

**Exhibit "F"**

**AREA REPRESENTATIVE AGREEMENT**

**BUTTERFLY FITNESS, INC.**

**AREA REPRESENTATIVE AGREEMENT**

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

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").

**Recitals**

1. Franchisor has made a substantial investment of money, time and effort to obtain knowledge and to develop 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 Butterfly Life Centers to sell products and services authorized and approved by Franchisor utilizing the System and the Marks.

3. Representative has applied for an area representative agreement to assist in the development and ongoing management of a number of Butterfly Life Centers utilizing the Marks, and such application has been approved by Franchisor in reliance upon all the representations made by Representative including the financial resources of the Representative.

4. Representative acknowledges the importance of the Franchisor's uniform standards and the necessity of operating the Butterfly Life Centers in conformity with the Franchisor's System.

5. Representative has reviewed this Agreement, the Butterfly Life Franchise Offering Circular, and other related materials, and declares that it possesses the requisite knowledge and skill.

6. Representative represents that it has conducted any independent investigations it felt necessary. Representative recognizes 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 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 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.

## **2. GRANT OF RIGHTS; RESPONSIBILITIES; DEVELOPMENT**

(a) Subject to the terms of this Agreement, Franchisor hereby grants to Representative the exclusive right to act as Franchisor's representative from the Representative’s Office within the Territory. Representative shall solicit the sale of Butterfly unit franchises and refer prospective Franchisees to Franchisor, and shall discharge Franchisor's obligations to the Franchisees within the Territory pursuant to the Franchise Agreements and to this Agreement. Subject to the provisions of this Agreement, Franchisor agrees not to authorize any other party to act as Franchisor's representative within the Territory, while this Agreement is in effect. Representative acknowledges and agrees that Franchisor may at any time designate others as representatives of the System outside the Territory.

(b) Representative shall 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 Territory, as well as supervising Franchisees in the Territory.

(c) Representative will comply with development schedule (the "Development Schedule") as set forth in Exhibit 3 to this Agreement. If Representative fails to meet the development schedule and fails to cure such noncompliance within 60 days after Franchisor's notice of such noncompliance, Franchisor may terminate this Agreement. In such event, Representative shall forfeit its rights to receive any portion of the fees under Section 4 of this Agreement. Representative shall cease to service franchises or solicit further sales immediately upon termination of this Agreement.

(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 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 shall not establish a presence on the Internet 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. TERM**

(a) This Agreement shall become effective as of the Effective Date and have a term of five years.

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

(i) Representative is not in default 12 months prior to the expiration of then current term of this Agreement or any other agreement with Franchisor or any of Franchisor's affiliates;

(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;

(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 the following 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 the Butterfly Life Center;

(ii) Information concerning possible sources of fixtures, furnishings, signs, equipment, leasehold improvements, and other products and services available in connection with the operation of the Butterfly Life Center;

(iii) Training and orientation in the sale of Butterfly franchises, including sales techniques and procedures and disclosure requirements; and

(iv) Manuals.

(b) Franchisor, Representatives, and Franchisees shall maintain standards of quality, appearance, service and cleanliness prescribed by Franchisor for the System, in order to protect and enhance the public image and reputation of the System and the demand for the products and services using the System. Franchisor may, in its sole discretion, provide Representative with the following:

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

(ii) Sales support in connection with the marketing and sale of the Butterfly franchises as Franchisor may provide to all others similarly situated 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, if such assistance, in Franchisor's reasonable discretion, exceeds reasonable levels of sales support or levels specified in the Manuals.

(iii) Copies of any disclosure documents that Representative shall use in connection with the sale of unit franchises in the Territory for purposes of complying with any applicable laws.

(iv) Periodic individual or group counseling in the operation and supervision of the 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.

(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 Manuals, management materials, promotional materials, advertising formats and the Marks.

## 5. FEES

(a) Representative shall pay Franchisor an initial area fee in the amount of \$100,000 for a 10 Centers territory, \$175,000 for a 25 Centers territory, and \$250,000 for a 50 Centers territory, respectively.

(b) 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 commission on any initial unit franchisee fees or royalties from the sale of any unit franchise outside the Territory.

(e) Franchisor shall pay to Representative 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: (1) \$400 per month per Center; or (2) 40% of the Continuing Monthly Fees received by Franchisor from Franchisees within the Territory during the preceding calendar month.

(iii) For Representative who is committed to open less than 50 Centers, an on-going administration fee that equals to the lesser of: (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 Centers owned directly or indirectly by Representative. Representative shall not solicit sales or attempt to support more Centers as set forth on the Development Schedule.

(g) For purposes of this Agreement, the "Continuing Monthly Fees" means the monthly fixed amount 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 Franchisees, or any advertising fees, cost reimbursements, training fees or other fees paid by such Franchisees pursuant to the Franchise Agreements.

(h) Unless otherwise provided, all fees due to Representative under this Agreement shall be paid by the 20th day of each month following the month to which they relate, with detailed breakdown statements from Franchisor.

(i) Franchisor may set off any payments received from a Franchisee against any amounts owed by such Franchisee.

(j) Representative shall pay (and Franchisor may set off against any amounts owing to Representative) 50% of any 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. THE MARKS**

Representative hereby covenants that:

(a) Representative shall not represent in any manner that it has acquired any ownership rights in the Marks.

(b) Representative shall not use any of the Marks or marks 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 System and identified by the 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 Marks upon the expiration or termination of this Agreement.

(d) Any use of the Marks without Franchisor's prior written consent, is an infringement of Franchisor's rights in such Marks. Representative's right to use the 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 party that it has the right to subfranchise Butterfly Life Centers or the Marks.

## **7. REPRESENTATIVE'S OBLIGATIONS**

Representative shall cause Franchisees in the Territory 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 Marks, indicia and goodwill of Franchisor, that Representative maintain and adhere to the standards, procedures and policies described in this Agreement and the Manuals. Representative hereby agrees as follows:

(a) Representative shall comply with the System standards, including those contained in the Manuals. Representative shall operate solely in the manner and pursuant to 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 business.

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

(d) Representative shall actively promote and solicit the sale of the Butterfly franchise. Representative shall use its best efforts to develop the Territory as provided in this Agreement and to verify



that franchisees comply with the Manuals. Representative shall suspend any 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 to adequately disclose the relationship of Representative and Franchisor to prospective franchisees as required by applicable law. Representative shall obtain any licenses and registrations necessary to perform its obligations under this Agreement. Representative agrees to maintain and provide to Franchisor accurate written records of all contacts and dealings with prospective Franchisees within the Territory.

(e) Representative shall present itself to the public as an area representative of Franchisor operating the Representative's business pursuant to this Agreement and identify its Representative's Office in the manner specified in the Manuals.

(f) Representative shall act as Franchisor's representative in the Territory to discharge Franchisor's obligations to the Franchisees under the relevant Franchise Agreements, including the provision of site selection assistance, opening assistance, continuing training, supervision, advice and guidance with respect to operations, business procedures and compliance with any 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) Any training and continuing education and support in the operation of Butterfly Life Centers that Franchisor may require. Unless otherwise permitted by Franchisor, all such training shall be conducted by Representative at a Center approved by Franchisor.

(v) Subject to Franchisor's approval, site selection by Franchisees and the development of each Center within the Territory to assure that each Unit conforms to Franchisor's then current specifications for 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) Inspection of each Center within the Territory at least once every quarter and preparation of inspection reports on forms required by Franchisor. Failure by a material number of Franchisees in the Territory to comply with requirements of the System will constitute a material default of Representative under this Agreement.

(viii) Compliance of Franchisor's uniform quality standards and specifications provided in 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) 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.

(xii) Attendance of all quarterly and annual meetings of Franchisees and any other special meetings called by Franchisor for Franchisees in the Territory.

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

(i) Representative shall use only advertising and promotional materials and programs provided or approved by Franchisor to promote the sale and operation of 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 deem necessary or desirable.

(j) Franchisor may withdraw its approval of any advertising or promotional materials or programs at any time. Under such circumstances, Representative shall immediately cease to use or display any materials or programs for which Franchisor's approval have been withdrawn. Representative shall also, at its own expense, cause Franchisees in the Territory to cease the use of and remove any such materials or programs. Franchisor may recommend prices, set the maximum prices, and determine pricing strategy of local, regional and national advertising and marketing programs to the extent permitted by applicable law.

(k) Franchisor may at its option organize the marketing in the Territory of one or more in-person seminars that invite potential Franchisees to attend to find out more about Butterfly Life franchises. If so, Representative and Franchisor will equally share the costs of television advertisements, marketing materials and other seminar expenses. (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 Franchisor. Franchisor will attempt to direct seminar marketing efforts to an audience that includes potential leads in the Territory, but such marketing or the seminars shall not be solely directed to the Territory

## **8. MANUALS AND CONFIDENTIAL INFORMATION**

(a) In order to protect the reputation and goodwill of the Butterfly Life Centers and the System and to maintain high standards of operation of the System under the Marks, Representative shall conduct its business in accordance with the Manuals and various written instructions 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.

(b) Representative shall use its best efforts to keep Franchisor's Confidential Information confidential and shall limit the access of its employees to the Manuals and Confidential Information on a need to know basis. Representative acknowledges that unauthorized use or disclosure of Franchisor's Confidential Information will cause irreparable injury to Franchisor and that damages will not be an adequate remedy. Representative accordingly covenants that it shall not, by any means, in whole or in part, disclose, use, permit to use, copy, duplicate, record, transmit or otherwise reproduce such 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 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 acknowledges that Franchisor may in an effort to further develop the System, implement new ideas, methods or strategies in Centers, which may be located outside the 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 Manuals current. In the event of any dispute as to the contents of the Manuals, the terms and dates of the master copy of the Manuals maintained by Franchisor at its principal place of business shall control.

## 9. COVENANTS

(a) Representative and its owners and guarantors hereby covenant, jointly and severally:

(i) to use its full time and best efforts to market and promote the sale of Butterfly franchises, operate the Center owned by Representative, and promote the 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 that as contemplated by this Agreement and Franchise Agreements between Representative and Franchisor;

(iii) to comply with all laws applicable to the offer or sale of franchises and persons engaged in the sale of Butterfly franchises as franchise sales agents or brokers;

(iv) not to make any representations or earnings claims without Franchisor's approval;

(v) not to accept any funds from Franchisees;

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

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

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

(b) In the event this Agreement expires, is terminated, or assigned by Representative, Representative and its owners and guarantors hereby each covenant for a period of two years thereafter not to engage, as an owner, operator or in any managerial capacity, in any similar or competitive business within the Territory, and not to represent, sell, or offer any other franchise.

(c) During the term of this Agreement and thereafter, Representative covenants not to communicate or transmit, directly or indirectly, divulge to, or use 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 to prohibit such persons from competing in fitness, health and weight loss centers during their employment or contractual relationship with Representative and for a period of two years thereafter within the Territory. Representative shall be responsible for enforcing such non-compete agreements in the Territory. Any deviation from the terms

enumerated in this Agreement to insure the enforceability of such non-compete agreements shall be subject to the prior written approval of Franchisor. Representative agrees 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 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 revise any of the covenants in this 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 applicable law. Representative further 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 Section.

## **10. TRANSFER AND ASSIGNMENT**

(a) Franchisor may transfer all or any part of its rights or obligations under this Agreement to any person without Representative's consent.

(b) Representative 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 the individual or collective character, skill, aptitude and business and financial capacity of Representative and Representative's principals. Accordingly, without Franchisor's prior written consent, Representative or any person owning any direct or indirect equity interest 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 under this Agreement. Any assignment or transfer without Franchisor's prior written consent shall be a material default of this Agreement.

(c) Representative acknowledges the vital importance of the performance of Representative to the market position and overall image of Franchisor. Representative also 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 shall remain a subjective determination and at Franchisor's sole discretion, subject to the following conditions:

(i) The proposed transferee meets Franchisor's standards of qualification then applicable with respect to all new area representative applicants for Butterfly franchise and has the ability to discharge Representative's obligations to the Franchisees in Territory;

(ii) The proposed transfer is upon such terms and conditions that Franchisor deems reasonable;

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

(iv) As of the effective date of the proposed transfer, all obligations of the proposed transferee to Franchisor have been fully satisfied.

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

(i) the proposed transfer, alone or together with any and all other previous, simultaneous or proposed transfers, would have the effect of reducing to less than 51% the percentage of voting or equity interest in the Franchisee by the initial equity owners as identified in Exhibit 4 to this Agreement; or,

(ii) the proposed transfer, alone or together with any and all other simultaneous or proposed transfers, would have the effect of reducing Representative's voting or equity interest in the Representative's business under this Agreement to less than 51%.

(e) In addition to any requirements provided in this Section 9,

(i) Representative must provide prospective transferee with any of Franchisor's current form of disclosure document required by any applicable law, and provide Franchisor with proof of delivery of such disclosure document.

(ii) Representative shall pay to Franchisor, together with the application for consent to the transfer, the transfer fee equal to 20% of the then current initial area fee.

(iii) Representative shall execute a general release, in a form satisfactory to Franchisor, to release Franchisor from any claims against Franchisor, its parent, subsidiaries, affiliates and their officers, directors, attorneys, shareholders, and employees, in their corporate and individual capacities, arising out of, or in connection with, the Representative's performance of this Agreement.

(iv) The prospective transferee shall enter into 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 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 Representative's business.

(vi) The prospective transferee or its designated managerial personnel shall have completed, to Franchisor's satisfaction, the training then required of Butterfly franchise representative and Franchisees.

(vii) The prospective transferee shall obtain all licenses and registrations necessary to perform its obligation under Franchisor's then current form of area representative agreement.

(f) Upon the death or mental incompetency 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 Section 9(e) 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 or business brokerage commissions, or the cash equivalent thereof, at Franchisor's option. If Franchisor and Representative cannot agree within 60 days of such notice on the terms and conditions of such sale or transfer, or if Franchisor notifies Representative that it elects not 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; (2) at a net price and on terms no more favorable than those offered in writing to Franchisor; and (3) subject to all requirements in this Section 9. Failure of Franchisor to exercise the option provided in this Section 9(g) shall not constitute a waiver of any other provision of this Agreement, including all requirements of this Section 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 Representative, nor shall it be deemed a waiver of Franchisor's right to demand compliance with all of the terms and conditions contained in this Agreement by the prospective transferee.

## **11. DEFAULT AND TERMINATION**

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

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

(iii) There is any violation of any transfer and assignment provision contained in Section 9 of this Agreement.

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

(v) If Representative violates any covenant of confidentiality or non-disclosure contained in 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 Representative's business.

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

(i) Representative fails to comply with any law applicable to the operation of the Representative's business and to cure such non-compliance within 15 days after receiving notification from appropriate authority.

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

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

(iv) Representative fails to obtain or has revoked any license or registration necessary to perform its obligations under this Agreement and to cure such non-compliance within 30 days after written notice from Franchisor or appropriate authority.

(v) If 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.

(c) Representative may not terminate this Agreement prior to the expiration of its term.

(d) Notwithstanding any other provision of this Section 10, termination of this Agreement shall not terminate any Franchise Agreement to which Representative is a party, if Representative is in full compliance with the terms and provisions of such Franchise Agreement.

(e) Each of following events shall constitute a "Termination Event":

(i) Representative fails to provide timely remedial and follow-up training to Franchisees as required by Franchisor;

(ii) Representative fails to provide a minimum of five days of pre-opening assistance to each Franchisee within the Territory;

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

(iv) Representative discloses to a third party any Confidential Information without Franchisor's prior written consent or otherwise violates confidentiality requirements set forth in this Agreement;

(v) A material number of the Franchisees in the Territory fail to conform to the standards of the System;

(vi) Representative fails to supervise the Franchisees in the Territory or fails to visit each Franchisee in the Territory at least once every quarter; or

(vii) Representative is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that in the Franchisor's sole judgment may affect adversely the System, the Marks, the goodwill associated the System or Marks, or Franchisor's rights 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. POST TERM RIGHTS, OBLIGATIONS AND COVENANTS**

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

(i) cease to be the Representative of Franchisor in the Territory;

(ii) pay all sums owing to Franchisor;

(iii) return to Franchisor the Manuals and all Confidential Information. Representative shall retain no copy or record of the Manuals or Confidential Information, provided that Representative may retain any materials necessary to operate a Center under an existing Franchise Agreement;

(iv) 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) transfer all trade name and similar registrations and business licenses to Franchisor or its new representative in the Territory and to cancel any interest which Representative may have in the same;

(vi) cease to use any methods, procedures or techniques associated with the System, the Marks; and

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

(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. INSURANCE**



(a) Representative shall, at its expense and no later than upon commencement of its Representative's business, procure and maintain in full force and effect throughout the term of this Agreement 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;

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

(iii) Comprehensive general liability insurance, 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 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 30 days prior written notice to Franchisor.

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

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

(a) Representative shall promptly pay when due any and all taxes and governmental fees including unemployment and sales taxes, 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 applicable laws 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 Representative's business.

#### **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 attorneys' and accountants' fees) as a result of, arising out of, or connected with the operation of the Representative's business under this Agreement.

(b) In all dealings with third parties including 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 to create a fiduciary relationship between Franchisor and Representative, or to constitute Representative as a subsidiary, joint venturer, partner, or employee of Franchisor. It is agreed that Representative is an independent contractor

and is 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, Representative shall not create any obligation or enter into any contract binding on Franchisor.

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

(a) Whenever this Agreement requires Franchisor's prior approval, Representative shall make a timely written request. Unless otherwise provided in this Agreement, Franchisor shall respond with its approval or disapproval within 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. The chief executive officer or chairman of the board of Franchisor must sign any such mutual agreement.

## **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 Office and all of its business records. Representative shall cooperate fully with Franchisor and its designated agents requesting such access.

(b) 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) The non-prevailing party shall be liable to the prevailing party in any lawsuit or arbitration for all reasonable costs including 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 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. Notice of demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The demand

for arbitration shall be made before such claim, dispute or other matter in question would be barred by the applicable statute of limitations. 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 30 days, then the 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 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 enforceable in any court of competent jurisdiction. The arbitrator shall award to the prevailing party or parties compensation for 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 under this Agreement shall be in writing and mailed by registered mail or hand delivered by a recognized international courier service. Notices to the parties shall be addressed to their respective address listed at the beginning of this Agreement. Any notice given pursuant to this Section shall be deemed received the earlier of seven days after the date of mailing, or the actual date of receipt.

## **19. GOVERNING LAW**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California. Provided, however, that the restrictive covenants contained in Section 8 shall be construed in accordance with the laws of the jurisdiction where such restrictions are to apply. This choice of laws will not affect 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 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.

## **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 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 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 to 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 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. 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 BUSINESS DAYS BEFORE THE EXECUTION OF THIS AGREEMENT, OR TEN 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 BUSINESS DAYS PRIOR TO REPRESENTATIVE'S EXECUTION 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.

(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 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**

**REPRESENTATIVE'S OFFICE OF AREA REPRESENTATIVE**

The Representative's office will be located at:

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

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

**Exhibit 2**

**TERRITORY AND INITIAL AREA FEE**

1. Description of Granted Territory:

2. Territory is for \_\_\_\_ units

3. Initial Area Fee: \$ \_\_\_\_\_



**Exhibit 3**

**DEVELOPMENT SCHEDULE**

"Effective Date" of Execution 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]**

On or before the specified anniversary of the date of the Area Representative Agreement:

<u>Anniversary</u>	<u>Minimum Center Sales, Open and Operating</u>
First .....	2
Second .....	4
Third .....	6
Fourth .....	8
Fifth .....	10

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

On or before the specified anniversary of the date of the Area Representative Agreement:

<u>Anniversary</u>	<u>Minimum Center Sales, Open and Operating</u>
First .....	5
Second .....	10
Third .....	15
Fourth .....	20
Fifth .....	25

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

On or before the specified anniversary of the date of the Area Representative Agreement:

<u>Anniversary</u>	<u>Minimum Center Sales, Open and Operating</u>
First .....	5
Second .....	15
Third .....	25
Fourth .....	35
Fifth .....	50

Any renewal or extension 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.

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: _____)	_____

FRANCHISOR: Butterfly Fitness, Inc.

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

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 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 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.

WITNESS:	GUARANTOR:	RELATIONSHIP (Ownership %):
----------	------------	-----------------------------

1. _____	_____	_____
_____	_____	_____
(Print Name)	(Print Name)	
Address: _____	_____	_____
2. _____	_____	_____
_____	_____	_____
(Print Name)	(Print Name)	
Address: _____	_____	_____
3. _____	_____	_____
_____	_____	_____
(Print Name)	(Print Name)	
Address: _____	_____	_____
4. _____	_____	_____
_____	_____	_____
(Print Name)	(Print Name)	
Address: _____	_____	_____