Franchise Agreement, any correspondence between the parties and any other document which Representative reasonably needs for compliance with any applicable provision of law;

(iv) ~~Upon~~upon Franchisor's request, provide Franchisor a complete list of Representative's employees, clients, customers, franchise prospects and contacts and their respective addresses and any outstanding obligations Representative may have to any third parties;

(v) ~~Take such action as may be required to~~ transfer all trade name and similar registrations and business licenses to Franchisor or its new are representative in the ~~Granted Territory~~ and to cancel any interest which Representative may have in the same;

(vi) ~~Cease~~cease to use, in advertising or in any manner whatsoever, any methods, procedures or techniques associated with the ~~BUTTERFLY System~~ in which Franchisor has a proprietary right, title or interest ~~the Licensed Marks; and any other marks, names and indicia of operation associated with the BUTTERFLY System.~~System, the Marks; and

(vii) ~~Remove~~remove all ~~Licensed Marks~~, trade dress and other indications of operation under the ~~BUTTERFLY System~~ from its place of business.

(b) ~~All right to any compensation due Representative hereunder shall immediately terminate upon the effective date of any termination or nonrenewal of this Agreement, and Representative shall have no further interest or rights in this Agreement nor any right to receive "monthly continuing fees" unpaid at the time of termination or nonrenewal, even though such fees or royalties may have accrued under any Unit Franchise Agreements.~~

(b) Representative shall not, in any communication to any other representative or franchise owner, disparage Franchisor, or interfere with any contract to which Franchisor is a party.

13. 13.-            **INSURANCE**

(a) Representative shall, at its expense and no later than upon commencement of ~~theits~~ Representative's business ~~contemplated by this Agreement~~, procure and maintain in full force and effect throughout the term of this Agreement ~~the types of insurance enumerated in the Regional Franchise Manual or BUTTERFLY confidential operations manual which shall be in such amounts as may from time to time be required by Franchisor and which shall designate Franchisor as an additional named insured~~ any insurance required by law, by the Manuals, or by the individual Franchise Agreements in the Territory, including the following:

(i) Employer's liability and workers' compensation insurance ~~as prescribed by law in the state(s) which include the Granted Territory;~~

(ii) Comprehensive hired and non-hired automobile liability insurance covering physical damage, personal injury and uninsured motorists; and

(iii) Comprehensive general liability insurance ~~covering the operation of the business contemplated by this Agreement~~ (, and professional liability insurance with coverage not less than \$2,000,000 aggregate, and \$1,000,000 per occurrence);

(b) Franchisor shall be listed as an additional named insured on such insurance policies.

(c) Representative ~~shall make timely delivery of~~ deliver the certificates of all required insurance to Franchisor, each of which shall contain a statement by the insurer that the policy will not be cancelled or materially altered without at least ~~thirty (30)~~ thirty (30) days' prior written notice to Franchisor.

(ed) The procurement and maintenance of such insurance shall not relieve Representative of any liability to Franchisor under any indemnity requirement of this Agreement.

14. 14.-            **TAXES, PERMITS AND INDEBTEDNESS**

(a) Representative shall promptly pay when due any and all ~~federal, state and local taxes and governmental fees including, without limitation, unemployment and sales taxes, levied or assessed goods and services taxes, and value added taxes (VAT)~~ with respect to any services or products furnished, used or licensed pursuant to this Agreement and all accounts or other indebtedness of every kind incurred by Representative in the operation of the business licensed hereunder.

(b) Representative shall comply with all ~~federal, state and local~~ applicable laws, ~~rules and regulations~~ and timely obtain any and all permits, certificates and licenses for the full and proper conduct of the business licensed hereunder.

(c) Representative hereby expressly covenants and agrees to accept full responsibility for any and all debts and obligations incurred in the operation of the ~~Franchised Business~~ Representative's business.

15. 15.-            **INDEMNIFICATION AND INDEPENDENT CONTRACTOR**



(a) Representative agrees to protect, defend, indemnify and hold Franchisor, its directors, officers and shareholders harmless from and against all claims, actions, proceedings, damages, costs, expenses and other losses and liabilities, consequently, directly or indirectly incurred (including, ~~without limitation,~~ attorneys' and accountants' fees) as a result of, arising out of, or connected with the operation of the ~~Franchised Business licensed hereunder~~ Representative's business under this Agreement.

(b) In all dealings with third parties including, ~~without limitation,~~ franchise owners, employees, suppliers, clients and customers, Representative shall disclose in an appropriate manner acceptable to Franchisor that it is an independent entity licensed by Franchisor. Nothing in this Agreement is intended ~~by the parties hereto~~ to create a fiduciary relationship between ~~them~~ Franchisor and Representative, or to constitute Representative as a subsidiary, joint venturer, partner, or employee of Franchisor ~~for any purpose whatsoever~~. It is ~~understood and~~ agreed that Representative is an independent contractor and is ~~in no way~~ not authorized to make any warranty or representation on behalf of Franchisor other than those expressly contained in any disclosure document prepared by Franchisor for use by Representative, ~~nor is Representative authorized to~~ shall not create any obligation or enter into any contract binding on Franchisor.

#### 16. 16. WRITTEN APPROVALS, WAIVERS, AND AMENDMENT

(a) Whenever this Agreement requires Franchisor's prior approval, Representative shall make a timely written request. Unless ~~a different time period is specified otherwise provided~~ in this Agreement, Franchisor shall respond with its approval or disapproval within ~~fifteen (15)~~ business days. In addition, Franchisor's approval shall not be unreasonably withheld.

(b) No failure of Franchisor to exercise any power reserved to it by this Agreement and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms herein. A waiver or approval by Franchisor of any particular default by Representative shall not be considered a waiver or approval by Franchisor of any preceding or subsequent breach by Representative of any term, covenant or condition of this Agreement.

(c) No amendment, change or variance from this Agreement shall be binding upon Franchisor or Representative except by mutual written agreement. ~~Such mutual agreement must be signed by the~~ The chief executive officer or chairman of the board of Franchisor. ~~If an amendment of this Agreement is executed at Representative's request, any legal fees or preparation cost in connection therewith shall be paid by Representative~~ must sign any such mutual agreement.

~~(d) No warranty or representation is made by Franchisor that all other agreements with BUTTERFLY representatives heretofore or hereafter issued by Franchisor do or will contain terms substantially similar to those contained in this Agreement. Further, Representative recognizes and agrees that Franchisor may, in its reasonable business judgment, due to local business conditions or otherwise, waive or modify comparable provisions of other representative agreements heretofore or hereafter granted to other BUTTERFLY System representatives in a non-uniform manner, subject, however, to those provisions of this Agreement which require Franchisor to act toward its representatives and franchise owners on a reasonably non-discriminatory basis.~~

#### 17. 17. ENFORCEMENT; MEDIATION AND ARBITRATION

(a) In order to ensure compliance with this Agreement and to provide consultation with Representative, Representative agrees that Franchisor and its designated agents shall be permitted full and complete access during business hours to inspect Representative's ~~place of~~ Representative's Office and all

~~of its business and all records thereof.~~ Representative shall cooperate fully with Franchisor and its designated agents requesting such access.

~~(b) Franchisor shall be entitled to obtain, without bond, declarations, temporary and permanent injunctions, and orders of specific performance, in order to enforce the provisions of this Agreement relating to Representative's use of the Licensed Marks, the obligations of Representative upon termination or expiration of this Agreement, the obligations of Representative specified in Paragraph 10 hereof, and assignment of the Regional Franchise and ownership interests in Representative, or to prohibit any act or omission by Representative or its employees that constitutes a violation of any applicable law or regulation, is dishonest or misleading to prospective or current franchise owners operating under the BUTTERFLY System, constitutes a danger to franchise owners, employees, customers, clients or the public, or may impair the goodwill associated with the Licensed Marks. Notwithstanding the mediation and arbitration clauses of this Agreement, either party may be entitled to seek temporary and permanent injunctions, and other expedited remedies from any court or arbitrator with jurisdiction if proper grounds exist.~~

~~(c) If Franchisor secures any declaration, injunction or order of specific performance pursuant to Paragraph 17(b) hereof, if any provision of this Agreement is enforced at any time by Franchisor, or if any amounts due from Representative to Franchisor are, at any time, collected by or through an attorney at law or collection agency, Representative shall be liable to Franchisor. The non-prevailing party shall be liable to the prevailing party in any lawsuit or arbitration for all reasonable costs and expenses of enforcement including, but not limited to, court costs and reasonable attorneys' fees.~~

~~(d) Any dispute relating to or arising out of this Agreement or any other agreement between the parties, or relating to any other disputes between the parties or their owners, managers, principals, officers, directors, employees or representatives not resolved by negotiation must be submitted to mediation. Mediation will be before a single skilled independent mediator mutually and reasonably agreed on by the parties. The parties will equally bear the costs of mediation. Mediation will be conducted in accordance with the then-applicable procedures of the American Arbitration Association. The mediation will be conducted in Contra Costa County, California.~~

~~(e) Any controversy or claim arising out of or relating to this Agreement, or any other agreement between the parties, or the breach thereof, shall be decided and settled in an arbitration proceeding conforming to parties, or relating to any other dispute between the parties or their owners, managers, principals, officers, directors, employees or representatives not resolved by mediation within 60 days after submission to mediation shall be subject exclusively to arbitration under the then-applicable Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the AAA American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made when institution of legal or equitable proceedings based on before such claim, dispute or other matter in question would be barred by the applicable contractual or statute of limitations. The arbitration shall be heard by a single arbitrator selected by mutual agreement of the parties shall hear the arbitration. If the parties cannot agree with respect to the arbitrator within thirty (30) days, then the AAA American Arbitration Association shall select an arbitrator to fill such vacancy.~~

~~(f) The arbitration shall take place in Contra Costa County in the State of California. If any party hereto refuses or neglects to appear or participate in the arbitration hearings, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented, and is authorized to award reasonable costs, expenses and attorneys' fees. Any decision by the arbitrator shall be conclusively binding upon the parties and nonappealable, and such decision shall be enforceable as a~~

~~judgment in any court of competent jurisdiction. The provisions of Section 1283.05 of the California Code of Civil Procedure, with the exception of subsection (e) thereof, shall be applicable to the arbitration pursuant to this Section. The arbitrator shall award to the prevailing party or parties compensation for the time, expense and trouble of arbitration, including reasonable attorneys' fees, and costs. To the extent permitted by law applicable to this arbitration clause, each arbitration must be decided on an individual basis, and not on the basis of a group or a class.~~

## 18. NOTICES

~~Any notice required to be given hereunder under this Agreement shall be in writing and shall be mailed by registered or certified mail or hand delivered by a recognized international courier service. Notices to Representative the parties shall be addressed to it at their respective address listed in Paragraph 1 of this Agreement. Notices to Franchisor shall be addressed to it at the address listed in Paragraph 1 of this Agreement, Attention: President. Any notice complying with the provisions hereof at the beginning of this Agreement. Any notice given pursuant to this Section shall be deemed received three the earlier of seven days after the date of mailing, or on the actual date of receipt, whichever is earlier.~~

## 19. GOVERNING LAW

(a) ~~This Agreement is accepted by Franchisor in the State of California and shall be governed by and construed in accordance with the laws thereof, which laws shall prevail in the event of any conflict; provided of the State of California. Provided, however, that the restrictive covenants contained in Paragraph 9 hereof Section 8 shall be construed in accordance with the laws of the State(s) jurisdiction where such restriction(s) is (restrictions are) to apply, and the laws of such State(s) shall determine the enforceability of such covenants to be performed in such State(s) to apply. This choice of laws will not affect the scope of any state law, and nothing in this Agreement will be considered to extend the scope of application of any of those laws or extend the scope of any franchise law or other California law. Nevertheless, the arbitration provisions of this Agreement shall be governed by the Federal Arbitration Act, which shall preempt any inconsistent state law or judicial precedent.~~

(b) ~~The parties hereto agree that it is in their best interest to resolve disputes between them in an orderly fashion and in a consistent manner. Therefore, the parties hereby agree as follows: The state and federal courts located in any city or county in which Franchisor shall have its headquarters, shall have personal jurisdiction over it in all lawsuits relating to or arising out of this Agreement. To the extent permitted by the arbitration provisions of this Agreement, venue and jurisdiction shall be proper in any of the state and federal courts located in any city or county in which Franchisor shall have its headquarters.~~

(i) ~~Representative consents and agrees that the following courts shall have personal jurisdiction over it in all lawsuits relating to or arising out of this Agreement and hereby waives any defense Representative may have of lack of personal jurisdiction in any such lawsuits filed in these courts: (A) all courts included within the state court system of the State of California; and (B) all courts of the United States of America sitting within the State of California including, but not limited to, all the United States District Courts sitting within the State of California.~~

(ii) ~~In the event that court action is required, Representative consents and agrees that venue shall be proper in any of the following courts in all lawsuits relating to or arising out of this Agreement and hereby waives any defense it may have of improper venue in any such lawsuits filed in these courts: (A) the state court of the county where the Franchisor has its principal place of business (presently, Contra Costa County; and (B) the United States~~

~~District Court for the State of California, Northern District of California. In the event any of these courts are abolished, Representative agrees that venue shall be proper in the state or federal court in the State of California which most closely approximates the subject matter jurisdiction of the abolished court as well as any of these courts which are not so abolished. All lawsuits filed by Representative against Franchisor relating to or arising out of this Agreement shall be required to be filed in one of these courts; provided, however, that if none of these courts has subject matter jurisdiction over such a lawsuit such lawsuit may be filed in any court having such subject matter jurisdiction if *in personam* jurisdiction and venue in such court are otherwise proper. Lawsuits filed by Franchisor against Representative may be filed in any of the courts named in this subparagraph or in any court in which jurisdiction and venue are proper.~~

## ~~20. 20.~~ SEVERABILITY AND CONSTRUCTION

(a) Should any provision of this Agreement be for any reason held invalid, illegal, or unenforceable, such provision shall be deemed restricted in application to the extent required to render it valid; and the remainder of this Agreement shall in no way be affected and shall remain valid and enforceable for all purposes, both parties hereto declaring that they would have executed this Agreement without inclusion of such provision. In the event such total or partial invalidity or unenforceability of any provision of this Agreement exists only with respect to the laws of a particular jurisdiction, this ~~Paragraph 20~~Section shall operate upon such provision only to the extent that the laws of such jurisdiction are applicable to such provision. Each party agrees to execute and deliver to the other any further documents ~~which that~~ may be reasonably required to effectuate fully the provisions hereof. Representative understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant of this Agreement binding upon Representative, or any portion hereof, without Representative's consent, effective immediately upon receipt by Representative of written notice thereof; and Representative agrees that it will comply forthwith with any covenant as so modified, which shall be fully enforceable.

(b) All references in this Agreement to "Representative" shall be deemed to include, personally and individually, the Representative, if Representative is an individual, all signatories ~~heretoto this Agreement~~ on behalf of Representative, and their successors, assigns, and legal representatives; and all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by Representative shall be deemed jointly and severally undertaken by them.

(c) This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute one and the same instrument.

(d) The headings and captions contained ~~herein~~ in this Agreement are for the purposes of convenience and reference only and are not to be construed as a part of this Agreement. All terms and words used herein shall be construed to include the number and gender as the context of this Agreement may require. The parties agree that each section of this Agreement shall be construed independently of any other section or provision of this Agreement.

(e) Any reference to applicable law or laws shall include applicable mandatory regulations, rules and codes at all levels of government.

(f) Any use of the words "includes" or "including" followed by one or more examples shall not be construed to limit the antecedent word or phrases.

## ~~21. 21.~~ ACKNOWLEDGMENTS

Representative hereby acknowledges the following:

(a) REPRESENTATIVE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE BUSINESS CONTEMPLATED BY THIS AGREEMENT AND UNDERSTANDS AND ACKNOWLEDGES THAT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS MAKING THE SUCCESS OF THE VENTURE LARGELY DEPENDENT UPON THE BUSINESS ABILITIES AND PARTICIPATION OF REPRESENTATIVE AND ITS EFFORTS AS AN INDEPENDENT BUSINESS OPERATOR. FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND REPRESENTATIVE ACKNOWLEDGES THAT IT HAS NOT RECEIVED OR RELIED UPON ANY WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS OR SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT.

(b) REPRESENTATIVE HAS NO KNOWLEDGE OF ANY REPRESENTATIONS BY FRANCHISOR OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS OR SERVANTS, ABOUT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT THAT ARE CONTRARY TO THE TERMS OF THIS AGREEMENT OR THE DOCUMENTS INCORPORATED HEREIN. REPRESENTATIVE REPRESENTS, AS AN INDUCEMENT TO FRANCHISOR'S ENTRY INTO THIS AGREEMENT, THAT IT HAS MADE NO MISREPRESENTATIONS IN OBTAINING THIS AGREEMENT.

(c) REPRESENTATIVE ACKNOWLEDGES THAT FRANCHISOR OR ITS AGENT HAS PROVIDED REPRESENTATIVE WITH A FRANCHISE OFFERING CIRCULAR NOT LATER THAN THE EARLIER OF THE FIRST PERSONAL MEETING HELD TO DISCUSS THE SALE OF THE REGIONAL FRANCHISE, TEN ~~(10)~~ BUSINESS DAYS BEFORE THE EXECUTION OF THIS AGREEMENT, OR TEN ~~(10)~~ BUSINESS DAYS BEFORE ANY PAYMENT OF ANY CONSIDERATION. REPRESENTATIVE FURTHER ACKNOWLEDGES THAT REPRESENTATIVE HAS READ SUCH FRANCHISE OFFERING CIRCULAR AND UNDERSTANDS ITS CONTENTS.

(d) REPRESENTATIVE ACKNOWLEDGES THAT FRANCHISOR HAS PROVIDED REPRESENTATIVE WITH A COPY OF THIS AGREEMENT AND ALL RELATED DOCUMENTS, FULLY COMPLETED, FOR AT LEAST TEN ~~(10)~~ BUSINESS DAYS PRIOR TO REPRESENTATIVE'S EXECUTION ~~HEREOF~~ OF THIS AGREEMENT.

(e) REPRESENTATIVE ACKNOWLEDGES THAT IT HAS HAD AMPLE OPPORTUNITY TO CONSULT WITH ITS OWN ATTORNEYS, ACCOUNTANTS AND OTHER ADVISORS AND THAT THE ATTORNEYS FOR FRANCHISOR HAVE NOT ADVISED OR REPRESENTED REPRESENTATIVE WITH RESPECT TO THIS AGREEMENT ~~OR THE RELATIONSHIP THEREBY CREATED~~.

(f) REPRESENTATIVE, TOGETHER WITH ITS ADVISERS, HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO MAKE AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE FRANCHISE.

(g) REPRESENTATIVE IS AWARE OF THE FACT THAT OTHER PRESENT OR FUTURE REPRESENTATIVES OF FRANCHISOR MAY OPERATE UNDER DIFFERENT FORMS OF AGREEMENT(S), AND CONSEQUENTLY THAT FRANCHISOR'S OBLIGATIONS AND RIGHTS WITH RESPECT TO ITS VARIOUS REPRESENTATIVES MAY DIFFER MATERIALLY IN CERTAIN CIRCUMSTANCES.

(h) REPRESENTATIVE ACKNOWLEDGES THAT THIS ~~INSTRUMENT~~ AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES. THIS AGREEMENT TERMINATES AND SUPERSEDES ANY PRIOR AGREEMENT BETWEEN THE PARTIES CONCERNING THE SAME SUBJECT MATTER.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal on the date first written above.

FRANCHISOR:

BUTTERFLY FITNESS, INC.

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

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

REPRESENTATIVE:

\_\_\_\_\_

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

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

**Exhibit 1**

**LOCATION REPRESENTATIVE'S OFFICE OF AREA REPRESENTATIVE**

The Representative's office will be located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit 2**

**~~DESCRIPTION OF TERRITORY AND DEVELOPMENT~~ INITIAL AREA FEE**

1. Description of Granted Territory:
  
2. Territory is for \_\_\_\_ units
  
3. ~~Development~~Initial Area Fee: \$ \_\_\_\_\_



**Exhibit 3**

**DEVELOPMENT SCHEDULE**

~~Representative agrees that there shall be Units sold within the Granted Territory by the date specified below, and opened and operating at all times thereafter during the term of this Agreement not less than the cumulative minimum number of BUTTERFLY Units specified below:~~

~~"Effective Date" of Execution    £            £~~

~~[FOR REPRESENTATIVES WITH GRANTED TERRITORIES OF 10 UNITS] Representative agrees Representative will be in material breach of this Development Schedule if any of the following occur: of Area Representative Agreement: \_\_\_\_\_, 20 \_\_\_\_\_ Representative agrees that there shall be Butterfly franchises sold, opened, and operating in the Territory in full compliance with the applicable Center Franchise Agreements not less than the minimum number of Butterfly Centers specified below:~~

**[FOR REPRESENTATIVES WITH TERRITORIES OF 10 CENTERS]**

~~(1) The specified number of Butterfly Unit franchise sales (for Units in the Granted Territory) fail to be consummated (with delivery of the initial franchise fee and signed Franchise Agreement by a third party franchisee to Franchisor) On or before the specified anniversary of the date of the Area Representative Agreement;~~

<u>Anniversary</u>	<u>Minimum Required Unit Sales</u>
First .....	5
Second .....	10

~~(2) The number of open and operating (i.e., monthly electronic transfers/drafts are being collected by Franchisor) Butterfly Units (whose sale was initiated by Representative in the Granted Territory during the Term of the Area Representative Agreement) falls below the specified number on or during the periods specified below:~~

<u>Period/Date</u>	<u>Minimum Required Center Sales, Open and Operating Butterfly Units</u>
--------------------	--

<del>On the First Anniversary of the First Area Representative Agreement.....</del>	<del>2 5</del>
<del>At any time after the Second Anniversary of the Area Repr. Agreement.....</del>	<del>10</del>
<u>Second .....</u>	<u>4</u>
<u>Third .....</u>	<u>6</u>
<u>Fourth .....</u>	<u>8</u>
<u>Fifth .....</u>	<u>10</u>

~~Any renewal or extension of this Agreement shall be subject to the parties mutually agreeing on a new Development Schedule for the remaining extension or renewal term.~~

**[FOR REPRESENTATIVES WITH GRANTED TERRITORIES OF 25 UNITS/CENTERS]**

Representative agrees Representative will be in material breach of this Development Schedule if any of the following occur:

(1) The specified number of Butterfly Unit franchise sales (for Units in the Granted Territory) fail to be consummated (with delivery of the initial franchise fee and signed Franchise Agreement by a third party franchisee to Franchisor) On or before the specified anniversary of the date of the Area Representative Agreement;

<u>Operating</u>	<u>Anniversary</u>	<u>Minimum Required UnitCenter Sales, Open and</u>
	First .....	7
	<u>First</u> .....	<u>5</u>
	<u>Second</u> .....	<u>10</u>
	<u>Second</u> <u>Third</u> .....	15
	Third .....	25

(2) The number of open and operating (i.e., monthly electronic transfers/drafts are being collected by Franchisor) Butterfly Units (whose sale was initiated by Representative in the Granted Territory during the Term of the Area Representative Agreement) falls below the specified number on or during the periods specified below:

<u>Period/Date</u>	<u>Minimum Required Open and Operating Butterfly Units</u>
On the First Anniversary of the <del>Area Representative Agreement</del> .....	3
At any time between the Second <del>and Third Anniversary of the</del> <del>Area Repr. Agreement</del> .....	10
At any time between the Third <del>of the Area Repr. Agreement</del> .....	20 <del>and Fourth Anniversary</del>
At any time after the Fourth <del>Anniversary of the Area</del> <del>Repr. Agreement</del> .....	25

Any renewal or extension of this Agreement shall be subject to the parties mutually agreeing on a new Development Schedule for the remaining extension or renewal term:

Fifth ..... 25

**[FOR REPRESENTATIVES WITH GRANTED TERRITORIES OF 50 UNITS]**

Representative agrees Representative will be in material breach of this Development Schedule if any of the following occur:

(1) The specified number of Butterfly Unit franchise sales (for Units in the Granted Territory) fail to be consummated (with delivery of the initial franchise fee and signed Franchise Agreement by a third

~~party franchisee to Franchisor)~~ On or before the specified anniversary of the date of the Area Representative Agreement.;

<u>Anniversary</u>	<u>Minimum Required Unit Sales</u>
First .....	10
Second .....	25
Third .....	50

(2) ~~The number of open and operating (i.e., monthly electronic transfers/drafts are being collected by Franchisor) Butterfly Units (whose sale was initiated by Representative in the Granted Territory during the Term of the Area Representative Agreement) falls below the specified number on or during the periods specified below:~~

<u>Period/Date</u>	<u>Minimum</u>
<u>Required Center Sales, Open and Operating Butterfly Units</u>	

	<del>On the First Anniversary of the Area Representative Agreement</del> 5	
Repr. Agreement	<del>At any time between the Second and Third Anniversary of the</del>	— Area
	15	
	<del>At any time between the Third ...</del>	<del>and Fourth Anniversary of the</del> <u>25</u>
	<del>Area Repr. Agreement</del> 30	
	<del>At any time after the Fourth</del>	
	<del>Anniversary of the Area</del>	
	<del>Repr. Agreement</del> ..... 50	
	<u>Fourth</u> .....	<u>35</u>
	<u>Fifth</u> .....	<u>50</u>

Any renewal or extension ~~of this Agreement~~ shall be subject to the parties mutually agreeing on a new Development Schedule for the remaining extension or renewal term, and to all other terms of the Agreement.

**EXHIBIT 4**

REPRESENTATIVE INITIALS AND DATE:

\_\_\_\_\_

Exhibit 4

**22. INDIVIDUAL CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

**[This page must be signed by all owners and spouses of owners, managers, officers, and directors, employees with access to Confidential Information, and affiliated persons and entities. Use additional pages if necessary.]**

THIS AGREEMENT dated \_\_\_\_\_, 20\_\_\_\_ is entered between Butterfly Fitness, Inc. ("Franchisor") and the persons who have signed below (collectively "Interested Party").

On \_\_\_\_\_, 20\_\_\_\_, the Franchisor entered into an Area Representative Agreement with \_\_\_\_\_ ("Representative"). Interested Party understands that Representative's Representative Agreement requires each party referred to above to sign a written agreement to be personally bound by the Franchise Agreement, including the covenants in Sections 10.03 and 12.02 of the Franchise Agreement. Interested Party desires to participate in Representative in one of the capacities described above. Interested Party hereby therefore agrees:

I. That he or she will comply with all the non-competition requirements set forth in Section 12.02 (a) and 12.02 (b) of the Franchise Agreement.

II. That he or she will observe the restrictions on disclosure of Confidential Information set forth in Section 10.03 of the Franchise Agreement, both during the term of the Franchise Agreement and after its termination or expiration.

INTERESTED PARTY:

ADDRESS AND PHONE:

(Print name here: \_\_\_\_\_)

\_\_\_\_\_

(Print name here: \_\_\_\_\_)

\_\_\_\_\_

(Print name here: \_\_\_\_\_)

\_\_\_\_\_

(Print name here: \_\_\_\_\_)

\_\_\_\_\_

(Print name here: \_\_\_\_\_)

\_\_\_\_\_

(Print name here: \_\_\_\_\_)

\_\_\_\_\_

FRANCHISOR: Butterfly Fitness, Inc.

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

Print Name and Title Here: \_\_\_\_\_

**GUARANTY OF REPRESENTATIVE'S UNDERTAKINGS**

Exhibit 5

PERSONAL GUARANTY

[Must be signed by all owners and spouses of owners of Representative.]

In consideration of, and as an inducement to, the execution of the foregoing ~~Representative Agreement (the "Agreement") by BUTTERFLY FITNESS, INC., each of the undersigned hereby guarantees unto Butterfly Fitness, Inc. that the above-named Representative will perform during the term of this Agreement each and every covenant, payment, agreement, and undertaking on the part of Representative contained and set forth in such Agreement.~~

~~BUTTERFLY FITNESS, INC., its successors and assigns, may from time to time, without notice to the undersigned (a) resort to the undersigned for payment of any of the liabilities, whether or not it or its successors have resorted to any property securing any of the liabilities or proceeded against any other of the undersigned or any party primarily or secondarily liable on any of the liabilities, (b) release or compromise any liability of any of the undersigned hereunder or any liability of any party or parties primarily or secondarily liable on any of the liabilities, and (c) extend, renew, or credit any of the liabilities for any period (whether or not longer than the original period); alter, amend, or exchange any of the liabilities; or, give any other form of indulgence whether under the Agreement or not.~~

~~The undersigned agree(s) to comply with and abide by the restrictive covenants and non-disclosure provisions contained in Paragraphs 8 and 9 of the Representative Agreement to the same extent as and for the same period of time as Representative is required to comply with and abide by such covenants and provisions. These obligations of the undersigned shall survive any termination, expiration, non-renewal or transfer of the Representative Agreement or this Guaranty. The undersigned further waives presentment, demand, notice of dishonor, protest, nonpayment, and all other notices whatsoever, including without limitation: notice of acceptance hereof; notice of all contracts and commitments; notice of the existence or creation of any liabilities under the foregoing Agreement or the amount and terms thereof; and notice of all defaults, disputes or controversies resulting from such Agreement or otherwise, and the settlement, compromise or adjustment thereof.~~ Franchise Agreement with

\_\_\_\_\_ ("Representative") dated

\_\_\_\_\_ by Butterfly Fitness, Inc. ("Butterfly"), the undersigned hereby personally and unconditionally guarantees to Butterfly and to its successors and assigns, that Representative shall pay and perform every undertaking, agreement and covenant set forth in the Franchise Agreement. The undersigned further waives acceptance and notice of acceptance; notice of demand for payment of any indebtedness or for performance of any obligations hereby guaranteed; protest and notice of default to any party with respect to the indebtedness or performance of obligations hereby guaranteed; any right he or she may have to require that an action be brought against Representative or any other person as a condition of liability; and any and all other notices and legal or equitable defenses to which he or she may be entitled. The undersigned further consents and agrees that his or her direct and immediate liability under this Personal Guaranty shall be joint and several; that he or she shall render any payment or performance required under the Representative Agreement upon demand if Representative fails or refuses punctually to do so; that such liability shall not be contingent or conditioned upon the pursuit of any remedies against the Representative or any other person; and that such liability shall not be diminished, relieved or otherwise affected by the extension of time, credit, partial payment, compromise or any other indulgence which Butterfly, its successors or assigns, may grant, or the

acceptance of any partial payment or performance. This Personal Guaranty shall continue and be irrevocable throughout the term of the Franchise Agreement and any extensions thereof.

~~The undersigned agrees to pay all expenses paid or incurred by Franchisor in attempting to enforce the foregoing Agreement and this Guaranty against Representative and against the undersigned and in attempting to collect any amounts due thereunder and hereunder, including reasonable attorneys' fees if such enforcement or collection is by or through an attorney at law. Any waiver, extension of time, or other indulgence granted from time to time by Franchisor, its agents, their successors or assigns, with respect to the foregoing Agreement, shall in no way modify or amend this Guaranty, which shall be continuing, absolute, unconditional, and irrevocable.~~

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

~~IN WITNESS WHEREOF, each of the undersigned has executed this Guaranty of Representative's Undertakings under seal effective as of the date of the foregoing Agreement.~~

\_\_\_\_\_  
Guarantor

\_\_\_\_\_  
Guarantor

**EXHIBIT 5**

**CONSENT OF SPOUSE**

Representative, \_\_\_\_\_, represents and warrants that he/she is married and has obtained the consent of his/her spouse to the transactions contemplated by this Area Representative Agreement (the "Agreement") and such consent executed below. No other individual, estate or other person or entity claims a community property interest in \_\_\_\_\_'s interest in the regional franchise granted under and pursuant to the Area Representative Agreement.

The undersigned, being the spouse of \_\_\_\_\_ who is a party to the attached Area Representative Agreement acknowledges that she/he has read the same and that she/he knows and understands that by the Agreement's provisions, her/his spouse has agreed: to acquire a regional franchise from Butterfly Fitness, Inc., a California corporation as set forth in that certain Area Representative Agreement attached hereto. By the signing and delivering this Consent of Spouse, she/he does hereby freely consent to her/his spouse acquiring a regional franchise on the terms and conditions set forth in the Area Representative Agreement and hereby agrees to be bound by all covenants, agreements, duties, liabilities and obligations of his spouse under the Area Representative Agreement and by all conditions of the Agreement, and he further agrees to join with her/his spouse in the signing, acknowledgment and delivery of all documents and instruments required under the Agreement.

WITNESS:

GUARANTOR:

RELATIONSHIP (Ownership %):

Signature: \_\_\_\_\_

1. \_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Print Name)

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

\_\_\_\_\_

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

2. \_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Print Name)

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

\_\_\_\_\_

3. \_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Print Name)

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

\_\_\_\_\_

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

4. \_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Print Name)



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

|

|