

Trey Grayson  
Secretary of State  
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**ARTICLES OF MERGER**  
**OF**  
**BIRMINGHAM ATHLETIC CLUB, LLC**  
**(a Kentucky limited liability company)**  
**INTO**  
**BIRMINGHAM ATHLETIC CLUBS, LLC**  
**(an Alabama limited liability company)**

Pursuant to the provisions of the Kentucky Revised Statutes 275.360, the undersigned merging business entity and surviving business entity hereby execute these Articles of Merger.

1. Birmingham Athletic Club, LLC, a manager managed Kentucky limited liability company ("Merging Entity") shall merge into Birmingham Athletic Clubs, LLC, a member managed Alabama limited liability company, ("Surviving Entity"), pursuant to the terms and conditions of the Plan of Merger dated December 30, 2005 ("Plan"), in the form attached hereto as Exhibit "A", which has not been abandoned and which was duly authorized and approved in the manner set forth below and in accordance with the applicable laws of the Commonwealth of Kentucky.

2. Approval was required by the managers and members of Merging Entity and the members of Surviving Entity. The managers and members of the Merging Entity approved of the Plan by the unanimous written consent of its managers and members as of December 30, 2005. The members of the Surviving Entity approved the Plan by the unanimous written consent of its members as of December 30, 2005.

3. The name of the Surviving Entity from and after the Effective Date shall be "Birmingham Athletic Clubs, LLC."

4. The merger of the Merging Entity into the Surviving Entity shall be effective at 11:56 p.m. Eastern Standard Time on December 30, 2005, which date is following the filing and recordation of these Articles of Merger with the Kentucky Secretary of State, and is herein referred to as the "Effective Date."

5. Pursuant to KRS 275.360, the Surviving Entity hereby

- a. agrees that it may be served with process in the Commonwealth of Kentucky in any proceeding for enforcement of any obligation of any constituent business entity party to the merger that was organized under the laws of the Commonwealth of Kentucky, as well as for enforcement of any obligation of the Surviving Entity arising from the merger; and
- b. appoints the Kentucky Secretary of State as its agent for service of process in any such proceeding.

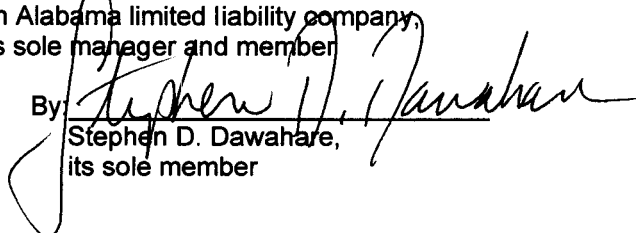
The Surviving Entity's address to which a copy of the service of process shall be mailed to it by the Secretary of State shall be: Birmingham Athletic Clubs, LLC, 239 South Limestone, Suite 100, Lexington, KY 40508.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have duly executed these Articles of Merger.

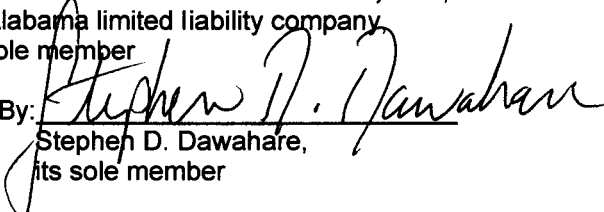
**BIRMINGHAM ATHLETIC CLUB, LLC,**  
a Kentucky limited liability company

By: **IVISIONARY FITNESS HOLDINGS, LLC,**  
an Alabama limited liability company,  
its sole manager and member

By:   
Stephen D. Dawahare,  
its sole member

**BIRMINGHAM ATHLETIC CLUBS, LLC,**  
an Alabama limited liability company

By: **IVISIONARY FITNESS HOLDINGS, LLC,**  
an Alabama limited liability company,  
its sole member

By:   
Stephen D. Dawahare,  
its sole member

THIS INSTRUMENT PREPARED BY:

  
\_\_\_\_\_  
Dan M. Rose  
Stoff, Keenon & Park, LLP  
300 W. Vine Street, Suite 2100  
Lexington, KY 40507  
(859) 231-3000

# EXHIBIT A

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement" or this "Agreement of Merger") is entered into this 30<sup>th</sup> day of December, 2005, by and between **BIRMINGHAM ATHLETIC CLUB, LLC**, a manager managed Kentucky limited liability company (the "Merging Entity"), **BIRMINGHAM ATHLETIC CLUBS, LLC**, a member managed Alabama limited liability company (the "Surviving Entity"), and both of which are sometimes hereinafter referred to collectively as the "Constituent Entities."

### WITNESSETH:

WHEREAS, the sole manager and member of the Merging Entity and the sole member of the Surviving Entity have resolved that the Constituent Entities be merged into a single entity existing under the laws of the State of Alabama and that pursuant to the Kentucky Limited Liability Company Act and the Alabama Business Entities Conversion and Merger Act, the Surviving Entity shall be the surviving entity in a transaction qualifying as a reorganization within the meaning of Sections 368(a)(1)(A) and 368(a)(1)(F) of the Internal Revenue Code (sometimes herein referred to as the "Merger");

WHEREAS, the sole manager and member of the Merging Entity and the sole member of the Surviving Entity have approved the Merger upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, provisions, and covenants herein contained, the parties hereto hereby agree as follows:

1. Filings; Effects of Merger.

(a) Filing of Articles of Merger; Effective Date. If this Agreement is not thereafter, and has not theretofore been, terminated or abandoned as permitted by the provisions hereof, then Articles of Merger shall be filed in accordance with the Kentucky Limited Liability Company Act, and a Certificate of Merger shall be filed in accordance with the Alabama Business Entities Conversion and Merger Act. The Merger shall become effective upon filing of both the Articles of Merger and the Certificate of Merger on December 30, 2005 at 11:56 p.m. Eastern Standard Time, which date and time are herein referred to as the "Effective Date."

(b) Certain Effects of Merger. On the Effective Date, the separate existence of the Merging Entity shall cease (except insofar as continued by statute) and it shall be merged with and into the Surviving Entity. The Merger shall have the legal effect as set forth in KRS 275.365 and Code of Ala.10-15-4, including but not limited to (i) all property, personal, real, mixed and intangible of the Merging Entity and all its claims, liabilities, actions, debts, contracts and obligations shall be transferred to and vested in the Surviving Entity without further act or deed, and (ii) the Surviving Entity shall be responsible and liable for all liabilities and obligations of the Merging Entity. At any time, or from time to time, after the Effective Date, the last acting officers or managers of the Merging Entity or any of the corresponding officers or managers of the Surviving Entity, may, in the name of the Merging Entity, execute and deliver all such proper deeds, assignments, and other instruments and take or cause to be taken all such further or other action as the Surviving Entity may deem necessary or desirable in order to vest, perfect or confirm in the Surviving Entity title to and possession of all the Merging Entity's property, rights, privileges, powers and interests and otherwise to carry out the purposes of this Agreement. As a result of the Merger, limited liability for the members of the Merging Entity and the members of the Surviving Entity shall be retained to the fullest extent permitted by the law.

2. Name of Surviving Entity; Articles of Organization; Operating Agreement.

(a) Name of Surviving Entity. The name of the Surviving Entity from and after the Effective Date shall be "Birmingham Athletic Clubs, LLC" until said name is changed.

(b) Street Address of Surviving Entity. The street address of the Surviving Entity's principal place of business shall be 239 S. Limestone, Suite 100, Lexington, KY 40508 until said address is changed.

(c) Articles of Organization. The Articles of Organization of the Surviving Entity as in effect on the date hereof shall from and after the Effective Date be, and continue to be, the Articles of Organization of the Surviving Entity until changed or amended as provided by law.

(d) Operating Agreement. The Operating Agreement of the Surviving Entity, that has been entered by the sole member of the Surviving Entity to be effective upon the Effective Date of the Merger, shall from and after the Effective Date be, and continue to be, the Operating Agreement of the Surviving Entity until amended as provided therein.

3. Status and Conversion of Equity Interests. The manner and basis of converting the ownership interests of the Merging Entity and the nature and amount of interests in the Surviving Entity of which the sole member of the Merging Entity shall possess after the Merger are as follows:

(a) Interests in Merging Entity Held by Members. Being that the sole member of the Merging Entity is also the sole member of the Surviving Entity; accordingly, the membership interests in the Merging Entity held by the sole member of the Surviving Entity immediately before the Effective Date shall, by virtue of the Merger and without any action on the part of the holder thereof, shall cease to exist and any certificates or other documents representing such interests shall be cancelled.

(b) Interests in Surviving Entity Held by Members. Being that the sole member of the Merging Entity is also the sole member of the Surviving Entity; accordingly, the membership interests in the Surviving Entity held by the sole member of the Surviving Entity immediately before the Effective Date shall, by virtue of the Merger and at the Effective Date, shall remain in existence and continue to be outstanding and continue to constitute 100% of the membership interests in the Surviving Entity.

4. Miscellaneous.

(a) Termination. This Agreement of Merger may be terminated and the proposed Merger abandoned at any time before the Effective Date of the Merger, and whether before or after approval of this Agreement of Merger by the sole member of the Merging Entity if the sole member of the Merging Entity or the sole member of the Surviving Entity duly adopt a resolution abandoning this Agreement of Merger.

(b) Counterparts. For the convenience of the parties hereto and to facilitate the filing of this Agreement of Merger, any number of counterparts hereof may be executed; and each such counterpart shall be deemed to be an original instrument.

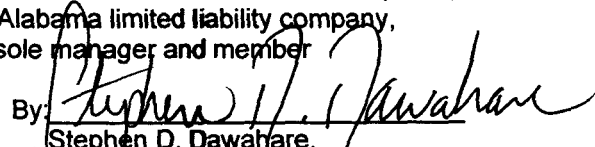
(c) Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the substantive law of the Commonwealth of Kentucky.

[Signature Page Follows]

IN WITNESS WHEREOF, the authorized officers and/or members of the respective parties have duly executed this Agreement the day and year first above written.

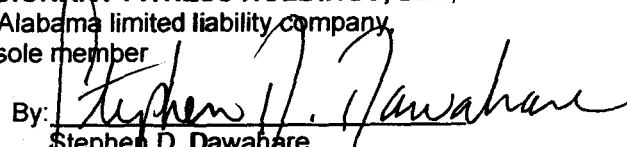
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