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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO
POACHING PROVISIONS

NO.

ANYTIME FITNESS, LLC
ASSURANCE OF
DISCONTINUANCE

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The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General (the "Attorney General"), and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance ("AOD") pursuant to RCW 19.86.100.

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I. PARTIES

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1.1 In August 2018, the Attorney General initiated an investigation into Anytime Fitness, LLC ("Anytime Fitness") relating to certain provisions in its franchise agreement.

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1.2 Anytime Fitness is a Minnesota limited liability corporation with its principal offices or place of business in Woodbury, Minnesota. Anytime Fitness is a franchisor, and its corporate and franchisee operated locations are in the business of operating boutique fitness centers.

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1.3 For purposes of this AOD, Anytime Fitness shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, controlled subsidiaries, and predecessor franchisor entities.

1 **II. INVESTIGATION**

2 2.1 There are 65 Anytime Fitness centers located in the State of Washington as of
3 the date hereof. All of these Anytime Fitness centers are independently owned and operated by
4 franchisees.

5 2.2 Since on or about March 30, 2015, the franchise agreements entered into
6 between Anytime Fitness and its franchisees have provided that franchisees subject to such
7 agreements “will not retain or hire any person employed at another Anytime Fitness center
8 located within ten (10) miles of your Anytime Fitness Center (or who was employed at such an
9 Anytime Fitness center within ninety (90) days of you retaining or hiring that person) to
10 become an employee of, or provide services to your Anytime Fitness Center (or to any other
11 business in which you have an ownership interest of ten percent (10%) or more) without the
12 consent of the owner of the other Anytime Fitness center” (the “No-Hire Provision”).

13 2.3 The Attorney General asserts that the foregoing conduct of Anytime Fitness and
14 its franchisees constitutes a contract, combination, or conspiracy in restraint of trade in
15 violation of the Consumer Protection Act, RCW 19.86.030.

16 2.4 Anytime Fitness and its current and former franchisees expressly deny that the
17 conduct described above constitutes a contract, combination, or conspiracy in restraint of trade
18 in violation of the Consumer Protection Act, RCW 19.86.030, or any other law or regulation,
19 and expressly deny they have engaged in conduct that constitutes a contract, combination, or
20 conspiracy in restraint of trade, or violates any other law or regulation. Anytime Fitness enters
21 into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100,
22 neither this AOD nor its terms shall be construed as an admission of law, fact, liability,
23 misconduct, or wrongdoing on the part of Anytime Fitness or any of its current or former
24 franchisees.

25 **III. ASSURANCE OF DISCONTINUANCE**

26 3.1 Subject to Paragraph 2.4 above, Anytime Fitness agrees:

1 3.1.1. It will no longer include the No-Hire Provision in any of its franchise
2 agreements in the United States signed after the date hereof.

3 3.1.2. It will not enforce the No-Hire Provision in any of its existing franchise
4 agreements in the United States, and will not seek to intervene in any action brought by the
5 Attorney General's Office against a current franchisee in Washington to defend an existing
6 No-Hire Provision, provided such action is brought in accordance with, and consistent with,
7 the provisions of this AOD.

8 3.1.3. It will notify all of its current franchisees in the United States of the
9 entry of this AOD and make a copy available to them.

10 3.1.4. If, after the 21 day period set forth in Paragraph 3.2 below, Anytime
11 Fitness becomes aware of a franchisee with a center located in the State of Washington
12 attempting to enforce the No-Hire Provision, and Anytime Fitness is unable to persuade such
13 franchisee to desist from enforcing or attempting to enforce such provision, Anytime Fitness
14 will notify the Attorney General.

15 3.2 Within 21 days of entry of this AOD, Anytime Fitness will send a letter to all of
16 its current franchisees with a center located in the State of Washington, stating that the
17 Attorney General has requested that the existing No-Hire Provision be removed from existing
18 franchise agreements. The letter that Anytime Fitness will send to its current franchisees in the
19 State of Washington, to the extent the franchisee has a No-Hire Provision in its franchise
20 agreement, will be substantially in the form of the letter attached hereto as Exhibit A. That
21 letter will enclose the proposed amendment that Anytime Fitness is requesting that each of its
22 franchisees in the State of Washington agree to, which amendment will remove the No-Hire
23 Provision. The proposed amendment that will be included with each letter will be substantially
24 in the form of the amendment attached hereto as Exhibit B.

25 3.3 In addition to sending the letter to its current franchisees in the State of
26 Washington pursuant to Paragraph 3.2 above, Anytime Fitness will respond promptly to any

1 employees, as well as their respective successors and assigns, controlled subsidiaries,
2 predecessor franchisor entities, or other entities through which Anytime Fitness may now or
3 hereafter act with respect to the conduct alleged in this AOD.
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5 4.2 This is a voluntary agreement and it shall not be construed as an admission of
6 law, fact, liability, misconduct, or wrongdoing on the part of Anytime Fitness or any of its
7 current or former franchisees. Anytime Fitness and its current and former franchisees neither
8 agree nor concede that the claims, allegations and/or causes of action which have or could have
9 been asserted by the Attorney General have merit and Anytime Fitness and its current and
10 former franchisees expressly deny any such claims, allegations, and/or causes of action.
11 However, proof of failure to comply with this AOD shall be *prima facie* evidence of a
12 violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against
13 imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and
14 civil penalties of up to \$2,000.00 per violation.

15 4.3 Anytime Fitness will not, nor will it authorize any of its officers, employees,
16 representatives, or agents to, state or otherwise contend that the State of Washington or the
17 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
18 Paragraph 2.2 with respect to the No-Hire Provision in Anytime Fitness's franchise agreement.

19 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
20 Division of the Attorney General's Office under the Consumer Protection Act and any other
21 related statutes pertaining to the acts of Anytime Fitness and its current and former franchisees as
22 set forth in Paragraph 2.1 – 2.3 above that may have occurred before the date of entry of this
23 AOD, or that occur between the date of the entry of this AOD and the conclusion of the 120 day
24 period identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to
25 Paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
26 Office shall not file suit or take any further investigative or enforcement action with respect to the

1 acts set forth above that occurred before the date of entry of this AOD, or that occurs between the
2 date of the entry of this AOD and the conclusion of the 120 day period identified in Paragraph 3.3
3 above, against Anytime Fitness or any of its current franchisees in the State of Washington that
4 sign the proposed amendment described in Section III, any of its former franchisees in the State of
5 Washington, or any of its current or former franchisees located outside the State of Washington.
6 The Attorney General reserves the right to take further investigative or enforcement action against
7 any current franchisee in the State of Washington identified pursuant to Paragraph 3.1.4 or any
8 current franchisee in the State of Washington that does not sign the proposed amendment
9 described in Section III.

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11 APPROVED ON this _____ day of _____, 2018.

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15 JUDGE/COURT COMMISSIONER
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1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

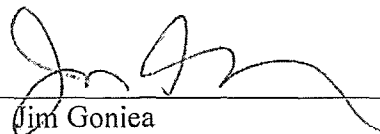
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6 Assistant Attorney General
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8 Antitrust Division
9 Attorneys for State of Washington
10 Office of the Attorney General
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10 Agreed to and approved for entry by:
11 ANYTIME FITNESS, LLC

12  

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18 Jim Goniea
19 General Counsel

20 Anytime Fitness, LLC

16 —and—

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Attorneys for Anytime Fitness, LLC

Exhibit A

Form Letter to Anytime Fitness Franchisees in the State of Washington

Subject: A message from Jim Goniea regarding "no poaching" clauses

Dear [Franchisee Name]

In August 2018, Anytime Fitness, LLC ("Anytime Fitness") received a Civil Investigative Demand from the Attorney General's Office of the State of Washington seeking information regarding whether there are any provisions in its franchise agreements that restrict the hiring or solicitation of employees (sometimes referred to as "no poaching" clauses). We understand that this is part of a broader investigation into the use of such clauses in several industries. We have cooperated fully with the investigation.

Without admitting that Anytime Fitness or its franchisees violated any law or regulation, or acted improperly in any respect, we have reached an agreement with the Attorney General's Office. This agreement provides that Anytime Fitness will, among other things, no longer include in any U.S. franchise agreement or renewal signed after the date of our agreement with the Attorney General's Office any provisions that restrict the hiring or solicitation of employees. The agreement also provides that Anytime Fitness will not enforce any such provisions in any of its existing franchise agreements or area development agreements in the United States.

We believe the Anytime Fitness franchise system's interests are best served by resolving the investigation quickly and cooperatively on these terms, and by avoiding the uncertainty and cost of protracted litigation.

Anytime Fitness's agreement with the Attorney General's Office also includes a requirement that it request, from franchisees with locations in the State of Washington containing "no poaching" clauses, that they agree to amend their existing franchise agreements to remove the "no poaching" clauses. Enclosed for your signature is an amendment to your franchise agreement(s) with Anytime Fitness to satisfy that requirement. To the extent that you agree to [this/these] amendment(s), the Attorney General has committed to not pursue any suit, or take any investigative or enforcement action against you, for conduct relating to the relevant provisions of your franchise agreement(s), up to and including the date you sign the amendment(s). Please sign and return the amendment(s) to me as soon as possible. If you decide not to sign the enclosed amendment(s), the Attorney General's Office has indicated that it will reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above.

Should you have any questions regarding this matter, please contact me at Jim.Goniea@sebrands.com. If you receive any media inquiries regarding this matter, please refer them to me.

Sincerely,

Jim Goniea
General Counsel
Anytime Fitness, LLC

Exhibit B

**AMENDMENT
TO
ANYTIME FITNESS FRANCHISE AGREEMENT(S)**

The Franchise Agreement(s) for the Anytime Fitness franchised locations in the State of Washington listed on Exhibit A hereto between Anytime Fitness, LLC ("Franchisor") and the undersigned franchisee ("Franchisee") are hereby amended in accordance with the following terms.

1. Background. Franchisor and Franchisee are parties to the Franchise Agreement(s) listed on Exhibit A hereto and incorporated herein by reference (as hereby amended, the "Franchise Agreement(s)"), and Franchisee operates a franchised outlet in the State of Washington, under each listed Franchise Agreement. Franchisor has determined that it is in the best interests of the franchise system to not enforce Section 9.M.5 of the Franchise Agreement(s). The purpose of this Amendment to the Franchise Agreement(s) is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Franchise Agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, Franchisee and Franchisor agree that Section 9.M.5 is hereby deleted from the Franchise Agreement(s) and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, the Franchise Agreement(s). If there is an inconsistency between this Amendment and the Franchise Agreement(s), the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement effective as _____, 2018 (the "Effective Date").

ANYTIME FITNESS, LLC

[FRANCHISEE'S NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____