

**2024 – 2025**

# Franchise Disclosure Document





## FRANCHISE DISCLOSURE DOCUMENT

Aqua-Tots Swim School Holding LLC  
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Mesa, Arizona 85206  
Phone: (480) 621-3226  
Fax: (480) 649-2897  
www.aqua-tots.com

Aqua-Tots Swim School Holding LLC (“Aqua-Tots Swim Schools”) offers franchises for the operation of a swim instruction school that offers small group and private swim instruction and lessons and pool parties to the general public using our proven business models designed by Aqua-Tots Swim Schools under the trade name “Aqua-Tots Swim School”. We offer 2 purchase options: 1) a Single Unit Franchise or 2) a Multi-Unit Development Agreement, under which you must open a minimum of two (2) locations within a specified period of time.

The total investment necessary to begin operation of a single unit Aqua-Tots Swim School is between \$1,619,095 and \$2,639,314. This includes between \$50,638 and \$51,257 that must be paid to the franchisor or its affiliate.

The total investment necessary to begin operation of a Multi-Unit Development Agreement (MUDA) for two (2) and up to six (6) Aqua-Tots Swim School Outlets is between \$1,637,845 and \$2,751,814. This includes between \$69,388 and \$163,757 that must be paid to the franchisor or its affiliate. The MUDA fee for each additional Unit is \$37,500 with 50%, i.e., \$18,750 per additional Unit, due at the time of signing the Multi-Unit Development Agreement.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive the disclosure document at least 14 calendar days before you sign a binding agreement with or make any payment to the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Paul Preston, Aqua-Tots Swim School 4Holding LLC, 1110 S. Greenfield Rd., Suite 201, Mesa, Arizona 85206; and Phone: (480) 621-3226.

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read your entire contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: April 15, 2024

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit B includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only Aqua-Tots business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be an Aqua-Tots franchisee?</b>	Item 20 lists current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit A.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

**1. Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation then arbitration only in Arizona. Out-of-state mediation or arbitration may force you to accept a less favorable settlement for disputes. It may also cost more to mediate and/or arbitrate with the franchisor in Arizona than in your own state.

Certain states may require other risks to be highlighted. Check the “State Specific Addenda” (if any) to see whether your state requires other risks to be highlighted.

## NOTICE REQUIRED BY THE STATE OF MICHIGAN

**THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.**

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

(a) A prohibition on the right of a franchisee to join an association of franchisees.

(b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

(c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

(d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) The term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.

(e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct location outside this state.

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to: (i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards. (ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor. (iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations. (iv) The failure of the franchisee or proposed transferee to

pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

(h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

**THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.**

**IF THE FRANCHISOR'S MOST RECENT FINANCIAL STATEMENTS ARE UNAUDITED AND SHOW A NET WORTH OF LESS THAN \$100,000.00, THE FRANCHISOR MUST, AT THE REQUEST OF THE FRANCHISEE, ARRANGE FOR THE ESCROW OF INITIAL INVESTMENT AND OTHER FUNDS PAID BY THE FRANCHISEE UNTIL THE OBLIGATIONS TO PROVIDE REAL ESTATE, IMPROVEMENTS, EQUIPMENT, INVENTORY, TRAINING, OR OTHER ITEMS INCLUDED IN THE FRANCHISE OFFERING ARE FULFILLED. AT THE OPTION OF THE FRANCHISOR, A SURETY BOND MAY BE PROVIDED IN PLACE OF ESCROW.**

Any questions regarding this notice should be directed to:

State of Michigan  
Department of Attorney General  
Consumer Protection Division  
Attn: Franchise Unit  
G. Mennen Williams Building  
525 W. Ottawa Street  
P.O. Box 30212  
Lansing, Michigan 48909  
Telephone Number: (517) 335-7622

**THE MICHIGAN NOTICE APPLIES ONLY TO FRANCHISEES WHO ARE RESIDENTS OF MICHIGAN OR LOCATE THEIR FRANCHISES IN MICHIGAN.**

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EXHIBITS

- A State Administrators and Agents for Service of Process
  - B Audited Financial Statements
  - C Franchise Agreement
  - D Manual Table of Contents
  - E State Addendum to the Disclosure Document, Franchise Agreement and Multi-Unit Development Agreement
  - F Multi-Unit Development Agreement
  - G. State Effective Dates
- Last Page Receipt

## **Item 1. The Franchisor and any Parents, Predecessors and Affiliates**

To simplify the language in this Disclosure Document, the "Company", "we," "our," "Aqua-Tots," "Aqua-Tots Swim Schools", "Franchisor" or "us" means Aqua-Tots Swim School Holding LLC, the franchisor. "You" means the person who buys the franchise, the franchisee. If the initial franchisee is an individual(s) that subsequently assigns his, her or their interest to a corporation, limited liability Company, partnership or other entity, then "You" will include the entity's owners by virtue of our requirement that all of the entity owners must personally guarantee, and be personally bound by, your obligations under the Franchise Agreement and the other agreements described in this Disclosure Document. To fully understand all of your and our respective rights and obligations, you must still carefully review the actual agreements you must execute. These agreements will control if there is any dispute between you and us.

### **The Franchisor**

Aqua-Tots Swim School Holding LLC is a limited liability company that was formed under the laws of Arizona in 2007. Aqua-Tots does not do business under any other name. Our principal business address is 1110 S. Greenfield Rd., Suite 201, Mesa, Arizona 85206. Aqua-Tots agent for service of process is disclosed in Exhibit A to this Franchise Disclosure Document. Aqua-Tots has never sold any other franchise and has no business other than offering franchises and assisting franchisees. We have been offering franchises since June 2007

Aqua-Tots Swim School Holding LLC has no parent companies.

### **The Franchisor's Predecessors and Affiliates**

Aqua-Tots has no predecessors, but we do have three (3) affiliates required to be disclosed in this document.

Our first Affiliate is Aqua-Tots Swim Schools, LLC, which began operation as an unincorporated business in April of 1991. It was then re-organized as Aqua-Tots Swim Schools, LLC under the laws of Arizona in 2006. Aqua-Tots Swim Schools, LLC has not conducted business in any other line of business, nor have they offered franchises in any line of business. Aqua-Tots Swim Schools, LLC operates one location, which is the model for this offering, since April 1991 and is referenced in Item 20. It is not an approved supplier of any product or service you must purchase or lease.

Our second Affiliate is KTR Franchise Holdings, LLC which was formed under the laws of Arizona on March 3, 2014, and whose principal business address is 1110 S. Greenfield Rd, Mesa, Arizona, 85206. This affiliate has never offered franchises in this line of business, but currently offers franchises in another line of business. It is not an approved supplier of any product or service you must purchase or lease.

Our third Affiliate is UB Grill and Tap LLC which formed under the laws of Arizona on January 25, 2019, and whose principal business address is 1110 S. Greenfield Rd, Mesa, Arizona, 85206. This affiliate has never offered franchises in this line of business, but currently offers

franchises in another line of business. It is not an approved supplier of any product or service you must purchase or lease.

In addition, Mr. Ron Sciarro, one of our co-founders, along with Mr. Paul Preston, our other Co-Founder and our President, and Mr. Craig Wright, our CEO, each own minority interests in Aqua Tots Swim Schools located in Midvale, and West Jordan, Utah; Oklahoma City, Oklahoma; Arvada, Lone Tree and Littleton, Colorado; Beavercreek and Springboro, Ohio; the following locations in Texas: Katy, Cypress, Missouri City, Coppell, Rockwall, Frisco, Plano, Richardson, McKinney, Flower Mound, and Murphy; and the following locations in Arizona: Gilbert, Scottsdale, and Paradise Valley.

### **The Franchisor's Business and the Franchises Offered**

We offer franchises for the operation of a swim instruction school ("Business") that offers the public small group, private swim instruction and lessons, and pool parties to the general public using a unique business format under the Aqua-Tots trademarks, trade names, service marks, and logos ("Marks"). The franchise is operated under a business format in agreement with a unique system, including our valuable know how, information, trade secrets, methods, manuals, standards, designs, methods of trademark usage, copyrightable works, products and service sources and specifications, proprietary software, confidential electronic and other communications, methods of Internet usage, marketing programs, and research and development connected with the operation and promotion of the Business (collectively, the "System") owned and developed by us and known as AQUA-TOTS ("Business"). In addition, our proprietary and development products are designed to support franchisees in their ongoing training efforts. We reserve the right to change or otherwise modify the System and add, modify, or delete any of our Products at any time in our sole discretion.

#### **Single Unit Franchise Program:**

If we approve you as a franchisee, you must operate your Swim School in agreement with our standard business operating practices and you will sign a Franchise Agreement, in the form attached as Exhibit C to operate a single Aqua-Tots Swim School Outlet.

#### **Multi-Unit Development Program:**

Under the Multi-Unit Development Program, you and we will agree on the number and the geographic Area within which you must open and operate Aqua-Tots Swim School Outlets ("MUD Units") within a specified period of time ("MUD Schedule"). The specific number of MUD Units required to be opened will be mutually agreed upon by you and us based on the size of the MUD Area and considering various market and economic factors. If you elect to participate in and are approved for this program, you will execute a Multi-Unit Development Agreement (the "MUD Agreement") in the form attached as Exhibit F, which will describe your MUD Area, the Locations, the MUD fee and the MUD Schedule. For each MUD Unit, you must sign a separate Franchise Agreement. In no event will you sign a Franchise Agreement for any MUD Unit until we have complied with any applicable waiting periods prescribed by law, and in no event will you be a franchisee entitled to operate a MUD Unit as an Aqua-Tots Swim School Outlet until we sign the

Franchise Agreement for that particular MUD Unit. You will sign a Franchise Agreement for your first MUD Unit, the Initial Franchise, at the same time you sign the MUD Agreement. You will also pay your MUD Fees for all locations you agree to open at the same time you sign the Initial Franchise Agreement and the MUD Agreement. The remaining balance of the Franchise Fee will be due on the date that you agree to sign the then current Franchise Agreement for each subsequent Franchise Unit shown on the MUDA. The Franchise Agreement for each subsequent Unit may differ materially from the current Franchise Agreement included with this FDD.

### **The Market and Competition**

Aqua-Tots Swim Schools markets its services to the general public. Competition includes other swim instruction businesses including franchised operations, national chains and independently owned companies offering similar services and programs to customers. The market for a swim school service is well developed and moderately competitive. You will also face other normal business risks that could have an adverse effect on your Swim School. These include industry developments, such as pricing policies of competitors, and supply and demand. Our ability to fulfill our obligations under our Franchise Agreement depends in part on our present and future financial condition. Litigation risks also exist, including future litigation that may not be foreseeable.

### **Applicable Laws**

Aqua-Tots Swim Schools trains, certifies and equips all owners or their delegated managers (up to two participants) to become Aqua-Tots Swim School Operators at Aqua-Tots University (ATU) in Arizona. The training course helps to prepare you to hire, train and equip each of your swim instructor employees how to effectively teach the Aqua-Tots Swim Schools curriculum.

Aqua-Tots Swim Schools requires all franchisee participants and their designated managers to pass each of the written and practical examinations with a 90% grade or higher to receive certification as an Operator. Aqua-Tots Swim Schools reserves the right to review, audit or to pull issued swimming certification if the quality and consistency is not to the minimum standard required by Aqua-Tots.

There may be other specific laws or regulations in individual states or municipalities regarding the operation of this Business. All federal, state and local laws and regulations that apply generally to all businesses must be obeyed. The laws in a particular state or municipality may be more or less stringent. These should be considered when planning a purchase of an Aqua-Tots Swim School franchise.

## **Item 2. Business Experience**

### **Ron Sciarro: Co-Founder**

Mr. Sciarro co-founded Aqua-Tots Swim School Holding LLC in 2007 and served as president until January 2020. He currently serves as a member of the Franchise Executive Team. In addition, beginning in April 1991 to the present, Mr. Sciarro serves as President of our affiliate Aqua-Tots

Swim Schools, LLC. Mr. Sciarro also holds the position of Managing Partner for our affiliate, KTR Franchise Holdings, LLC, since its inception in 2014. In addition, he serves as Managing Partner for our affiliate, UB Grill and Tap LLC since its inception in 2019. All companies are located in Mesa, AZ.

**Paul Preston: Co-Founder and President**

Mr. Preston co-founded Aqua-Tots Swim School Holding LLC and served as Vice-President until January 2020, when he became President and serves to the present date. In addition, beginning in June 2005 to present, Mr. Preston serves as Vice-President of Aqua-Tots Swim Schools, LLC. Mr. Preston was also Director of Franchise Development for KTR Franchise Holdings, LLC, since inception in 2014 and until February 2020, in which he now serves as Member. In addition, he served as Director of Franchise Development for UB Grill and Tap LLC since inception on January 25, 2019, until February 2020, in which he also now serves as Member. All companies are located in Mesa, AZ.

**Craig A Wright: CEO**

Mr. Wright joined Aqua-Tots Swim School Holding LLC as Chief Operating Officer in March 2017. In January 2018, he became CEO and serves in this position through the present date. In addition, Mr. Wright serves on the Franchise Executive Team for our affiliate, UB Grill and Tap LLC, since January 2019. He operates these positions in Mesa AZ.

**John Garry: Franchise Development Director**

Mr. Garry has been the Franchise Development Director for Aqua-Tots Swim School Holding LLC since February 2020. In addition, he is the Franchise Development Director for our affiliates, KTR Franchise Holdings, LLC, and UB Grill and Tap LLC, since February 2020, each being located in Mesa, AZ. Mr. Gary also became an ATSS Franchise Owner for a location in Roseville, California in December 2022. Prior to this time, Mr. Garry was a Franchise Development Director for Red Roof Inn Hotel, an Ohio company, from January 2017 – February 2020. These positions were operated from his location in Phoenix AZ.

**Jonathan Martin: Chief Operating Officer**

Mr. Martin joined Aqua-Tots Swim School Holding LLC as Director of Technology in January 2019. In April 2023, he became Chief Operating Officer and serves in this position through the present date. In addition, Mr. Martin serves as the Managing Member for our affiliate, AT Gilbert LLC, since December 2023. He operates these positions in Mesa AZ.

**Item 3.           Litigation**

No litigation is required to be disclosed in this Item.

**Item 4.           Bankruptcy**

No bankruptcy is required to be disclosed in this Item.

## **Item 5. Initial Fees**

### **Single Unit**

You must pay us an initial franchisee fee (the “Initial Franchise Fee”) in a lump sum when you sign the Franchise Agreement. Our initial franchise fee under the Single Unit Franchise Program is \$50,000. The Initial Franchise Fee is fully earned when paid. In no event is the Initial Franchise Fee refundable.

You are required to use Pike 13 as your software program. The cost of this program is between \$249 and \$349 per month and depends on whether you use our proprietary digital tool with this software, plus tax where applicable, and is payable to us. You must also pay to us a Technology Fee of \$70 per month. You will begin utilizing the software and paying the Technology Fee between 2 and 3 months prior to opening, and as such will pay to us between \$638 and \$1,257 prior to opening.

Should you request and should Aqua-Tots provide assistance with your lease or your purchase of real estate, you will pay to us an Administrative Fee for Lease Assistance of \$200 per occurrence.

### **Multi-Unit Development Agreement (MUDA)**

If you desire to be a part of our Multi-Unit Development (MUD) program, you must sign a Franchise Agreement to open your first Aqua-Tots Swim School and pay us the full Initial Franchise Fee of \$50,000 for that Unit. You will also agree to open a minimum of one (1) additional Unit under the Multi-Unit Development Schedule. The Initial Franchise Fee for each additional Unit purchased under our Multi-Unit Development program will be discounted to \$37,500 per Unit. You will pay 50% of the \$37,500 (being \$18,750) for each additional Unit that you desire to open at the time that you sign the MUDA. The Initial Franchise Fee and the MUD fee are due at the time that you sign the Multi-Unit Development Agreement. The remaining 50% of the MUD Fee (being \$18,750 for each additional Unit) will be due on the date that you agree to sign the then current Franchise Agreement for each subsequent Franchise Unit shown on the MUDA. The Franchise Agreement for each subsequent Unit may differ materially from the current Franchise Agreement included with this FDD.

The MUD Fee and the Franchise Fees, as stated above, are payable on execution of the respective Agreements and are fully earned upon payment. There are no refunds under any circumstances.

During our fiscal year ending December 31, 2023, the range of actual Initial Franchise Fees paid was \$0 to \$50,000. The factors that influenced our decision to adjust the Initial Franchise Fee included the number of locations to be opened by the franchisee, if it’s an additional location for a franchisee, the length of time the franchisee had been associated with any affiliate of ours, and the size of the Development Area. We reserve the right to take these and other factors into consideration when offering adjustments to the Initial Franchise Fee in the future.

You pay us or our affiliates no other fees or payments for services or goods before your business opens.

**Item 6. Other Fees**

**OTHER FEES**

<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty Fee	6% of Gross Revenue (Note 2)	Due on the 10 <sup>th</sup> day of the month for the prior month	Required of you and will be collected electronically. Royalties are not uniformly imposed for individual franchisees and multi-unit franchises.
National Advertising	2% of Gross Revenue per location per month. (Note 2)	Due on the 10 <sup>th</sup> day of the month for the prior month	Required of you and will be collected electronically.
Advertising Cooperative	Up to 2% of Gross Revenue if implemented in your Area.	As Determined by Cooperative	We reserve the right to implement cooperatives in any metro markets in the future, once 3 franchises are open and operational within a specific Metro Area. Franchisor will have no control on any fees imposed by such franchisee cooperatives. Franchisor-owned outlets in the cooperative area will be required to participate in these cooperatives but will have no control on any fees imposed by the cooperative but would abide by the decision of the majority of the outlets in the cooperative.
Other Marketing	Will vary under circumstances	As incurred	We reserve the right to charge marketing fees for digital platforms such as email, text, and social media expenses. We will not make a profit on these expenses
Initial Training for Additional Persons	\$495 per person per day (Note 3)	As incurred	Training for two persons is included in the Initial Franchise Fee, however, you will be required to pay all travel and living expenses for you and any employees who attend.
Additional Assistance at Your Location	\$1,295 per day (two day minimum) plus travel and living expenses (Note 4)	As incurred	Additional charges only incurred for at-location assistance beyond the initial training.

Type of Fee	Amount	Due Date	Remarks
Conference Fee	\$0 - \$1,500	As incurred	Conferences will be held once yearly. Cost is per person. You will be required to pay all travel and living expenses for you and any employees who attend.
Transfer Fee Single Unit	\$0 - 5,000. (Note 5)	Prior to acceptance of transfer	Payable before you sell your franchise. No fee charged for a one-time transfer from individual(s) to a corporate entity formed for convenience of ownership of the franchise.
Audit	Cost of audit plus 1.5% interest per month on understatement	30 days after billing	We pay all audit costs unless the audit shows an understatement of at least 1% of Gross Revenue for any month.
Interest	1.5% per month	30 days after due date	You must pay interest on late payments in the amount of 1.5% per month (18% annual), or the maximum interest rate allowed by applicable law, whichever is less.
Bank Fees	\$45 NSF, 3% credit card transaction fee	As incurred	You will pay to us a fee of \$45 per occurrence for any transactions not honored by your bank. You will pay to us a 3% transaction fee for any credit card payments, including payments for royalties and other fees or supplies.
Administrative Fee for Non-Compliance	\$200 per occurrence, per each day on non-compliance	As incurred	You will pay to us a fee of \$200 for each infraction of certain non-compliance issues. This fee will be charged per occurrence and per each day of non-compliance.
Administrative Fee for lease assistance	\$200 per occurrence	As incurred	Should you request and should Aqua-Tots provide assistance with your lease or Aqua-Tot's required option to assume the lease, you will pay to Us an Administrative Fee for Lease Assistance of \$200 per occurrence
Franchise Renewal Fee	\$10,000	30 days prior to renewal	Initial franchise term is 10 years. The renewal term is 10 years.

Type of Fee	Amount	Due Date	Remarks
Monthly Software Fee	\$249 to \$349 per month	Due on the 1 <sup>st</sup> day of the month for the prior month	Paid to us in the same manner as the Royalty Fee. The Fee will vary and depends on whether you use our proprietary digital tool with this software, plus tax where applicable
Technology Fee	\$70	Due on the 1 <sup>st</sup> day of the month for the prior month	Paid to us in the same manner as the Royalty Fee. This fee may increase due to upgrades.
Liquidated Damages	Will vary under circumstances	Within 45 days of termination	If we terminate your Franchise Agreement for cause, you must pay us within 45 days after the effective date of termination liquidated damages equal to the average monthly Royalty Fees you paid or owed to us during the 12 months of operation preceding the effective date of termination multiplied by the number of months remaining in the Agreement had it not been terminated.
Costs and Attorneys' Fees	Will vary under circumstances	On demand	If you default under your agreement, you must reimburse us for the expenses we incur (such as attorneys' fees) in enforcing or terminating the agreement.
Indemnification	Will vary under circumstances	On demand	You must reimburse us for the costs we incur if we are sued or held liable for claims that arise from your operation of the Outlet or for costs associated with defending claims that you used the Proprietary Marks in an unauthorized manner.
Computer and Communications Equipment Upgrades and Maintenance	Varies, but usually no more than \$3,000 per year.	As incurred or as agreed	You must purchase upgrades and pay for maintenance for your computer and communications equipment, including upgrades for our proprietary software, when we require you to do so.

Notes:

1. Except as noted, all fees are imposed by and are payable to Aqua-Tots. The fees and costs in this ITEM 6 are not uniformly imposed. All fees are non-refundable.
2. "Gross Revenue" means the total of all revenues derived from services performed or sold by you, whether the receipts are evidenced by cash, credit, checks, gift certificates, scrip, coupons, services, property, or other means of exchange. Gross Revenue excludes only sales tax

receipts that you must by law collect from customers and that you pay to the government, promotional or discount coupons to the extent that you realize no revenue, and employee receipt of services, if free, or any portion not paid for by an employee.

3. Training for you and your Manager is included in the Initial Franchise Fee. Additional charges are applied only if you choose to train more than two people. Training fees can be increased or decreased by us at any time at our discretion. You will be required to pay any travel and living expenses for you and any other person who attends training.

4. We will charge you the Additional Assistance fee only if you require additional assistance at your location. Fees for additional assistance can be increased or decreased by us at any time in our discretion.

5. Transfer Fee. No Transfer Fee is required if you transfer your Outlet to a corporation in which you are the majority stockholder, or if you transfer the Outlet to your child, parent, sibling, or spouse. You must pay a Transfer Fee of \$3,000 if you transfer the Outlet to another franchisee of ours. In all other cases, you must pay a Transfer Fee of \$5,000.

**Item 7. Estimated Initial Investment**

**YOUR ESTIMATED INITIAL INVESTMENT – SINGLE UNIT FRANCHISE**

Type of Expenditure	Amount (Low)	Amount (High)	Method of payment	When due	To whom payment is to be made
Initial Franchise Fee (Note 1)	\$50,000	\$50,000	Lump sum	Upon signing of a Franchise Agreement	Aqua-Tots Swim School Holding LLC
Initial Travel Expenses during Training at Aqua-Tots University (ATU) in Arizona	\$2,000	\$18,000	As incurred your responsibility	During initial training and certification	Airlines, Hotels, Restaurants, etc. up to you
Rent or Real Estate (Note 2)	\$12,000	\$85,000	As determined by Lessor	Prior to opening	Lessor, Us
Pool Design, Build and Aquatic Supplies and Equipment (Note 2)	\$250,000	\$400,000	As determined by Vendors	Prior to opening or as arranged with Vendors	Vendors
Tenant Improvements (Note 2)	\$1,200,000	\$1,800,000	As determined by Vendors	Prior to opening or as arranged with Vendors	Vendors
Miscellaneous Opening Costs (Note 3)	\$6,000	\$19,500	As incurred	Prior to opening	Suppliers, Utilities, etc.
Computers, Color Printer and Copier (Note 4)	\$5,000	\$15,000	As determined by Vendors	Prior to opening or as arranged with Vendors	Vendors
Signage	\$15,000	\$60,000	As determined by Vendors	Prior to opening or as arranged with Vendors	Vendors

Type of Expenditure	Amount (Low)	Amount (High)	Method of payment	When due	To whom payment is to be made
Opening Inventory (Note 5)	\$9,000	\$18,800	As incurred	Prior to opening	Approved Suppliers
Advertising (3 mos) (Note 6)	\$26,000	\$45,000	As incurred	Prior to opening and during first three months	Rack Card Distribution Service and Media
Aqua-Tots Swim Schools Proprietary Software (Note 7)	\$1,595	\$2,514	As incurred	1 <sup>st</sup> of every month	Aqua-Tots Swim School Holding LLC
Insurance	\$2,500	\$10,500	As determined by Insurance Companies	Prior to opening or as arranged with Insurance Company	Independent Insurance Agent and/or company
Additional Funds for Initial three (3) Months (Note 8)	\$40,000	\$115,000	As incurred	As incurred	Employees, Suppliers, Utilities
<b>TOTALS (Note 9)</b>	<b>\$1,619,095</b>	<b>\$2,639,314</b>			

Notes: The above Chart describes the estimated initial investment for a single Aqua-Tots Swim School outlet whether it is a single franchise unit under our Single Unit Franchise Program or a MUD Unit under our Multi-Development Program. The foregoing expenses are merely estimates. You are encouraged to make an independent investigation and analysis of the potential expenses which may be incurred in order to start your Store. These estimates do not include the cost of acquiring real estate or constructing a building.

1. Aqua-Tots will approve or decline your application within 45 days of our receipt of your completed application. Your Franchise Fee will be due upon signing the Franchise Agreement. We will not refund the Initial Franchise Fee under any circumstances. Neither Aqua-Tots, nor any affiliate or agent finances any fee. All other fees are generally non-refundable.
2. If you do not own adequate property, you will be required to lease or purchase a property for your indoor Aqua-Tots Swim School facility within 9 months of signing your franchise agreement. If we determine that you are not making commercially reasonable efforts to lease or purchase a suitable location by the end of the ninth (9th) month after signing a Franchise Agreement, we may terminate the Franchise Agreement and retain all monies received. You will still be liable for all non-competition and non-disclosure provisions. You must exercise exclusive control over the property in which you will operate your swim school. The location you choose will be an important decision for maximizing service options to communities near your facility. Aqua-Tots Swim School is a destination business and clients will search through many venues to locate your facility to meet their needs. Swim school industry data and market research shows that some of the largest swim schools in the country are not in retail strip malls but are in industrial parks or commercially zoned locations. Typical locations for swim schools are commercial centers or commercial streets with moderate traffic. The minimum Aqua-Tots Swim School is 5,500 square feet. You may not operate your swim school out of a residential pool. The terms and conditions of all agreements relating to the purchase, lease, and alteration of the property will be negotiated solely by you. Should you request and should Aqua-Tots provide

assistance with your lease or your purchase of real estate, you will pay to Us an Administrative Fee for Lease Assistance of \$200 per occurrence, (See Attachment V to the FA).

3. Includes other deposits, utility costs, telephone, Internet, and communications costs and incorporation fees.
4. Aqua-Tots requires you to purchase a Computer System and color printer and we require that you meet certain minimum standards established periodically in the Manual.
5. You will be required to purchase uniforms and teaching equipment as well as other miscellaneous office supplies and inventory for a small retail line.
6. You will be required to spend between \$26,000 and \$45,000 prior to opening and during the first three months of operation on local advertising and marketing in your territory. You are also required to pay 2% of your monthly gross revenue to the National Marketing Fund.
7. You are required to use Pike 13 as your software program. The cost of this program is between \$249 and \$349, and depends on whether you use our proprietary digital tool with this software, plus tax where applicable, per month, and is payable to Us. You must also pay to Us a Technology Fee of \$70 per month. You will begin utilizing the software between 2 and 3 months prior to opening, and as such will be billed prior to opening for software and Technology Fee. This chart shows your estimated costs for the 2 to 3 months prior to opening. Additional cost for the Initial 3 months is included in this estimate.
8. You must maintain insurance policies in amounts specified by Aqua-Tots Swim School Holding LLC. Insurance coverage must include general liability, combined single limit, bodily injury and property damage insurance for premises operations, products liability, and all other occurrences against claims of any person, employee, customer, agent, or otherwise.
9. This estimates your initial startup expenses for an initial three-month period, not including payroll costs, and does not include any revenue generated by the operation of your business. These figures are estimates and we cannot guarantee that you will not have additional expenses starting your Business. Your expenses will depend on factors such as your management skill, experience and business acumen, local economic conditions (e.g., the local market for our services), the prevailing wage rate, competition and the sales level reached during the initial period.
10. We relied on over 30 years of experience in the swim school business to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. We do not provide financing arrangements. If you obtain financing from others to pay for some of the expenditures necessary to establish and operate the franchise, the cost of financing will depend on your creditworthiness, collateral, lending policies, financial condition of the lender, regulatory environment, and other factors.

**YOUR ESTIMATED INITIAL INVESTMENT – MULTI-UNIT DEVELOPMENT AGREEMENT**

<b>Type of Expenditure</b>	<b>Amount (Low) – (High)</b>	<b>Method of payment</b>	<b>When due</b>	<b>To whom payment is to be made</b>
Multi-Unit Development Fee (Note 1)	\$68,750 - \$162,500	Lump sum	Upon signing First Franchise Agreement and MUDA	Us
Estimated Initial Investment for 1st Unit (Note 2)	\$1,569,095 - \$2,589,314	As indicated in Item 7 chart above	As indicated in Item 7 chart above	As indicated in Item 7 chart above

Type of Expenditure	Amount (Low) – (High)	Method of payment	When due	To whom payment is to be made
TOTALS (Note 3)	\$1,637,845 - \$2,751,814			

Notes:

1. Upon signing the MUDA, you must pay us the MUD Fee which consists of \$50,000 of the Initial Franchise Fee for your first Unit plus 50% of the discounted Franchise Fee \$18,750 for each subsequent Unit you agree to develop. The example above assumes that you commit to develop a minimum of 2 Units and a maximum of 6 Units, however, as long as you and we agree, you are not limited as to how many Units you may purchase. The remaining balance of the MUD Fee will be paid to us as explained in more detail at Item 5. The MUD Fee is non-refundable.
2. For each Unit you agree to open under the MUDA, you will sign a separate Franchise Agreement and you will incur the estimated expenses in the first chart above, except your Franchise Fee for subsequent Units will be the amount explained in Note 1, immediately above and in Item 5.
3. The Total Estimated Initial Investment for the MUDA includes the Development Fee you must pay at the time you enter into the MUDA as well as estimated range of fees you will incur to open and operate your first Unit for a period of three (3) months. This chart does not include the cost to open and operate additional units purchased under the MUDA.

**Item 8. Restrictions on Sources of Products and Services**

**General**

We require that you establish and operate your franchised swim school in compliance with your Franchise Agreement. You must strictly follow our service specifications as noted in the Aqua-Tots Swim Schools Operations Manual and other written materials from us (collectively, the “Manual”) we provide to you and which we may modify from time to time. Format may be print or electronic. We reserve the right to require you to use an electronic version of the Manual and to require you to access the document using the Internet or an intranet created and supported by us. Our standards and specifications have been prescribed in order to maintain a uniform standard of high quality, value, customer recognition, advertising support and availability to be furnished to the public in connection with our Marks. In operating the swim school, all services must conform to our standards and specifications, which have been established through years of experience. In the future, we may modify our service specifications.

**Required Purchases**

You must purchase employee uniforms and teaching equipment as well as our proprietary software used in the operation of your franchise from our approved or designated suppliers or us. Currently, you pay the monthly software fee and technology fee directly to Us. Aqua-Tots has established special pricing packages with designated suppliers for you to use for purchase of other goods, services and equipment. All retail products must be purchased from an Aqua-Tots approved vendor or designated supplier on our approved vendor list. We estimate that the cost of these required purchases from designated or approved suppliers represents approximately 20% to 30% of your total purchases made in accordance with standards and specifications in the

establishment of your business, and between 10% and 15% of your ongoing operation expenses of your business. In the fiscal year ending December 31, 2023, we received \$642,048 from these required purchases, which represents 4% of our total revenues of \$16,248,567. The \$642,048 represents the total collected for Pike 13 and Tech fee in 2023, of this \$555,940 was a pay through expense.

### **Required Vendors:**

Software: Pike 13, 1221 E Pike St., Suite 200, Seattle, WA 98122. 855-416-7120. You are required to utilize this software; however, payments will be made directly to Us.

Currently, other than the required software and technology fees, we do not receive any rebates or income from Franchisees' required purchases from designated and approved suppliers, but we reserve the right to do so in the future. This income will serve to partially reimburse us for our costs in the initial sourcing, approval and ongoing monitoring of compliance with our quality standards by our suppliers, but we may receive income in excess of our cost to source, approve and monitor suppliers. In the fiscal year ending December 31, 2023, neither we nor our affiliate(s) derived revenue or other material consideration as a result of required purchases or leases made by our Franchisees.

Other than as described above, there are no approved suppliers in which any of our officers or affiliate(s) owns an interest.

### **Approval of Suppliers**

If you would like to purchase these items from another supplier, you may request to do so. Based on the information and samples you supply to us, we will test the items supplied and review the proposed supplier's business reputation, delivery performance, credit rating and other information. There is no cost to you for this review. We expect to complete our review and advise you of our decision within 30 days after you submit the required information. The specifications and standards for these required purchases are in the Manual. We reserve the right to disapprove any previously approved vendor whose performance falls below our standards. We will make any approvals of new vendors or revoke approval of vendors in writing based on the vendor's credit worthiness, delivery standards, and cost and will incorporate our decision in the Manual. The specifications and standards for these required purchases are in the Manual.

We do not have any purchasing or distribution cooperatives as of the date of this Disclosure Document. We may negotiate purchase arrangements with other suppliers and distributors for the benefit of our Franchisees in the future and we may receive rebates or volume discounts from our purchase of products that we resell to you. We do not provide or withhold material benefits to you (such as renewal rights or the right to open additional Outlets) based on whether or not you purchase through the sources we designate or approve; however, purchases of unapproved products from unapproved suppliers in violation of the Franchise Agreement will entitle us, among other things, to terminate the Franchise Agreement.

## **Computer Equipment**

A computer system is part of the standard equipment necessary to open your franchise swim school. We do not currently require you to purchase any particular brand of computer to establish or operate the Business, but we do specify the standards for computer and communication equipment and Internet access. The computer is to be purchased from an independent vendor or supplier. We reserve the right to require specific computer hardware or software and other communications equipment and to specify additional computer-related and communications standards in the future. Currently, you are required to use the Pike 13 web-based software in the operation of your Business. You will also be required to utilize a basic accounting software program of your choosing.

## **Leases**

You must obtain Aqua-Tots prior written approval of your proposed business site. Aqua-Tots requires you to include certain provisions in your lease (See Attachment V to the FA).

## **Insurance**

Before you open an Outlet for operation, you must obtain the insurance coverage for the Outlet as specified below, provided that the types, amounts, and terms of coverage are subject to adjustment from time to time by us, in our sole discretion. The insurance coverage must be maintained during the term of the Franchise Agreement and provide evidence of insurance to us that insurance has been obtained from a responsible carrier or carriers acceptable to us.

All insurance coverage shall be taken out in your name and shall name us an additional insured and be placed with insurers designated by us or acceptable by us. You must furnish us with certified copies of each of the insurance policies described above on the earlier of your opening of the business or thirty (30) days following the date that the Franchise Agreement is executed. You must purchase "A" rating insurance policies. Each such policy shall provide that it cannot be canceled without thirty (30) days prior written notice to us and that we shall receive at least thirty (30) days prior written notice of its expiration. You shall promptly refer all claims or potential claims against you or against us to your insurer and to us.

- A. Workers' compensation insurance in amounts prescribed by law in your territory;
- B. Fire and lightening, extended coverage, theft, vandalism and malicious mischief, flood (if the Swim School is in a Designated Flood Hazard Area), and sprinkler leakage insurance on the Swim School and all fixtures, equipment, supplies and other property used in the operation of the swim school, for not less than 100% of the replacement value of the same, except that an appropriate deductible clause will be permitted;
- C. Comprehensive general liability insurance and product liability insurance coverage in such amounts and upon such terms as may from time to time be customary for a swim instruction business located in your Territory, but not less than \$1,000,000, insuring both you and Aqua-Tots against all claims, suits, obligations, liabilities and damage, including attorneys' fees, based upon or arising out of actual or alleged personal injuries or property damage relating to the use or condition of the Swim School; and

D. Such additional insurance as may be required by the terms of any lease or mortgage for the Swim School.

**Item 9. Franchisee's Obligations**

**FRANCHISEE'S OBLIGATIONS**

**This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.**

	<b>Obligation</b>	<b>Section in Franchise Agreement</b>	<b>Section in MUD Agreement</b>	<b>ITEM in Disclosure Document</b>
A	Site selection and acquisition/lease if any	Sections 8.02 & 10.02, 10.03, Attachment V	Not Applicable	ITEM 11
B	Pre-opening purchases/leases	Sections 10.02, 10.03 & 12.06, Attachment V	Not Applicable	ITEM 11
C	Site development and other pre-opening requirements	Sections 10 & 12	Sections I-A, V-A and Attachment A	ITEM 11
D	Initial and ongoing training	Sections 8.04 & 8.05	Not Applicable	ITEM 11
E	Opening	Section 8.06	Not Applicable	ITEM 11
F	Fees	Section 5	Section IV	ITEM 5, 6, & 7
G	Compliance with standards and policies/Manual	Section 7.04, 12.02, 12.03	Not Applicable	ITEM 11
H	Trademarks and proprietary information	Section 6 & 7	Not Applicable	ITEM 13 & 14
I	Restrictions on Services offered	Sections 8.03, 12.06	Not Applicable	ITEM 8 & 16
J	Warranty and customer service requirements	Not Applicable	Not Applicable	Not Applicable
K	Territorial development and sales quotas	Section 4 and Attachment I	Section II	ITEM 11 & 12
L	Ongoing product and service purchases	Section 12	Not Applicable	ITEM 8 & 16
M	Maintenance, appearance and remodeling requirements	Sections 10.01, 10.04 12.02, 12.03	Not Applicable	Not Applicable
N	Insurance	Section 12.08	Not Applicable	ITEM 8
O	Advertising	Section 9	Not Applicable	ITEM 11
P	Indemnification	Section 12.14	Not Applicable	ITEM 6
Q	Owner's participation/management staffing	Sections 12.04	Not Applicable	ITEM 15
R	Records/reports	Sections 7 & 11	Not Applicable	Not Applicable
S	Inspection/audits	Section 11	Not Applicable	ITEM 6

	<b>Obligation</b>	<b>Section in Franchise Agreement</b>	<b>Section in MUD Agreement</b>	<b>ITEM in Disclosure Document</b>
T	Transfer	Section 14	Not Applicable	ITEM 17
U	Renewal	Section 3	Not Applicable	ITEM 17
V	Post-termination obligations	Sections 13.03, 13.04	Not Applicable	ITEM 17
W	Non-competition covenants	Sections 7.05, 15.01	Not Applicable	ITEM 17
X	Dispute resolution	Section 16	Section 18	ITEM 17
Y	Other	Not Applicable	Not Applicable	Not Applicable

**Item 10. Financing**

Neither Aqua-Tots, nor any agent or affiliate of ours, offers direct or indirect financing. We do not guarantee your note, lease, or obligation.

**Item 11. Franchisor's Assistance, Advertising, Computer Systems and Training**

**Except as listed below, we are not required to provide you with any assistance.**

**Before you begin your Business, we will:**

1. Upon signing the Franchise Agreement, Aqua-Tots will designate your Territory in writing. We will also approve, if it meets our standards and specifications for approval, the location selected solely by you to be used for the operation of the Swim School within 30 days of selection. (See Sections 4, 8.02 and 10 of the Franchise Agreement).
  
2. Aqua-Tots will provide you with access to a digital copy of our confidential operating Manual, which contains mandatory and suggested specifications, standards, strategies, operating procedures and rules. The Manual is confidential and remains our property. We may modify the Manual from time to time, but the modification will not alter your status and rights under the Franchise Agreement. (See Section 7.04 of the Franchise Agreement). We have included a copy of the Table of Contents of our Manual as of April 15, 2024, as Exhibit D to this Franchise Disclosure Document. The Manual contains 370 pages.
  
3. Aqua-Tots will provide advice about selecting and analyzing a site for your swim school. During the first 9 months after signing your Franchise Agreement, you must make what we determine to be a commercially reasonable effort to obtain a suitable location for your Aqua-Tots Swim School. You may not operate your swim school out of a residential pool. Your site must be at least 5,500 square feet. Site selection is your responsibility, but we will assist you in the location selection process by considering population density, traffic patterns, and proximity of the proposed site to other Aqua-Tots Swim Schools or any other reasonable criteria. Aqua-Tots must approve or disapprove your site within 30 days after we receive notice of the location from you. If Aqua-Tots does not approve your proposed site, you must continue to submit sites until we approve a site, our approval will not be unreasonably withheld. Aqua-Tots will give you an

evaluation of each location within 30 days of submission. The franchise agreement cannot be terminated due to failure to agree on site selection however, if we determine that you are not making a commercially reasonable effort to lease or purchase a suitable location by the end of the ninth (9th) month after signing a Franchise Agreement, we may terminate the Franchise Agreement and retain all monies received. You will still be liable for all non-competition and non-disclosure provisions. (See Section 10.02 of the Franchise Agreement).

4. Upon request and should Aqua-Tots provide assistance with the lease or your purchase of real estate from independent third parties, you will pay to Us an Administrative Fee for Lease Assistance of \$200 per occurrence. The terms and conditions of all agreements relating to the purchase, lease, and alteration of the property will be negotiated solely by you; however, Aqua-Tots requires you to include certain provisions in your lease. (See Sections 10.02 and 10.03 and Attachment V of the Franchise Agreement).

5. Aqua-Tots will approve, if it meets our standards and specifications for approval, plans submitted by you for the design of your swim school. You should be able to open your Outlet within twelve (12) to fifteen (15) months after you sign a Franchise Agreement. The factors that affect this time frame include, but are not limited to, purchasing a building or securing a building lease, securing general business permits, training, financing, zoning and local ordinances, weather conditions, shortages, and installation of fixtures and signs. If we determine that you do not make commercially reasonable efforts to open your location by the end of the twenty-fourth (24<sup>th</sup>) month after signing a Franchise Agreement, we may terminate the Franchise Agreement and retain all monies received. You will still be liable for all non-competition and non-disclosure provisions. (See Section 8.06 of the Franchise Agreement.)

6. You may not operate your swim school out of a residential pool. Construction or remodeling, if needed, should begin as soon as possible after obtaining your location. You must exercise exclusive control over the property in which you will operate your swim school. We will assist in the development and planning of any construction or remodeling with respect to sign specification and colors and swimming school layout and design. You will be responsible to conform the premises to local laws and ordinances and building codes and obtaining any permits. You must pay for all construction or remodeling and all other costs associated with compliance and permits. (See Section 10 of the Franchise Agreement)

7. Within 90 days of your signing the Franchise Agreement, or any other time as may be mutually agreed upon, train you and your designated Manager as follows:

**TRAINING PROGRAM**

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
E-Learning: Front Desk Training Chapters 1-8 (AT-FDS)	Minimum 6 hours	None	Online/Virtual
E-Learning: All Staff Foundations	Minimum 1 hour	None	Online/Virtual
E-Learning: AT-WSI Basic Training	Minimum 8 hours	None	Online/Virtual

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
E-Learning: Corporate Identity and Marketing Manuals	Minimum 1 hour	None	Online/Virtual
	<i>Minimum of 16 hours</i>		
<b>FRANCHISE OWNER TRAINING</b>			
Introduction to Franchise System and Your Role as the Owner	Minimum 3 Hours	None	Mesa, AZ
New School Construction and Launch Process	Minimum 2 Hours	None	Mesa, AZ
Aquatic Operations and AT-WSI program	Minimum 6 Hours	None	Mesa, AZ
Front Desk Operations and Customer Service	Minimum 8 Hours	None	Mesa, AZ
Marketing, Advertising and Customer Acquisition	Minimum 8 Hours	None	Mesa, AZ
Business Accounting Systems, Setup Procedures, and Reporting Requirements	Minimum 1 Hour	None	Mesa, AZ
Human Resources, Risk Management and School Culture	Minimum 2 Hours	None	Mesa, AZ
In-School Aquatic Observation	Minimum 2 Hours	None	Mesa, AZ
In-School Front Desk Observation	Minimum 2 Hours	None	Mesa, AZ
	<i>Minimum 34 hours</i>		
<b>IN-SCHOOL TRAINING</b>			
General Manager/Front Desk Certification			
• Sales – phone and in person	None	Minimum 8 hours	Mesa, AZ
• Daily/weekly/monthly reporting	None	Minimum 4 hours	Mesa, AZ
• Customer Service	None	Minimum 12 hours	Mesa, AZ
• Facility Maintenance	None	Minimum 2 hours	Mesa, AZ
• Hiring and training	None	Minimum 4 hours	Mesa, AZ
• Opening and Closing the school	None	Minimum 4 hours	Mesa, AZ
• Merchandising and supplies	None	Minimum 2 hours	Mesa, AZ
• Assessing your team	None	Minimum 4 hours	Mesa, AZ
		<i>Minimum 52 hours</i>	
Aquatic Manager/AT-Water Safety Instructor Certification			
• Aquatic Operations	None	Minimum 8 hours	Mesa, AZ

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
• Parent Communication	None	Minimum 2 hours	Mesa, AZ
• Daily/weekly/monthly reporting	None	Minimum 2 hours	Mesa, AZ
• Scheduling	None	Minimum 4 hours	Mesa, AZ
• Pool Maintenance	None	Minimum 2 hours	Mesa, AZ
• In-Water Skills Education Levels 1-6	None	Minimum 9 hours	Mesa, AZ
• Co-Teaching	None	Minimum 27 hours	Mesa, AZ
• Assessing your team	None	Minimum 2 hours	Mesa, AZ
• Plan, Prep and Conduct In-Services	None	Minimum 4 hours	Mesa, AZ
		<i>Minimum 56 hours</i>	
<b>TOTALS</b>	<b>Minimum of 50 Hours</b>	<b>Minimum of 108 Hours</b>	

Our training staff will be headed by Jonathan Martin, April Caiola and Christina Svendsen who have more than 21 years combined experience in various capacities relating to the operation, management and promotional procedures of an Aqua-Tots Swim School. Individually, Mr. Martin has 5 years, Mrs. Caiola has 7 years and Ms. Svendsen has 9 years' experience relating to the operation of an Aqua-Tots Swim School. We will include other trainers from the Headquarters staff to assist in areas of the training. You will receive online access to a complete resource kit with associated reproducible forms on the above topics (See Section 8.04 of the Franchise Agreement)

You and your designated Manager must attend the entire Initial Training, consisting of both classroom training and virtual reality training, but we do not charge an additional fee for this training or service unless more than two persons are attending. The current charge for additional training is \$495 per person per day. Training fees can be increased or decreased by us at any time at our discretion. You will, however, be required to pay the travel and living expenses for you, your designated Manager, and any other persons who attend. The initial franchise training course will be held by virtual reality, as well as by your personal attendance at the Aqua-Tots University (ATU) in Mesa, Arizona, or at another designated location that we may select. The entire comprehensive training usually lasts for approximately four (4) weeks and averages eight (8) hours per day. The duration of your training program may vary depending upon your previous work experience. You and your designated manager must complete this training to our satisfaction or repeat the training, at no cost. After satisfactorily completing this initial training, there are no mandatory initial training requirements. The training program will be conducted as often as necessary to enable each franchisee to complete training prior to opening for business.

8. We may also provide to you, on-site initial training at your swim school and assistance with respect to opening activities within the first four to eight weeks of the operation of your swim school at an additional cost to you. (See Section 8.06 of the Franchise Agreement)

**During the operation of the franchised business, we will:**

1. Research new services and methods of doing business and provide you with information concerning developments of this research. (See Section 8.09 of the Franchise Agreement). Upon request, we may also provide assistance in establishing prices for your outlet.

2. Offer you a reasonable amount of continuing advisory services by telephone during normal business hours. We may also provide to you visits by our franchise support staff, but there is a fee associated with any additional on-site consultation or advisory services you request. (See Sections 5.11, 8.04 and 8.07 of the Franchise Agreement).

3. We will include information about your Swim School on our Website. (See Section 8.11 of the Franchise Agreement).

4. We may implement a centralized purchasing system for you and negotiate prices and terms with suppliers. We may receive rebates from the suppliers for these purchases. We reserve the right to use these funds in our sole discretion. (See Section 8.10 of the Franchise Agreement).

5. We may hold periodic regional or national conferences to discuss on-going changes in the industry, operational techniques, product and service developments, personnel training, bookkeeping, accounting, advertising programs and new service procedures. You may be required to attend these conferences. We currently hold an annual conference; however, it is not mandatory, but we may require you to pay a conference fee of up to \$1,500 per person attending, which may increase in the future, plus travel and living expenses. These conferences will be held at our corporate headquarters or at another location chosen by us. We estimate the cost of the travel and living expenses to attend the conferences to be between \$500 and \$1,500. We may provide other conferences from time to time, and we reserve the right to require you to attend and to pay a conference fee for these additional conferences based upon the direct costs to us of retaining speakers and other expenses associated with the conference, but we currently estimate this cost to be no more than \$1,500 per person, but it may increase in the future. You must pay all of the travel and living expenses for you and any other employees who attend. We will not receive any net income from these conferences. (See Section 8.05 of the Franchise Agreement).

6. We will provide all artwork for advertising and promotional materials to you in a digital format. Materials provided may include multimedia, print-ready advertising materials, posters, banners, and miscellaneous items. We do not charge a fee for this artwork however, you are responsible for all charges incurred for print and publication of this artwork (See Section 9.03 of the Franchise Agreement)

7. You may develop advertising materials for your own use, at your own cost. Your materials cannot be used without prior written approval from us. We must notify you of approval or rejection of your advertising materials in writing within fifteen days of receipt. We reserve the right to utilize advertising developed by you for the use of all Franchisees without any payment or other compensation to you. (See Section 9.03 of the Franchise Agreement).

8. We may implement additional marketing programs in which we may charge fees to you for digital platforms such as email, text, and social media expenses. We will charge you at our cost for these programs. These programs will be in addition to any local, regional, national or cooperative programs already in place.

9. You may not advertise independently on the World Wide Web or outside your territory without prior written consent from Franchisor. (See Section 9.02 of the Franchise Agreement)

### **Computer Equipment**

We do not currently require you to purchase any particular brand of computer to establish or operate the Business, but we do specify the standards for computer and communication equipment and Internet access. You will be required to use the Aqua-Tots preferred software program in the operation of your Aqua-Tots Swim School. The minimum requirement to run the software is Windows / OS X / macOS with 8GB of RAM. This hardware may be obtained from a computer independent computer vendor or supplier. You will also need to utilize basic accounting software. We do not currently specify the vendor for the accounting software. We estimate the cost of the required computer equipment and accounting software to cost between \$5,000 and \$15,000, which include the purchase of a color copier and printer. We reserve the right to specify computer hardware or software and to specify other computer-related standards in the future. You must have access to the Internet and have an Aqua-Tots approved electronic mail address. You must periodically check your electronic mailbox and the portion of our Web Site devoted to franchise owners.

You must use our required software program, Pike 13; you will make payments for this software directly to us. The software is Internet based and will cost between \$249 and \$349 per month and depends on whether you use our proprietary digital tool with this software. You are also required to pay to us a monthly Technology Fee of \$70. You will begin using this software between 2 and 3 months prior to opening. You may be required to pay applicable sales tax.

The software has the capability to produce, and Aqua-Tots will collect, daily business operations reports, cash summaries and a customer database. Aqua-Tots has the contractual right to poll the necessary data from your computer, but as a practical matter would be unable to do so without your cooperation. Aqua-Tots will not have the right to access other types of data on your computer and does not have the ability to access it independently.

You may be required to upgrade your hardware and/or software in order to utilize the computerized system as technological advances require. You will be responsible for the cost of such upgrades. You will not be required to upgrade your hardware or software more often than once a year and we estimate that the cost to upgrade will be no more than \$3,000 based on

current market pricing, this may increase and is out of the Franchisor's control. (See Section 12.14 of the Franchise Agreement).

You are solely responsible for protecting yourself from viruses, computer hackers and other communications and computer-related problems. You agree not to hold Aqua-Tots liable for any harm caused by computer-related problems. You must also take reasonable steps to verify that any person or entity upon whom you rely on is reasonably protected. This may include establishing firewalls, access code protection, anti-virus systems and use of backup systems. (See Section 12.15 of the Franchise Agreement).

## **Advertising Programs**

### **Local**

You will be required to spend between \$26,000 and \$45,000 on local advertising and marketing in your territory prior to opening and during your first three months of operation. (See Section 9.02 of the Franchise Agreement).

### **Regional Advertising Cooperative**

We have the right to require that advertising cooperatives be formed, changed, dissolved or merged. Currently, there are no advertising cooperatives in effect; however, we reserve the right to require that a Cooperative be implemented in an area which may include your Franchise in the future, once 3 franchises are open and operational, within a specific Metro Area, and, once implemented, you will be required to participate in an amount not to exceed 2% of your Gross Revenue. Aqua-Tots will collect any of these fees, but they will be held in a separate bank account formed by the Cooperative. The Cooperative is responsible for the management of the funds and may require showing the marketing expenditures to the franchisor quarterly. Any contributions made to an Advertising Cooperative will be in addition to any contributions due to the National Marketing Fund. You will have the first right to provide services which are mandatory elements of the System to any customers within your Territory (if applicable). Areas for Advertising cooperatives shall be those Designated Marketing Areas (DMA) defined by the Franchisor in given markets. We do not administer any cooperatives; however, we have the right to provide advice and/or direction for your marketing. Each Cooperative will operate from a written set of By-Laws, and hold periodic meetings, to which a representative from Aqua-Tots Swim School Holding LLC may attend. Following the close of each fiscal year, Franchisor requires an audit of the Co-op's books and records. Such reports of audits are to be presented to Aqua-Tots Swim School Holding LLC by January 15 for the preceding year and are to be presented to the members of the Co-op at the next scheduled meeting. The Treasurer shall prepare a quarterly and year-end financial statement to be filed with Aqua-Tots Swim School Holding LLC. We also reserve the right to issue mandatory policies to coordinate such marketing programs. Franchisor-owned outlets in the cooperative area will be required to participate in these cooperatives but will have no control on any fees imposed by the cooperative but would abide by the decision of the majority of the outlets in the cooperative. (See Sections 9.01 & 9.04 of the Franchise Agreement)

## **National**

You will be required to participate in National Advertising Program. You will be required to pay to us a contribution to the national advertising fund (“National Marketing Fund”) in an amount equal to 2% of your Gross Revenue per location in USD on the 10<sup>th</sup> day of each month for the preceding calendar month and in the manner as the Royalty Fee. These fees will be imposed in addition to any local or regional advertising requirement. We will hold the National Marketing Fund in a bank account of our choosing, including our corporate account, and it will be administered by Aqua-Tots’ marketing and accounting staff. All company-owned Aqua-Tots Swim Schools will be required to contribute to the National Fund on the same basis as you. We will use the National Marketing Fund for local, regional, national, or international advertising, marketing or development programs, including maintenance, related expenses and/or agency costs of such programs. These programs may include, but are not limited to, the internet, e-commerce, any media format, telemarketing or other marketing vehicles which target customers or potential customers, including those customers inside Franchisee’s Territory. Aqua-Tots will not derive income from the fund, but we may reimburse our administrative expenses incurred in administering the National Marketing Fund. We may also use the funds to offset or partially rebate the local media and printing expenses. Advertising expenditures may or may not be proportionate to your contributions or provide direct benefit to you or any other Franchisee. We are not required to spend any amount on advertising in your particular territory. We will spend the National Marketing Fund at our discretion, and we have no fiduciary duty to you regarding the National Marketing Fund. We may accumulate these funds and the balance may be carried over to subsequent years. If the National Marketing Fund operates at a deficit or requires additional funds at any time, we reserve the right to loan such funds to the National Marketing Fund on any terms we determine. Franchisor will provide an unaudited financial statement of the NMF for the previous year to Franchisees, upon request, as the financial statements are prepared and available, and in any event no later than the Franchisor’s annual conference. We are not required to have any Fund statement audited, but if we choose to have the Fund audited it will be at the Fund’s expense. (See Section 9.05 of the Franchise Agreement).

These Advertising funds will be used to promote the services provided by franchisees and may, in the future, be used to solicit the sale of franchises. Any advertising funds not spent in the fiscal year in which they accrue will be carried over to the next year.

In the fiscal year ending December 31, 2023, the National Marketing Fund spent 97% on advertising and 3% on administration expenses.

There are restrictions on your advertising. The fund focuses on new customer acquisition, branding, management tools, digital health, franchise training, and reporting results. We must approve all advertising materials in advance of use. Franchisor will respond in writing within fifteen days from receipt of request.

## **National Marketing Committee**

We have instituted a National Marketing Committee (NMC) and we periodically meet with the Committee to seek its input. Members of the NMC are and will be selected by us among existing Franchisees. We will give due consideration to all input from the Committee, but we

retain the ultimate decision-making authority and responsibility for all of these matters. (See Section 9.06 of the Franchise Agreement).

### **Other Advertising Programs**

We may implement additional marketing programs in which we may charge fees to you for digital platforms such as email, text, and social media expenses. We will charge you at our cost for these programs and will not make any profit. These programs will be in addition to any local, regional, national or cooperative programs that may already in place. (See Section 9.07 of the Franchise Agreement).

### **Schedule for Opening**

It is estimated that the length of time between the signing of the Franchise Agreement and obtaining a lease or purchasing a location for your Business will be six (6) to twelve (12) months but must be no later than twelve (12) months without prior approval from Aqua-Tots, or we may terminate the Agreement. Factors affecting this length of time include financing arrangements and property lease terms. We expect you to be open for business within twelve (12) to fifteen (15) months after signing your Franchise Agreement, but no later than twenty-four (24) months without prior approval from Aqua-Tots, or we may terminate the Agreement. Factors affecting this length of time include obtaining permits, construction or conversion requirements and availability of materials needed for construction or conversion. (See Section 10.01 of the Franchise Agreement).

## **Item 12. Territory**

### **Franchise Agreement**

You will receive a Territory ("Territory") that we will negotiate with you and that will be specified in the Franchise Agreement. You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. We base our negotiations on factors that include the population density, medium income levels and other potential factors, and our future development plans. The boundaries of your Territory may also be determined by streets, highways, map coordinates, or any other criteria we deem appropriate. As long as you are not in default of your Franchise Agreement, neither Aqua-Tots, nor any affiliate, will operate, through our current or different trademarks, any Aqua-Tots Swim School nor grant franchises for a similar or competitive business to be located within your Territory, but we have the right to do so anywhere outside your Territory. Once established, and unless otherwise agreed to in writing, the boundaries of your Territory will not be adjusted during the initial term of your franchise agreement. However, we reserve the right to adjust the boundaries of your territory upon the renewal or extension of the initial term.

You will operate your swim school business from a location accepted by us. We may grant approval to relocate if you are in compliance with the Franchise Agreement, you have paid all

money owed to us and/or our affiliates, and the proposed location meets our site selection criteria as specified in the Manual.

You are responsible for proposing a suitable site for your swim school and submitting the proposed site for our acceptance. We will evaluate and either accept or reject your proposed site within 30 days after we receive notice of the location from you. If you and Aqua-Tots do not agree on a proposed site, then you must continue to submit proposed sites until Aqua-Tots accepts a proposed site, such acceptance will not be unreasonably withheld. The Franchise Agreement cannot be terminated due to failure to agree on site selection; however, if we determine that you are not making a commercially reasonable effort to lease or purchase a suitable location by the end of the ninth (9th) month after signing a Franchise Agreement, we may terminate the Franchise Agreement and retain all monies received. You will still be liable for all non-competition and non-disclosure provisions. In addition, if we determine that you are not making commercially reasonable efforts to open your Franchised Unit to the public by the end of the twenty-fourth (24th) month after signing a Franchise Agreement, we may terminate the Franchise Agreement and retain all monies received. You will still be liable for all non-competition and non-disclosure provisions. You may not advertise in any media with a primary circulation outside your Territory without Franchisor's prior written consent and approval.

You may not advertise independently on, the Internet or World Wide Web without Franchisor's prior written consent and approval. We will maintain all Aqua-Tots Swim Schools web pages and other digital spaces. We will include information regarding your Swim School on our web pages. Franchisor reserves the right to own all webpages, and other digital spaces using our Marks.

There is no minimum sales quota or minimum royalty fee. However, failure to pay the royalties is a material breach of the Franchise Agreement and may result in termination.

You do not have the right to acquire additional franchises within your area or any contiguous area by this agreement alone. Each Franchise Agreement is a separate and distinct transaction between you and us. We intend to develop a strong system of multi-unit owners. You are encouraged to purchase franchise rights to operate additional locations within or outside your local trade area. You do not receive any rights to use any other channel of distribution for our products or services without our written consent.

If we engage in electronic commerce through any Internet, World Wide Web or other computer network site or sell through any other alternative distribution channel, and we receive orders for any System products or services calling for service or performance in your Territory, then we will offer the order to you at the price we establish. If you choose not to fulfill the order or are unable to do so, then we, one of our affiliates or a third party we designate (including another franchisee) may fulfill the order, and you will be entitled to no compensation in connection with this order.

We reserve the right, among others:

1. to own, franchise, or operate Franchises at any location outside of existing Territories regardless of the proximity to your Franchise;

2. to use the Marks and the System to sell any services, similar to those which you will sell, through any alternative channels of distribution within or outside of existing Territories;
3. to purchase or be purchased by, or merge or combine with, any businesses, including a business that competes directly with your Franchise, wherever located;
4. to implement multi-area marketing programs which may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

### **Multi-Unit Development (MUD) Agreement**

If you sign a MUD Agreement, we will negotiate with you and you will receive a Development Area with the right to develop and open a specific number of Aqua-Tots Swim Schools as designated in your MUD Agreement. We base our negotiations on factors that include the population density, medium income levels and other potential factors and our future development plans. You may not establish Aqua-Tots Swim School outlets anywhere outside the designated Development Area. You must operate each Aqua-Tots Swim School outlet that you establish under your MUD Agreement under a separate Franchise Agreement with us. If, during the term of your MUD Agreement, you comply with your obligations under your MUD Agreement and any Franchise Agreement or any other agreement between you and us, we will not establish, or license anyone other than you to establish an Aqua-Tots Swim School outlet in the defined Development Area. If you do not meet your development obligations according to the Schedule in your MUD Agreement, or if you otherwise fail to comply with the terms of the MUD Agreement, any Franchise Agreement or any other agreement between you and us, your rights to develop Aqua-Tots Swim School outlets in your MUD Area may be terminated.

Except as described above, we reserve all other rights with respect to the System, Marks and development of Aqua-Tots Swim School outlet, including (a) the right to own or operate, or license others to own or operate Aqua-Tots Swim School outlet anywhere outside of and even if immediately adjacent to your MUD Area; (b) to operate or license others to operate similar businesses and services under trademarks or service marks other than the Marks in any location, both inside or outside of your MUD Area; (c) to operate or license others to operate businesses that are not similar to an Aqua-Tots Swim School outlet under the Marks in any location, both inside or outside of your MUD Area; (d) to develop, merchandise, sell and license others to sell products bearing the Marks including the products and services offered at your MUD Units through other channels of distribution such as, the Internet, print, direct marketing media and any other outlets inside or outside your MUD Locations, (e) our right to promote services and products bearing the Marks at special events, conventions, athletic contests, etc., through temporary locations and mobile units both inside and outside your MUD Locations and (f) our right to purchase, be purchased, merge, acquire, be acquired or affiliate with a competitor or any other business regardless of the location of the competitor or business and to operate, franchise or license these businesses as Aqua-Tots Swim School outlets under the System or Marks or under other proprietary marks, regardless of the location of these businesses, whether such businesses are inside or outside your MUD Territory. You will not receive any compensation if we exercise any of the above reserved rights.

You have no options, rights of first refusal or similar rights to acquire additional franchises except as provided in the MUD Agreement.

We have not granted, or presently intend to grant other multi-unit development rights for franchises selling or leasing similar products or services under a different trade name or trademark, but we have the right to do so.

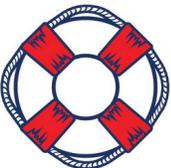
Provided that you comply with the terms of the Multi-Unit Development Agreement, you will receive a Development Area under the Multi-Unit Development Agreement.

**Item 13. Trademarks**

We grant you the right to operate a business under our Marks, including the name “Aqua-Tots Swim School.” You may also use our other current or future Marks as we may designate to operate your Business. You must indicate, as required in the Franchise Agreement and specified in the Manual, that you are an independent operator of the Swim School and shall use the appropriate trademark and copyright marks as indicated by us.

The following is a description of the principal Trademarks which we will license to you:

**Registered Marks as of April 15, 2024**

Description of Mark	Registration No	Registration Date	Register
Aqua-Tots Swim Schools (Design Mark) 	4580230	August 5, 2014	Principal
Safety First, FUN Every Second – (Word Mark)	4478074	February 4, 2014	Principal
Aqua-Tots Swim Schools (Word Mark)	4666282	January 6, 2015	Principal
Aqua Tots (Word Mark)	5344899	November 28, 2017	Principal
Buoy (Design Mark) 	5647057	January 8, 2019	Principal
Propelling Life (Word Mark)	5862253	September 17, 2019	Principal
Ollie the Otter (Design Mark) 	6560135	November 16, 2021	Principal

**Pending Application Marks as of April 15, 2024**

Description of Mark	Application No	Application Date	Register
Tadpoles (word mark)	98424,760	February 28, 2024	Principal
Terry the Tadpole (design logo)	98424,776	February 28, 2024	Principal
Minnows (word mark)	98424,782	February 28, 2024	Principal
Mindy the Minnow (design logo)	98424,791	February 28, 2024	Principal
Leapfrogs (word mark)	98424,795	February 28, 2024	Principal
Lenny the Leapfrog (design logo)	98424,814	February 28, 2024	Principal
Seahorses (word mark)	98424,820	February 28, 2024	Principal
Spike the Seahorse (design logo)	98424,835	February 28, 2024	Principal
Starfish (word mark)	98424,844	February 28, 2024	Principal
Sandy the Starfish (design logo)	98424,851	February 28, 2024	Principal
Seals (word mark)	98424,866	February 28, 2024	Principal
Sunny the Seal (design logo)	98424,873	February 28, 2024	Principal
Sharks (word mark)	98424,879	February 28, 2024	Principal
Sammy the Shark (design logo)	98424,885	February 28, 2024	Principal
Stingrays (word mark)	98424,895	February 28, 2024	Principal
Sidney the Stingray (design logo)	98424,906	February 28, 2024	Principal
Toby the Turtle (design mark)	98424,913	February 28, 2024	Principal
Dolphin tail (design logo)	98424,924	February 28, 2024	Principal
Swordfish (design logo)	98424,938	February 28, 2024	Principal
Buoy (design logo)	98425,831	February 28, 2024	Principal
Lessons for Life (word mark)	98424,961	February 28, 2024	Principal
Swimming Around the Corner and Across the Globe since 1991 (word mark)	98424,947	February 28, 2024	Principal
Swim Smarter (word mark)	98424,817	February 28, 2024	Principal
Neighborhood Swim School (word mark)	98424,970	February 28, 2024	Principal
Aqua-Tots Swim School (design mark) 	98425,840	February 28, 2024	Principal
Ollie (word mark)	98460,528	March 21, 2024	Principal
Ollie the Otter (design mark)	98460,539	March 21, 2024	Principal

**We do not have a federal registration for the above Marks. Therefore, until the Application(s) are registered, those trademarks do not have as many legal benefits and rights as a federally registered trademark. If our right to use a particular trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.**

You must follow our rules when you use any of the Marks. You may not use any of the Marks alone or with modifying words, designs or symbols as part of a corporate name or in any form on the Internet, including, but not limited to URLs, domain names, email addresses, locators, links, metatags or search techniques except as we license to you. You may not use any of the Marks in connection with the sale of an unauthorized product or service or in a manner not authorized by us in writing. Guidelines regarding proper trademark use and notices are set forth in the Manual and will be updated from time to time at our discretion.

There is no currently effective determination of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of this state or any court, or any pending interference, opposition or cancellation proceeding, or any pending material litigation involving the Marks which are relevant to your use of these Marks.

No currently effective litigation affects our use or ownership rights in a trademark. There are no currently effective agreements that significantly limit our rights to use or license the use of the Trademarks listed in this section in a manner material to the franchise. All required affidavits have been filed.

We have the right to control any administrative proceedings or litigation involving a trademark licensed by us to you. You must notify us within three days of when you learn about an infringement of or challenge to your use of our Marks. We will take the action necessary, in our sole and absolute discretion, to protect the unauthorized use of our Marks, which may include payment of reasonable costs associated with the action. We will indemnify you for any claims of infringement or challenges from use of Marks and will be solely responsible for the defense and the cost thereof.

You must modify or discontinue the use of a Mark if we modify or discontinue use. The use of a new or modified trademark is required, and you will be required to remove existing signs. If this happens, we will reimburse you for your tangible cost of compliance (for example, changing signs). You must not directly or indirectly contest our right to our Marks, trade secrets or business techniques that are part of our business.

We do not know of any infringing uses that could materially affect your use of our Marks. You should understand that there could be other businesses using trademarks, trade names, or other commercial symbols similar to our Marks with superior rights to our rights. Before starting your Franchise, you should research this possibility, using telephone directories, trade directories, Internet directories, or otherwise in order to avoid the possibility of having to change your Franchise name.

#### **Item 14. Patents, Copyrights and Proprietary Information**

##### **Patents and Copyrights:**

There are no pending patent applications that are material to the franchise. We hold no patents. We have registered no copyright with the United States Copyright Office. However, we claim copyrights on certain forms, advertisements, promotional materials and other written

materials. We also claim copyrights and other proprietary rights in Aqua-Tots' Confidential Operating Manual.

There are no agreements currently in effect which significantly limit your right to use any of our copyrights. Also, there are no currently effective determinations of the USPTO, the U.S. Copyright Office (Library of Congress) or any court pertaining to or affecting any of our copyrights discussed above. As of the date of this disclosure document, we are unaware of any infringing uses of or superior previous rights to any of our copyrights which could materially affect your use of them in any state.

Your and our obligations to protect your rights to use our copyrights are the same as the obligations for Trademarks described in Item 13 of this disclosure document.

**Confidential Information:**

You may never - during the Initial Term, any Renewal Term, or after the Franchise Agreement expires or is terminated - reveal any of our confidential information to another person or use it for any other person or business. You may not copy any of our confidential information or give it to a third party except as we authorize. All persons affiliated with you must sign our Confidentiality and Covenant not To Compete Agreement (Attachment IV).

Our confidential information will include services, technologies and procedures relating to the operation of an AQUA-TOTS' business; systems of operation, services, programs, products, procedures, policies, standards, techniques, requirements and specifications which are part of the AQUA-TOTS System; the Manual: methods of advertising and promotion: instructional materials; and other matters.

**Item 15.      **Obligation to Participate in the Actual Operation of the Franchise Business****

The Company does require you to personally participate in the operation of your Aqua-Tots Swim School for a minimum of six months. Additionally, your Aqua-Tots Swim School must at all times be under the direct, supervision of a manager who has satisfactorily completed the initial training course and devotes his or her full business time, energy and effort to the management and operation of your Aqua-Tots Swim School. If your Franchise Agreement is subsequently assigned to an entity, each of the entity's officers, directors, shareholders, partners, and members, plus any individual who owns, directly or indirectly, any interest in the entity must also assume and agree to discharge all of your obligations and comply with all restrictions under the Franchise Agreement. Additionally, we do not require that the designated Manager of the swim school own an equity interest in the business or the entity. However, your designated Manager and each of your officers, directors, partners, shareholders or members and their spouses, as applicable, must execute our standard Confidentiality and Covenant Not to Compete Agreement, a copy of which is attached to the Franchise Agreement as Attachment IV. Other than the above, we make no other recommendations and have no other requirements regarding employment or other written agreements between you and your employees.

## Item 16. Restrictions on What the Franchisee may Sell

You must offer and sell only products and services which are part of the Aqua-Tots system. You must offer and sell all products and services that we designate as required for all Franchisees within your market area as well as all services and products we incorporate into the Aqua-Tots system in the future. Aqua-Tots reserves the right, in our sole discretion, to change the types of authorized services upon reasonable notice to you. There are no contractual limits on Aqua-Tot's right to make changes, but Aqua-Tots will not make changes lightly. We also reserve the right to set maximum prices for use with multi-area marketing and special price promotions.

Currently, you must purchase uniforms, small retail lines, and teaching equipment from our designated suppliers. We reserve the right in the future to designate alternate vendors from whom you will purchase these or other items. You are not restricted as to individuals to whom you may offer services to.

In addition, you are prohibited from using the premises for any purpose other than the operation of an Aqua-Tots Swim School.

## Item 17. Renewal, Termination, Transfer and Dispute Resolution

**This table lists certain important provisions of the franchise and related agreements. You should read the full provisions in the Franchise Agreement attached to this Disclosure Document.**

### THE FRANCHISE RELATIONSHIP

	Provision	Section in Franchise Agreement	Section in MUD Agreement	Summary For Agreements
A	Length of the franchise term	Section 3	Section III	10 years. Your multi-unit development rights begin on the date you sign the MUD Agreement and pay the MUD Fee and expire on the earlier of the day you sign the Franchise Agreement for the last MUD Unit listed in the MUD Schedule or the expiration date
B	Renewal or extension of term	Section 3	Section III	You may request one additional term of 10 years. We will grant or reject the request in writing within thirty days.
C	Requirements for you to renew or extend	Section 3	Section III	Sign a new agreement, be current in all payments and pay the Renewal Fee. You may be asked to sign a new Franchise Agreement with materially different terms and conditions than your original contract. We may adjust the boundaries of your territory. Royalty payments on renewal or

	<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Section in MUD Agreement</b>	<b>Summary For Agreements</b>
				extension will be no greater than the royalties that we impose on new franchisees
D	Termination by you	Section 13.01	Not Applicable	Default by us.
E	Termination by Franchisor without cause	Not Applicable	Not Applicable	Not Applicable
F	Termination by Franchisor with cause	Section 13.02	Section VII(A)	We can terminate if you commit any of several violations.
G	“Cause” defined - curable defaults	Section 13.02(a)	Section VII(A)	You have 30 days to cure, including failure to comply with the System, non-payment of fees and other obligations, failure to comply with federal, state or local laws or regulations.  Under the MUD Agreement: If you materially breach any Franchise Agreement and do not cure that breach within the cure period provided for in that Franchise Agreement.
H	“Cause” defined non-curable defaults	Section 13.02(b)	Section VII(A)	Non-curable defaults include misrepresentation by you, failure to complete initial training, bankruptcy, insolvency, or appointment of receiver, repeated defaults even if cured, abandonment, trademark misuses and unapproved transfers. (Termination upon bankruptcy may not be enforceable under U.S. Bankruptcy Law.)  If you fail to meet the MUD Schedule, you transfer or encumber your rights in violation of the MUD Agreement, you or your owner is convicted of a crime or you are bankrupt.
I	Your obligations on termination/nonrenewal	Sections 13.03, 13.04 & 13.05	Section VII(B)	Obligations include complete de-identification, non-competition and payment of amounts due.  No rights to open additional MUD Units; you must continue to operate the MUD Units according to any existing Franchise Agreements that are not terminated.

	<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Section in MUD Agreement</b>	<b>Summary For Agreements</b>
J	Assignment of contract by Franchisor	Section 14	Section VI(B)	No restriction on our right to assign.
K	“Transfer” by franchisee - definition	Section 14.03	Section VI(A)	Includes transfer of contract or assets or ownership change.
L	Franchisor approval of transfer	Section 14.03	Section VI(A)	We have the right to approve all transfers but will not unreasonably withhold approval.
M	Conditions of approval of transfer	Section 14.03	Section VI(A)	New Franchisee qualifies, Transfer Fee paid, purchase agreement approved, training arranged, release signed by you, and current agreement signed by new Franchisee.  We may require you to transfer all of the undeveloped MUD Units under the MUD.
N	Franchisor’s right of first refusal to acquire your Business.	Section 14.06	Section VI(A)	We can match any offer for your Business.
O	Franchisor’s option to purchase your Business	Section 14.06	Not Applicable	We may purchase your inventory and equipment at fair market value if franchise is terminated for any reason.
P	Death or disability of franchisee	Section 14.05	Not Applicable	Franchise must be assigned by estate to approved buyer within 120 days.
Q	Non-competition covenants during the term of franchise	Sections 7.05 & 15.01	Not Applicable	No involvement in competing business anywhere in U.S.
R	Non-competition covenants after the franchise is terminated or expires	Sections 7.05 & 15.01	Not Applicable	No competing business for 2 years within 50 miles from the boundary of your Territory or from another Aqua-Tots Swim School franchise, or company-owned Swim School (including after assignment).
S	Modification of agreement	Sections 7.04, 8.09 & 18.02	Section VIII(M), (O)	No modifications generally but Manual subject to change.
T	Integration/merger clause	Section 18.01	Section VIII(G)	Only the terms of the Franchise Agreement and/or the Multi-Unit Developer Agreement are binding (subject to state law). Any other promises may not be enforceable. Nothing in this Agreement or in any related agreement is intended to

	<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Section in MUD Agreement</b>	<b>Summary For Agreements</b>
				disclaim any of the representations made in the disclosure document
U	Dispute resolution by arbitration or mediation	Section 16	Section VIII(H)	Except for certain claims, all disputes must be arbitrated.
V	Choice of forum	Section 16.05	Section VIII(I)	Mediation, Arbitration and actions for injunctive relief, claims based on the Marks, or on covenants not to compete must be in the State of Arizona (subject to state law).
W	Choice of law	Section 16.05	Section VIII(I)	Arizona law applies (subject to state law).

The provision of the Franchise Agreement that provides for termination upon your bankruptcy may not be enforceable under federal bankruptcy, law (11 U.S.C. Section 101 et seq.).

See the state addenda in Exhibit E to the Franchise Agreement and disclosure document for special state disclosures.

**Item 18. Public Figures**

The Company does not use any public figure to promote its franchise.

**Item 19. Financial Performance Representations**

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor owned outlets if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if (1) the franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Paul Preston, Aqua-Tots Swim School Holding LLC, 1110 S. Greenfield Rd., Suite 201, Mesa, Arizona 85206; and Phone: (480) 621-3226 and the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580 and the appropriate state regulatory agencies.

**Item 20. Outlets and Franchisee Information**

**Table No. 1**  
**Systemwide Outlet Summary**  
**For years 2021 to 2023 (As of December 31 of each year)**

OUTLET TYPE	YEAR	OUTLETS AT THE START OF THE YEAR	OUTLETS AT THE END OF THE YEAR	NET CHANGE (+ or -)
Franchised	2021	99	102	+3
	2022	102	106	+4
	2023	106	118	+12
Company Owned	2021	1	1	0
	2022	1	1	0
	2023	1	1	0
Total Outlets	2021	100	103	+3
	2022	103	107	+4
	2023	107	119	+12

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)**  
**For years 2021 to 2023 (As of December 31 of each year)**

STATE	YEAR	NUMBER OF TRANSFERS
Arizona	2021	2
	2022	0
	2023	1
Ohio	2021	2
	2022	0
	2023	2
Texas	2021	1
	2022	3
	2023	0
Total Outlets	2021	5
	2022	3
	2023	4

**Table No. 3**  
**Status of Franchised Outlets**  
**For Years 2021 to 2023 (as of December 31 of each year)**

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	TERMINATIONS	NON-RENEWALS	REACQUIRED BY FRANCHISOR	CEASED OPERATIONS OTHER REASONS	OUTLETS AT END OF THE YEAR
Arizona	2021	11	0	0	0	0	0	11
	2022	11	0	0	0	0	0	11
	2023	11	0	0	0	0	0	11
California	2021	4	1	0	0	0	0	5
	2022	5	0	0	0	0	0	5
	2023	5	1	0	0	0	0	6
Colorado	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	TERMINATIONS	NON-RENEWALS	REACQUIRED BY FRANCHISOR	CEASED OPERATIONS OTHER REASONS	OUTLETS AT END OF THE YEAR
	2023	2	1	0	0	0	0	3
Florida	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Georgia	2021	6	1	0	0	0	0	7
	2022	7	1	0	0	0	0	8
	2023	8	1	0	0	0	0	9
Idaho	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Illinois	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Indiana	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Iowa	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Kansas	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	1	0	0	0	0	2
Kentucky	2021	2	0	0	0	0	0	2
	2022	2	0	0	0	0	0	2
	2023	2	1	0	0	0	0	3
Massachusetts	2021	0	0	0	0	0	0	0
	2022	0	1	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Michigan	2021	8	0	0	0	0	0	8
	2022	8	1	0	0	0	0	9
	2023	9	2	0	0	0	0	11
Minnesota	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Nebraska	2021	1	0	0	0	0	0	1
	2022	1	1	0	0	0	0	2
	2023	2	0	0	0	0	0	2
Nevada	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
New Jersey	2021	0	1	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	1	0	0	0	0	2
North Carolina	2021	6	0	0	0	0	0	6
	2022	6	0	0	0	0	0	6
	2023	6	0	0	0	0	0	6
Ohio	2021	5	1	0	0	0	0	6
	2022	5	1	0	0	0	0	6
	2023	6	0	0	0	0	0	6

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	TERMINATIONS	NON-RENEWALS	REACQUIRED BY FRANCHISOR	CEASED OPERATIONS OTHER REASONS	OUTLETS AT END OF THE YEAR
Oklahoma	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Pennsylvania	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Tennessee	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	1	0	0	0	0	2
Texas	2021	33	0	0	0	0	0	33
	2022	33	0	0	0	0	0	33
	2023	33	2	1	0	0	0	34
Utah	2021	1	0	0	0	0	0	1
	2022	1	0	0	0	0	0	1
	2023	1	0	0	0	0	0	1
Virginia	2021	5	0	0	0	0	0	5
	2022	5	1	0	0	0	0	6
	2023	6	1	0	0	0	0	7
Total Outlets	2021	99	3	0	0	0	0	102
	2022	102	5	0	0	0	1	106
	2023	106	12	0	0	0	0	118

**Table No. 4**  
**Status of Company-Owned Outlets**  
**For years 2021 to 2023 (as of December 31 of each year)**

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	OUTLETS REACQUIRED FROM FRANCHISEES	OUTLETS CLOSED	OUTLETS SOLD TO FRANCHISEES	OUTLETS AT END OF THE YEAR
Arizona	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1
Total Outlets	2021	1	0	0	0	0	1
	2022	1	0	0	0	0	1
	2023	1	0	0	0	0	1

**Table No. 5**  
**Projected Openings As Of December 31, 2024**

STATE	FRANCHISE AGREEMENTS SIGNED BUT OUTLETS NOT OPEN	PROJECTED NEW FRANCHISED OUTLETS IN THE NEXT YEAR	PROJECTED NEW COMPANY-OWNED OUTLETS IN THE CURRENT FISCAL YEAR
Alabama	1	1	0
California	2	3	0
Colorado	0	0	0
Florida	3	3	0
Georgia	1	1	0

STATE	FRANCHISE AGREEMENTS SIGNED BUT OUTLETS NOT OPEN	PROJECTED NEW FRANCHISED OUTLETS IN THE NEXT YEAR	PROJECTED NEW COMPANY-OWNED OUTLETS IN THE CURRENT FISCAL YEAR
Illinois	1	1	0
Indiana	0	1	0
Kansas	0	0	0
Kentucky	0	0	0
Massachusetts	1	1	0
Michigan	1	1	0
Minnesota	1	1	0
Nebraska	0	0	0
Nevada	1	1	0
New Jersey	3	3	0
New York	1	1	0
Ohio	1	1	0
Pennsylvania	0	1	0
South Carolina	0	1	0
Tennessee	0	1	0
Texas	0	0	0
Utah	1	1	0
Virginia*	1	1	0
Washington	1	1	0
Washington DC	1	1	0
Wisconsin	0	1	0
TOTALS	20	23	0

\* Anticipated Outlet to open in locations not yet determined.

### Lists of Current and Former Franchises:

Below lists the names of all current franchises and the addresses and telephone numbers of their outlets as of December 31, 2023.

#### Current Open Franchises as of December 31, 2023

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
Aqua-Tots Chandler, LLC	4040 South Arizona Ave #1	Chandler	AZ	85248	480-726-5264
AT Gilbert LLC*	2335 S. Lindsay Rd	Gilbert	AZ	85295	480-462-2899
RJC Aqua-Tots, LLC	7000 W. 78th Ave, Suite 233	Peoria	AZ	85354	623-376-6554
Swim Ventures, Inc.	1930 W Pinnacle Peak Rd	Phoenix	AZ	85027	623-879-7408
Central Phoenix Swim, LLC	7824 N. 12th Street	Phoenix	AZ	85020	602-753-5101
PKS Group, LLC	12825 N Tatum Blvd., Suite A02	Phoenix	AZ	85032	480-499-5419
Arizona Swim Schools, LLC	4735 E Ray Rd. Suite A0011	Phoenix	AZ	85044	480-565-6080

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
Aqua-Tots Queen Creek, LLC	21365 S. Ellsworth	Queen Creek	AZ	85242	480-726-5264
Aqua-Tots South Scottsdale, LLC	7624 E Indian School Rd., Ste 107,	Scottsdale	AZ	85251	480-681-7993
PKS Group, LLC	15111 North Hayden Road, Suite 140c	Scottsdale	AZ	85260	480.499.5419
Cartledge Enterprises	13833 W. Bell Rd, Ste. 104	Surprise	AZ	85374	623-455-5571
AT Anaheim LLC	3150 W Lincoln Ave, Suite 104	Anaheim	CA	92801	714 430 8333
Aqua Tots Otay Ranch, LLC	2015 Birch Rd., Ste 1505	Chula Vista	CA	91915	619-332-0200
AT LA, LLC	2200 Harbor Blvd Ste P120	Costa Mesa	CA	92627	949-464-4141
Aqua Tots Orange, LLC	942 N. Tustin St.	Orange	CA	92867	949-359-7979
AT Rancho LLC	8750 Base Line Rd	Rancho Cucamonga	CA	91701	909-259-0500
AT Tustin LLC	1200 Irvine Blvd	Tustin	CA	92780	714 613-8700
AT Ventures LLC	7947 N Wadsworth Blvd.	Arvada	CO	80003	720 446 5582
AT Ventures LLC	8996 W. Bowles Avenue, Unit P	Littleton	CO	80123	720-446-5650
AT Ventures LLC	7600 E. Park Meadows Drive, Suite 1400	Lone Tree	CO	80124	303-731-1363
AT Davie, LLC	11510 W State Rd. 84	Davie	FL	33325	786-838-8000
Root Beer Float LLC	3700 S Tuttle Ave. Suite 5.	Sarasota	FL	34239	941-919-3937
AT Alpharetta, LLC	3005 Old Alabama Rd., Suite 4000	Alpharetta	GA	30022	770-282-8123
AT Briarcliff, LLC	2153-A Briarcliff Rd. NE	Atlanta	GA	30329	404-495-4842
AT Westside LLC	2250 Marietta Blvd. NE, Suite 104	Atlanta	GA	30318	770-927-8155
MJ Holdings Group, Inc	9375 Landing Drive Suite G-190	Douglasville	GA	30135	678-331-8687
AT Dunwoody LLC	5566 Chamblee Dunwoody Rd.	Dunwoody	GA	30338	919 272 8053
MJ Holdings Group, Inc.	2655 Cobb Parkway Suite 102	Kennesaw	GA	30152	678-331-8687
AT East Cobb LLC	1255 Johnson Ferry Rd., Suite 30	Marietta	GA	30068	404-527-0430
AT Roswell, LLC	1145 Woodstock Rd., Ste. 610	Roswell	GA	30075	404-495-4872
AT Sandy Springs, LLC	5290 Roswell Rd	Sandy Springs	GA	30342	704-576-5328
Aqua-Tots Des Moines, LLC	7125 Mills Civic Parkway #105	Des Moines	IA	50266	515-612-9400
Aqua-Tots Boise, LLC	3116 E. State St. Suite 180	Eagle	ID	83616	208-938-9300
Swim OP, LLC	15565 S 94 <sup>th</sup> Ave	Orland Park	IL	60462	219-232-5032
Aqua-Tots Chicagoland, LLC	1245 E. Butterfield Rd.	Wheaton	IL	60189	630.348.6550
AT Indy, LLC	4825 E. 96 <sup>th</sup> St.	Indianapolis	IN	46240	317-559-3210
Swim, LLC	655 E US 30	Schererville	IN	46375	219-232-5032
Kansas Swim Schools, LLC	11943 S Strang Line Rd.	Olathe	KS	66062	913-353-9852
Kansas Swim Schools LLC	5364 W 95thSt.	Prairie Village	KS	66207	913 274 1823

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
AT Hamburg, LLC	2300 Sir Barton Way, Suite 160	Lexington	KY	40509	859-948-8600
AT Lexington, LLC	220 Ruccio Way, Suite 150	Lexington	KY	40503	859-712-0271
AT Lou, LLC	117 Blankenbaker Pkwy	Louisville	KY	40243	502-242-6388
AT Norwood, LLC	991 Providence Hwy	Norwood	MA	02062	781-984-0606
Aqua-Tots Auburn Hills, LLC	750 Brown Rd.	Auburn Hills	MI	48326	248-537-4005
AT Berkley, LLC	2485 Coolidge Hwy.	Berkley	MI	48072	248 220-6330
Aqua-Tots Canton, LLC	43335 Joy Road	Canton	MI	48187	734-828-2000
AT Dearborn LLC	24365 Michigan Ave.	Dearborn	MI	48124	313-915-5655
Aqua-Tots Farmington Hills, LLC	31221 W. 14 Mile Rd.	Farmington Hills	MI	48334	248-537-4004
AT 28th LLC	2458 28th Street SE	Grand Rapids	MI	49512	616-213-0040
AT Novi, LLC	44225 W Twelve Mile Rd, Suite C-103	Novi	MI	48377	248-845-4544
AT Portage LLC	7113 S Westnedge Ave.	Portage	MI	49002	269 230-4040
AT Sterling Heights, LLC	44891 Hayes Rd	Sterling Heights	MI	48313	586-884-3633
Aqua-Tots One, Inc.	846 E. Big Beaver Rd.	Troy	MI	48083	248-894-2400
AT Woodhaven LLC	21621 Allen Rd.	Woodhaven	MI	48183	734-818-8111
Aqua-Tots Swim School Eagan, LLC	2115 Cliff Road	Eagan	MN	55122	651.212.2144
AT Bellevue LLC	3512 Samson Way	Bellevue	NE	68123	402-295-1947
Aqua-Tots Omaha LLC	14242 Fort Street	Omaha	NE	68164	402.819.0440
AT Clark LLC	1255 Raritan Rd	Clark	NJ	07066	908-460-8687
Delaware Valley Swim Schools of Mount Laurel LLC	1102 Nixon Drive	Mount Laurel	NJ	08054	640-223-6640
Aqua-Tots Las Vegas LLC	7230 W Lake Mead Blvd.	Las Vegas	NV	89101	702-840-1032
George Family Swim School	2765 NC Hwy 55	Cary	NC	27519	919-447-1234
AT Ballantyne, LLC	11926 Providence Rd West, Suite E-4	Charlotte	NC	28277	704-612-4646
AT Providence, LLC	2935 Providence Rd., Ste 105	Charlotte	NC	28211	704-585-8155
AT Holly Springs, LLC	313 Matthews Dr., Suite D	Holly Springs	NC	27540	919-948-6644
AT Matthews, LLC	1709 Matthews Township Pkwy.	Matthews	NC	28105	704-612-4672
AT North Raleigh, LLC	8823 Six Forks Rd.	Raleigh	NC	27615	919-447-1100
AT Ohio LLC**	2451 Lakeview Dr., Ste 106	Beavercreek	OH	45431	937-886-4321
Buckeye Swim IV LLC	5984 N. Hamilton Rd.	Gahanna	OH	43081	614-407-3388
Buckeye Swim II, LLC	4018 Powell Rd.	Powell	OH	43065	614-682-8687
AT Ohio, LLC**	716 N Main St	Springboro	OH	45066	937-886-4321
Buckeye Swim, LLC	714 N State St	Westerville	OH	43082	614.984.3732
Buckeye Swim III LLC	30219 Detroit Rd.	Westlake	OH	44145	404-482-8687
AT Development	8405 N Rockwell Ave.	Oklahoma City	OK	73132	405-721-1871

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
Delaware Valley Swim Schools	307 Horsham Rd.	Horsham	PA	19044	267-317-2400
MJ Holdings Group Inc.	125 Cherokee Blvd.	Chattanooga	TN	37405	423-702-4591
MJ Holding Group, Inc.	6413 Lee Point Highway	Chattanooga	TN	37421	423 702-4592
AT Learn to Swim, LLC	3340 Pablo Kisel, Suite c-204	Brownsville	TX	78526	956-542-7946
AT of Aggieland, LLC	3153 Wildflower Dr.	Bryan	TX	77802	979-314-9879
Deuteronomy 1:30 LLC	1335 E. Whitestone Blvd., Suite Y-100	Cedar Park	TX	78613	512-256-8687
ATSS Development, LLC	757 and 777 MacArthur Blvd	Coppell	TX	75019	214-235-4898
South Texas Swim Schools, LLC	5702 S Stales St. Suite D4	Corpus Christi	TX	78413	361-993-7946
AT Houston LLC	26341 Northwest Freeway	Cypress	TX	77429	281-310-5777
HP2S LLC	6060 Long Prairie Road Suite 100	Flower Mound	TX	75028	214-396-7900
TK Morgan Alliance Aquatics, LLC	3529 Heritage Trace Parkway Suite 103	Fort Worth	TX	76177	817-439-7700
TK Morgan Benbrook Aquatics, LLC	4736 Bryant Irvin Rd., Ste 718	Fort Worth	TX	76132	817-953-8611
AT Development	15922 Eldorado Pkwy	Frisco	TX	75035	972-540-9011
HP2S LLC	5530 FM 423	Frisco	TX	75034	817-296-4999
FAV Swimmers, LLC	11852 Bandera Rd	Helotes	TX	78023	830-714-4472
Sista & Gonzalez Enterprises, LLC	9669 FM 1960 Bypass, Ste 800	Humble	TX	77338	832-645-5744
AT Houston LLC	1542 West Grand Parkway S	Katy	TX	77494	281-769-8630
Genesis 1:9, LLC	7529 North Loop 1604, Ste. 103	Live Oak	TX	78233	210-866-8687
Prov 16.3, LLC	1551 HWY 287	Mansfield	TX	76063	817-853-8687
South Texas Swim Schools, LLC	4901 W Expressway 83	McAllen	TX	78501	956-687-7946
South Texas Swim Schools, LLC	5800 N 10th St	McAllen	TX	78504	956-655-1601
AT Ventures, LLC	1871 N. Lake Forest, Ste. 400	McKinney	TX	75071	972-468-9712
AT Houston LLC	6122 Highway 6 South	Missouri City	TX	77459	281-310-5555
AT Ventures LLC	601 West FM 544, Suite 104	Murphy	TX	75094	972-502-9040
TK Morgan NRH Aquatics, LLC	6039 Precinct Line Road, Suite 160,	North Richland Hills	TX	76180	817-766-7777
GTEX Enterprises, LLC	5968 Fairmont Pkwy	Pasadena	TX	77505	281-764-5644
EGT Enterprises, LLC	3145 Silverlake Village Drive	Pearland	TX	77584	281-305-0223
ATSS Development, LLC	6505 W Park Blvd., Suite 220	Plano	TX	75093	214-396-8687
ATSS Development, LLC	1130 W Campbell Rd. Suite 101	Richardson	TX	75080	214-396-6610
AT Development	3001 Ridge Road	Rockwall	TX	75032	214-771-3133.

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
Aqua-Tots Swim School of Austin, LLC	1208-Q North IH-35	Round Rock	TX	78681	512-336-8687
Aqua-Tots Swim School of San Antonio	2606 TPC Parkway	San Antonio	TX	78259	512-336-8687
FAV Swimmers II, LLC	17530 La Cantera Pkwy Suite 107	San Antonio	TX	78257	210.202.0990
FAV Swimmer IV, LLC	630 NW Loop 410, Suite 109	San Antonio	TX	78216	210-625-4670
FAV Swimmer III LLC	415 W Loop 1604	San Antonio	TX	78253	210-910-4252
Sista & Gonzalez Enterprises, LLC	17943 I-45 South, Suite 230	Shenandoah	TX	77385	281-231-9361
MCLS Enterprises, LLC	6935 Cypresswood Dr., Ste A	Spring	TX	77379	832-720-6339
SLC Swim AT LLC	7220 South Union Park Ave.	Midvale	UT	84047	801-901-2290
Aqua-Tots Swim School 2, Inc.	6319 Multiplex Dr.	Centreville	VA	20121	703-260-9222
Eternus, Inc.	25401 Eastern Marketplace Plaza, Suite 190	Chantilly	VA	20152	703-291-4640
AT Falls Church LLC	1104b W Broad St.	Falls Church	VA	22046	571-356-9985
AT Lake Barcroft LLC	6345 Columbia Pike	Falls Church	VA	22041	703-719-4456
Morgan Swim School, Inc	7508 W. Broad Street	Henrico,	VA	23294	804.740.1185
ATSS3 LLC	510 Fort Evans Rd.	Leesburg	VA	20176	703-291-4640
Morgan Family Aquatics, LLC	1205 Carmia Way	Midlothian	VA	23295	804-205-1184

\* transferred from Aqua-Tots Swim School Gilbert, LLC to AT Gilbert LLC

\*\* transferred from AT Beaver Creek, LLC, and AT Springboro, LLC to AT Ohio LLC

### Franchise Locations Sold but not open as of December 31, 2023

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
Blue Vulcan LLC	138 Hargis Dr.	Chelsea	AL	35043	205-337-0036
AT Lake Murray LLC	5628 Lake Murray Rd.	La Mesa	CA	91942	619 745-6100
SavannahBadanna LLC	1850 Douglas Blvd. #210	Roseville	CA	95661	480.277.3309
AT Fort Lauderdale LLC	1711 E Commercial Blvd.	Fort Lauderdale	FL	33334	786-785-1717
Super Swimmers LLC	97 Alafaya Woods Blvd.	Oviedo	FL	32765	210-860-5986
Houston Lake Holdings, LLC	1114 Highway 96, Suite C-1	Kathleen	GA	31047	248-252-6671
Unk Swim School LLC	6528 W Waterstone Way	Edwards	IL	61528	989-513-0593
AT Medford LLC	291 Middlesex Ave.	Medford	MA	02155	781-984-0606
AT Holland LLC	12610 Felch St.	Holland	MI	48424	616-330-3830
Aqua-Tots Swim Schools-Edina LLC	7645 Metro Blvd., Suite 1	Edina	MN	55439	952 300 6227
Lasting Legacy LLC*	PO Box 896	Louisburg	NC	27549	252-767-8858
Sporcic Sharks Du Du Du LLC	24 Hillside Drive	East Hanover	NJ	07936	973 800-4054

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
AT Old Bridge LLC	3853 US 9	Old Bridge	NJ	08857	845 325-0434
AT Short Hills LLC	750 Morris Turnpike	Short Hills	NJ	07078	845 325-0434
R&S Swim Schools	1366 Hooper Ave.	Toms River	NJ	08753	570-417-8394
ATHEND	617 Mall Ring Circle	Henderson	NV	89014	702 941 7970
Christian Rozanski	4998 Harlem Rd.	Amherst	NY	14216	917-279-3433
Leigh and Jon Taylor	4397 Whipple Ave. NW	Canton	OH	44718	616-330-3830
Super Swimmers II LLC*	10 Kings Tower	San Antonio	TX	78257	619.647.4735
SLC Swim AT LLC	7552 S. Plaza Center Drive, Suite 150	West Jordan	UT	84084	801-441-6141
ATSS4 LLC	45591 Dulles Eastern Plaza., Suite 120	Sterling	VA	20166	571-520-2201
Salish Swimming 1 Inc.	19701 Hwy 99, Suite 103	Lynnwood	WA	98036	602 821-3567

\*Anticipated Outlet to open in locations not yet determined

Below lists the Franchisees who had an outlet terminated, canceled, or not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during our most recently completed fiscal year or who has not communicated with us within 10 weeks of the issuance date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

#### TERMINATIONS AND TRANSFERS FOR THE FISCAL YEAR ENDING DECEMBER 31, 2023

NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE
Aqua-Tots Swim School Gilbert, LLC*	2335 S. Lindsay Rd.	Gilbert	AZ	85295	480-462-2899
AT Beaver creek, LLC**	2451 Lakeview Dr. Ste 106	Beaver creek	OH	45431	937-200-1120
AT Springboro, LLC**	716 N Main St	Springboro	OH	45066	937-886-4321
Nagesh Gunda, Spipavan Nattuva & Mounima Akula ***	1204 Lakebridge Ln	Irving	TX	75063	214-235-4898
South Texas Swim Schools IV, LLC	9708 McPherson Rd, Suite 400	Laredo	TX	78045	956-722-7946
Michael Barnes ***	3076 Torrington Trl	Williamsburg	VA	23188	703-434-1090

\*Transferred to AT Gilbert, LLC., \*\* Transferred to AT Ohio LLC, \*\*\*Franchise purchased but outlet never opened.

#### **Confidentiality Agreements:**

During the last three fiscal years, no current or former franchisees have signed confidentiality clauses that restrict them from discussing with you their experiences as a franchisee in our franchise system.

#### **Associations and/or Organizations:**

There are no trademark-specific franchisee organizations associated with the franchise system being offered which we have created, sponsored or endorsed.

There are no independent franchisee organizations that have asked to be included in this disclosure document.

**Item 21. Financial Statements**

Attached to the Disclosure Document as Exhibit B are our audited financial statements as of December 31, 2023, 2022 and 2021.

Attached to the Disclosure Document as Exhibit B-1 are our unaudited financial statements for the period ending March 27, 2024. These financial statements in Exhibit B-1 are prepared without an audit. Prospective Franchisees or Sellers of Franchises should be advised that no certified public accountant had audited these figures or expressed his/her opinion with regard to the content or form.

Our Fiscal Year End is December 31.

**Item 22. Contracts**

Attached to this Disclosure Document are the following contracts:

Exhibit C	Franchise Agreement
	Attachment I Accepted Location and Territory
	Attachment II Electronic Payment Authorization
	Attachment III Proposed Trade Name and Delegation of Authority
	Attachment IV Confidentiality and Covenant not To Compete Agreement
	Attachment V Lease Assignment Agreement
	Attachment VI Full and Final Release
	Attachment VII Americans with Disabilities Act
	Attachment VIII Assignment of Agreement to Entity and Guaranty of Performance
	Attachment IX Payment and Performance Guarantee
	Attachment X Renewal Addendum
Exhibit F	Multi-Unit Development Agreement

**Item 23. Receipts**

Included as the last page of this Disclosure Document is a detachable Receipt to be signed by you.

**EXHIBIT A**  
**LIST OF STATE AGENCIES**

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>CALIFORNIA</b>	<p style="text-align: center;">Department of Financial Protection and Innovation (DFPI)</p> <p style="text-align: center;"><u>Sacramento Main Office:</u> 2101 Arena Boulevard Sacramento, CA 95834</p> <p style="text-align: center;"><u>San Francisco:</u> One Sansome Street, Suite 600 San Francisco, CA 94105</p> <p style="text-align: center;"><u>Los Angeles:</u> 320 West 4th Street, Suite 750 Los Angeles, CA 90013-2344</p> <p style="text-align: center;">(866)-275-2677 www.dfpi.ca.gov</p>	<p>Commissioner of Financial Protection and Innovation 2101 Arena Blvd Sacramento, CA 95814 1-866-275-2677 www.dfpi.ca.gov</p>
<b>CONNECTICUT</b>	<p>Securities and Business Investment Division Connecticut Department of Banking 260 Constitution Plaza Hartford, CT 06106 (203) 240-8299</p>	<p>Connecticut Banking Commissioner Same Address</p>
<b>FLORIDA</b>	<p>Department of Agriculture &amp; Consumer Services P.O. Box 6700 Tallahassee, FL 32399-6700 (800) 435-7352</p>	<p>Same</p>
<b>GEORGIA</b>	<p>Office of Consumer Affairs 2 Martin Luther King Drive, S.E. Plaza Level, East Tower Atlanta, GA 30334 (404) 656-3790</p>	<p>Same</p>
<b>HAWAII</b>	<p>Department of Commerce and Consumer Affairs Business Registration Division Commissioner of Securities Securities Compliance Branch 335 Merchant St., Room 205 Honolulu, HI 96810 (808) 586-2744</p>	<p>Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Securities Compliance Branch 335 Merchant St., Room 205 Honolulu, HI 96810</p>
<b>ILLINOIS</b>	<p>Franchise Division Office of the Attorney General 500 South Second Street Springfield, IL 62706 (217) 782-4465</p>	<p>Illinois Attorney General Same Address</p>

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>INDIANA</b>	Securities Commissioner Indiana Securities Division Room E 111 302 West Washington Street Indianapolis, IN 46204 (317) 232-6681	Indiana Secretary of State 201 State House 200 West Washington Street Indianapolis, IN 46204
<b>IOWA</b>	Iowa Securities Bureau Second Floor Lucas State Office Building Des Moines, IA 50319 (515) 281-5705	Same
<b>KENTUCKY</b>	Kentucky Attorney General's Office Consumer Protection Division 1024 Capitol Center Drive Frankfort, KY 40602 (502) 696-5300	Same
<b>LOUISIANA</b>	Department of Urban & Community Affairs Consumer Protection Office 301 Main Street, 6th Floor One America Place Baton Rouge, LA 70801 (504) 342-7013 (gen. info.) (504) 342-7900	Same
<b>MAINE</b>	Department of Business Regulations State House - Station 35 Augusta, ME 04333 (207) 298-3671	Same
<b>MARYLAND</b>	Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202 (410) 576-6360	Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020
<b>MICHIGAN</b>	Michigan Department of Attorney General Consumer Protection Division Antitrust and Franchise Unit 670 Law Building Lansing, MI 48913 (517) 373-7117	Michigan Department of Commerce Corporations and Securities Bureau Same Address
<b>MINNESOTA</b>	Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, MN 55101 (651) 539-1600	Minnesota Commissioner of Commerce Same Address

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>NEBRASKA</b>	Department of Banking and Finance 1230 "O" Street, Suite 400 P.O. Box 95006 Lincoln, NE 68509-5006 (402) 471-3445	Director of the Department of Banking and Finance Same Address
<b>NEW HAMPSHIRE</b>	Attorney General Consumer Protection and Antitrust Bureau State House Annex Concord, NH 03301 (603) 271-3641	Same
<b>NEW YORK</b>	NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21 <sup>st</sup> Floor New York, NY 10005 (212) 416-8222	Secretary of State of New York 99 Washington Street Albany, New York 12231
<b>NORTH CAROLINA</b>	Secretary of State's Office Securities Division Legislative Annex Building 300 Salisbury Street Raleigh, NC 27602 (919) 733-3924	Secretary of State Secretary of State's Office 300 Salisbury Street Raleigh, NC 27602
<b>NORTH DAKOTA</b>	North Dakota Securities Department 600 East Boulevard Avenue State Capital, 5 <sup>th</sup> Floor, Dept 414 Bismarck, ND 58505-0510 (701) 328-4712	North Dakota Securities Commissioner Same Address
<b>OHIO</b>	Attorney General Consumer Fraud & Crime Section State Office Tower 15th Floor 30 East Broad Street Columbus, OH 43215 (614) 466-8831 or (800) 282-0515	Same
<b>OKLAHOMA</b>	Oklahoma Securities Commission 2915 Lincoln Blvd. Oklahoma City, OK 73105 (405) 521-2451	Same
<b>OREGON</b>	Department of Insurance and Finance Corporate Securities Section Labor and Industries Building Salem, OR 96310 (503) 378-4387	Director Department of Insurance and Finance Same Address

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>RHODE ISLAND</b>	Department of Business Regulation Securities Division John O. Pastore Complex 1511 Pontiac Ave., Building 69-1 Cranston, RI 02910 (401) 462-9588	Department of Business Regulation Securities Division John O. Pastore Complex 1511 Pontiac Ave., Building 69-1 Cranston, RI 02910 (401) 462-9588
<b>SOUTH CAROLINA</b>	Secretary of State P.O. Box 11350 Columbia, SC 29211 (803) 734-2166	Same
<b>SOUTH DAKOTA</b>	Department of Labor and Regulation Division of Securities 124 S Euclid, Suite 104 Pierre SD 57501 (605) 773-4823	Director of South Dakota Division of Securities Same Address
<b>TEXAS</b>	Attorney General's Office Consumer Protection Division P.O. Box 12548 Austin, TX 78711 (512) 463-2070	Same
<b>UTAH</b>	Utah Department of Commerce Consumer Protection Division 160 East 300 South P.O. Box 45804 Salt Lake City, UT 84145-0804 (801) 530-6001	Same
<b>VIRGINIA</b>	State Corporation Commission Division of Securities and Retail Franchising 1300 E. Main Street, Ninth Floor Richmond, VA 23218-1197 (804) 371-9051	Clerk of the State Corporation Commission 1300 E. Main Street, First Floor Richmond, VA 23219 (804) 371-9733
<b>WASHINGTON</b>	Department of Financial Institutions Securities Division P.O. Box 9033 Olympia, WA 98507-9033 (360) 902-8760	Director of Dept. of Financial Institutions Securities Division 150 Israel Rd SW Tumwater WA 98501
<b>WISCONSIN</b>	Commission of Securities P.O. Box 1768 Madison, WI 53701-1768 (608) 266-1365	Wisconsin Commissioner of Securities Same Address

**EXHIBIT B**

**Audited Financial Statements as of  
December 31, 2023, 2022 and 2021**

**Aqua Tots Swim School Holding, LLC**  
**Audited Financial Statements**  
**December 31, 2023**

**Kevin Norton, P.A.**  
**Certified Public Accountant**  
**1451 W. Cypress Creek Road, Suite 300**  
**Ft. Lauderdale, Florida 33309**  
**(954) 822-1223**

To The Owners

March 24, 2024

**Independent Auditor's Report**

*Report on the Financial Statements*

We have audited the accompanying financial statements of Aqua Tots Swim School Holding, LLC which comprise the balance sheet as of December 31, 2023 and the related consolidated statements of income, comprehensive income, changes in members' equity and cash flows for the year then ended, and the related notes to the financial statements.

*Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

*Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

*Opinion*

In our opinion, the financial statements referred to above, present fairly, in all material respects, the financial position of Aqua Tots Swim School Holding, LLC as of December 31, 2023 and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States.

Respectfully submitted,

**Kevin J Norton**

Kevin Norton, C.P.A.

**Serving the business community since 1985.**

**Aqua Tots Swim School Holding, LLC**

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**Aqua Tots Swim School Holding, LLC****Balance Sheets**

As of December 31,

<b>ASSETS</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
<b>Current Assets</b>			
Cash - Checking	\$ 485,727	\$ 517,465	\$ 345,843
Cash - Savings	180,682	475,479	1,136,335
<b>Total Cash</b>	<b>\$ 666,409</b>	<b>\$ 992,944</b>	<b>\$ 1,482,178</b>
Accounts Receivable	706,500	448,501	346,529
Marketing Fund	809,401	602,078	380,744
Intercompany	-	-	-
Other Receivables (Payables) - National Mkt fund	2,723	(32,593)	24,769
<b>Total Current Assets</b>	<b>2,185,033</b>	<b>2,010,930</b>	<b>2,234,220</b>
<b>Property, Plant &amp; Equipment</b>			
Pool	72,468	72,468	72,468
Furniture & Equipment	441,864	436,518	431,009
Vehicles	331,627	328,071	290,534
Less: Accumulated Depreciation	(55,848)	(131,463)	(129,444)
<b>Property, Plant and Equipment - net</b>	<b>790,111</b>	<b>705,594</b>	<b>664,567</b>
Software - net	11,812	11,812	11,812
Investment - Guardian	1,805,420	1,299,799	1,010,242
Other Intangible Assets - net	20,354	22,845	25,152
<b>TOTAL ASSETS</b>	<b>\$ 4,812,730</b>	<b>\$ 4,050,980</b>	<b>\$ 3,945,993</b>
<b>LIABILITIES &amp; EQUITY</b>	<b>2022</b>	<b>2022</b>	<b>2021</b>
<b>Current Liabilities</b>			
Accounts Payable & Credit Cards	\$ 433,709	\$ 442,089	\$ 287,267
Taxes Payable	-	-	6,769
National Marketing Fund (accrued expenses)	938,143	331,223	400,358
Accrued Expenses & Other	118,921	105,658	176,674
Notes Payable - vehicles & other	164,240	221,166	222,540
<b>Total Current Liabilities</b>	<b>1,654,808</b>	<b>1,099,931</b>	<b>1,093,403</b>
<b>Long Term Liabilities</b>			
Deferred Gain - Greenfield Investment	252,922	326,465	405,068
<b>Non Current Liabilities Total</b>	<b>252,922</b>	<b>326,465</b>	<b>405,068</b>
<b>TOTAL LIABILITIES</b>	<b>1,907,730</b>	<b>1,426,396</b>	<b>1,498,471</b>
<b>SHAREHOLDER'S EQUITY</b>			
Common Stock, no par 1,000 shares authorized, 1,000 issued and outstanding.	-	-	-
Additional Paid In Capital	\$ 88,216	\$ 88,216	\$ 88,216
Retained Earnings	2,816,784	2,536,368	2,359,306
<b>Total Shareholder's Equity</b>	<b>2,905,000</b>	<b>2,624,584</b>	<b>2,447,522</b>
<b>TOTAL - LIABILITIES &amp; EQUITY</b>	<b>\$ 4,812,730</b>	<b>\$ 4,050,980</b>	<b>\$ 3,945,993</b>

*The accompanying notes are an integral part of these financial statements.*

**Aqua Tots Swim School Holding, LLC**  
**Statement of Income and Retained Earnings**  
**For the year ended December 31,**

<u>Revenues:</u>	<u>2023</u>	<u>2022</u>	<u>2021</u>
Franchise Fees	\$ 694,565	\$ 365,500	\$ 426,500
Royalty Fees	8,479,306	7,374,294	5,402,303
Software License Fees	642,048	558,532	543,019
National Marketing fund	5,492,228	4,759,913	2,894,984
Other	940,418	237,933	101,536
<b>Total Revenue</b>	<b>\$ 16,248,565</b>	<b>\$ 13,296,172</b>	<b>\$ 9,368,342</b>
Cost of good sold	-	-	419
<b>Gross Profit</b>	<b>\$ 16,248,565</b>	<b>\$ 13,296,172</b>	<b>\$ 9,367,923</b>
<u>Expenses:</u>			
Advertising & Marketing	\$ 4,182,311	\$ 2,854,519	\$ 1,638,314
Bad Debt & Bank Fees	19,392	67,581	82,846
Covid Expense	-	-	2,804
Depreciation	1,836	1,836	1,836
Guaranteed Payments	-	-	27,093
Computer & Internet - Operational	799,132	1,199,853	831,655
Computer & Internet -Marketing	555,950	585,284	490,715
Donations	566,304	395,674	204,554
Auto expense	33,405	35,571	33,635
Dues & subscriptions	83,419	45,975	34,643
Employee Benefits	199,227	169,881	136,190
Rent	210,191	205,967	211,237
Insurance	63,531	48,844	37,800
Legal and Professional Fees	71,636	114,365	50,404
Meals & Entertainment	61,066	209,927	135,937
Travel Expenses	304,230	211,934	142,117
Master Developer fees	369,288	205,209	153,099
Office Expense	20,809	26,043	26,512
Postage	3,312	10,537	3,248
Repairs & Maint. / Equip. Rental	231,005	214,538	112,154
Payroll & Taxes - Operational	3,973,393	2,916,371	2,222,650
Taxes - Other	170,186	134,958	33,630
Supplies & Janitorial	17,947	17,913	14,124
Telephone Expenses	25,948	27,732	29,551
Utilities	13,791	-	6,390
Interest - net	4,552	5,028	(3,663)
Amortization	2,491	2,491	2,471
Seminars & Education	118,476	88,257	63,904
Contractor Expense	316,794	237,297	131,710
Uniforms	16,005	14,127	8,499
<b>Total - Expenses</b>	<b>\$ 12,435,627</b>	<b>\$ 10,047,712</b>	<b>\$ 6,866,059</b>
<b>Net Income - Before Extraordinary Item</b>	<b>\$ 3,812,938</b>	<b>\$ 3,248,460</b>	<b>\$ 2,501,864</b>
Extraordinary Item: Sale of Asset /stimulus Money	\$ 74,129	-	\$ 401,490
<b>NET INCOME - After Extraordinary Item</b>	<b>\$ 3,887,067</b>	<b>\$ 3,248,460</b>	<b>\$ 2,903,354</b>
Retained Earnings - Beginning	\$ 2,536,368	\$ 2,359,306	\$ 1,999,306
Distributions to Shareholders - net	\$ (3,680,000)	\$ (3,150,000)	\$ (2,595,626)
Prior Period Adjustment	\$ 73,349	\$ 78,602	\$ 52,272
<b>Net Income</b>	<b>\$ 3,887,067</b>	<b>\$ 3,248,460</b>	<b>\$ 2,903,354</b>
<b>Retained Earnings - Ending</b>	<b>\$ 2,816,784</b>	<b>\$ 2,536,368</b>	<b>\$ 2,359,306</b>

*The accompanying notes are an integral part of these financial statements.*

**Aqua Tots Swim School Holding, LLC****STATEMENT OF CASH FLOWS**

For the year ended December 31,

<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>	<u>2023</u>	<u>2022</u>	<u>2021</u>
Net Income	\$ 3,887,067	\$ 3,248,460	\$ 2,903,354
Non cash - depreciation	1,836	1,836	1,836
Savings	294,797	660,856	(238,791)
Accounts Receivable - (increase) decrease	(257,999)	(101,972)	4,175
Other Receivable -NMF (increase) decrease	(35,316)	57,362	215,650
Marketing Fund Recv. - (increase) decrease	(207,323)	(221,334)	(257,977)
Texas Capital A/C. - (increase) decrease	-	-	73,323
Employees Loans. - (increase) decrease	-	-	-
Accounts Payable - increase (decrease)	(8,380)	154,822	93,766
Taxes Payable - increase (decrease)	0	(6,769)	4,634
Marketing Fund Pay. - increase (decrease)	606,920	(69,135)	150,590
Accrued Expenses - current - increase (decrease)	13,263	(71,016)	150,294
Notes Payable - current - increase (decrease)	(56,926)	(1,374)	222,540
Miscellaneous	69,247	157,387	53,620
Cash Received from Operating Activities	\$ 4,307,186	\$ 3,809,123	\$ 3,377,014
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
Purchase of Furniture & Equipment	(5,346)	(5,509)	(6,925)
Purchase of Vehicles	(3,556)	(37,537)	(194,452)
Purchase (decrease) of Intangibles Assets	2,491	2,307	2,472
	\$ (6,411)	\$ (40,739)	\$ (198,905)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Deferred Gain - Greenfield	(73,543)	(78,603)	(52,272)
Prior Period Adjustment -Deprec, Int, & taxes	(73,349)	(78,602)	(52,272)
Investment in Guardian	(505,621)	(289,557)	(505,621)
Shareholder Distributions - net	(3,680,000)	(3,150,000)	(2,595,626)
	\$ (4,332,513)	\$ (3,596,762)	\$ (3,205,791)
<b>INCREASE/ (DECREASE) IN CASH</b>	\$ (31,738)	\$ 171,622	\$ (27,682)
CASH - Beginning of the year	517,465	345,843	373,525
CASH - End of the year	\$ 485,727	\$ 517,465	\$ 345,843

*The accompanying notes are an integral part of these financial statements.*

## **Aqua Tots Swim School Holding, LLC**

Notes to Financial Statements December 31, 2023

### **Note 1 – Summary of Significant Accounting Policies**

#### **Nature of Business...**

Aqua Tots Swim School Holding, LLC (The Company) is an Arizona based company engaged in the business of selling franchises to the general public. The main headquarters is located in Arizona and organized in 2007. The Company owns a unique system for opening, marketing and operating a facility designed to provide swimming instruction and services.

#### **Basis of Presentation...**

The financial statements have been presented on the accrual basis of accounting and in accordance with United States generally accepted accounting principles.

#### **Use of Estimates...**

The preparation of the Company's financial statements are made in conformity with generally accepted accounting principles that require estimates and assumptions that affect revenues and expenses, assets and liabilities. Actual results could differ from those estimates, and such estimates could be material.

#### **Revenue Recognition...**

The Company recognizes revenue from various sources of revenue including service fees, contracts, advertising, franchise fees and royalties. Revenues from such sources are recognized as earned upon the completion of work performed. Initial franchise fees are recognized upon the completion of all contractual requirements (or Deferred Revenue until completed), with subsequent other revenues being predominantly classified as royalty fees. ASC 606 was considered and determined, in coordination with management, to have no material effect on revenues in 2023.

#### **Customer Deposits...**

The Company will be maintaining an account called Customer Deposits for the collection of funds from pending franchisees that are in the process of completing all pertinent requirements prior to the finalization of franchise acceptance by the Company. These funds are ultimately transferred to Revenue upon satisfactory completion of the franchise process. ASC 606 has been considered regarding revenue recognition that there is no material impact. Management has determined all responsibilities have been contractually satisfied, with no pending additional requirements

#### **Inventory...**

The company maintains no physical inventory.

#### **Cash...**

The company maintains its cash balances at banks that participate with the Federal Deposit Insurance Corporation with guarantees insuring accounts with balances up to \$250,000.

**Aqua Tots Swim School Holding, LLC (continued)**

Notes to Financial Statements December 31, 2023

**Fixed Assets...**

The company's fixed assets are comprised of furniture and fixtures, including computers, and are recorded at cost. The assets are generally depreciated using the Modified Accelerated Recovery System (MACRS) method over the applicable recovery period. The company also employs Section 179 and Bonus depreciation. No material impact resulted pertaining to GAAP

**Note 2 – Provision for Federal Income Tax:**

The company has elected under the Internal Revenue Service Code to be taxed as an LLC as a "pass through" entity. In lieu of this election, all shareholders will pay tax on their proportionate share of profits / losses via a K1. Therefore, no provision for income tax has been included in these financial statements.

**Note 3 – Commitments and Contingencies:**

The Company has no material commitments or legal or financial contingencies to note as of December 31, 2023.

**Note 4 - Concentration:**

The Company had no significant concentrations during 2023 that represented any material impact on its revenues.

**Note 5 - Related Party Transactions:**

During 2023 the Company had no material dealings with any related party.

**Note 6 - Financial Instruments:**

Cash, money market investments, current loans payable, accounts receivable, accounts payable and accrued liabilities are all short term in nature and as such, their carrying values approximate fair values.

**Note 7 - Credit Risk:**

Concentration of credit risk with respect to trade accounts receivable is limited due to the large number of customers and their geographic dispersion. Management believes the concentration of credit risk is not significant.

**Aqua Tots Swim School Holding, LLC**

Notes to Financial Statements December 31, 2023

**Note 8 – Transfer of Greenfield Pool Property:**

The company transferred Greenfield pool property to third party trusts substantially along with related debt with Texas Capital in 2023.

**Note 9 – Subsequent Events**

The company has no material subsequent events to disclose at the time of this report..

**Note 10 – Notes Payable:**

The Company utilized the resources available through The Covid 19 relief package legislation. The company obtained stimulus monies of \$400,000 under the Covid relief options, and was forgiven upon completion of all the requirements of the mandated process. Various accounting options were considered in reporting and it was determined to report as extraordinary income in 2023.

**EXHIBIT B-I**

**Un-Audited Financial Statements for the Period  
January 1, 2024 through March 27, 2024**

THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.

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 03/27/24  
 Accrual Basis

Aqua-Tots Swim School Holding LLC  
**Balance Sheet**  
 As of March 27, 2024

	<u>Mar 27, 24</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10250 · WFB - X 6209 - Accounts Payable	41,586.28
10300 · Wells Fargo Savings 1703	671,261.06
10400 · Marketing Fund 3247	431,018.42
10450 · Western Alliance - 2373	230,966.23
10610 · WFB - 3835 - Royalty & PR	278,147.89
<b>Total Checking/Savings</b>	<u>1,652,979.88</u>
<b>Accounts Receivable</b>	
11100 · Accounts Receivable	1,220,494.08
<b>Total Accounts Receivable</b>	<u>1,220,494.08</u>
<b>Other Current Assets</b>	
11400 · Accounts Receivable - Other	63.00
<b>Total Other Current Assets</b>	<u>63.00</u>
<b>Total Current Assets</b>	<u>2,873,536.96</u>
<b>Fixed Assets</b>	
10112 · Investment In Greenfield HQ	-252,922.09
14520 · 2022 BMW - 540l	71,652.63
14530 · 2021 Chevrolet Suburban	94,130.78
15200 · Furniture and Equipment	443,091.57
15410 · Suburban 2014	45,156.37
15431 · 2020 Ford Explorer	39,681.32
15500 · Greenfield Pool Build	72,468.56
15532 · 2023 Ford F150	72,697.43
15600 · Software	11,812.50
15700 · Guardian Investment	
15701 · Guardian R. Sciarro	477,065.20

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Accrual Basis

Aqua-Tots Swim School Holding LLC  
**Balance Sheet**  
As of March 27, 2024

	<u>Mar 27, 24</u>
15702 · Guardian J. Sciarro	435,875.32
15703 · Guardian H. Preston	441,907.52
15704 · Guardian P. Preston	450,571.72
<b>Total 15700 · Guardian Investment</b>	<b>1,805,419.76</b>
16100 · Accumulated Depreciation	-56,307.18
<b>Total Fixed Assets</b>	<b>2,346,881.65</b>
<b>Other Assets</b>	
11450 · Allowance for Bad Debt	-35,985.85
16200 · Accumulated Amortization	-27,847.92
19700 · Intangible Asset - Fees	47,578.81
19900 · Suspense	2,722.89
<b>Total Other Assets</b>	<b>-13,532.07</b>
<b>TOTAL ASSETS</b>	<b><u>5,206,886.54</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
20000 · Accounts Payable	320,512.99
<b>Total Accounts Payable</b>	<b>320,512.99</b>
<b>Other Current Liabilities</b>	
21100 · Direct Deposit Liabilities	-1,930.72
24000 · Payroll Liabilities	-315.22
24100 · Note Payable Earnhardt Ford	-1,124.08
25500 · Sales Tax Payable	509.71
25605 · Note Payable Suburan	54,504.82
25611 · Note Payable - Larry H Miller I	29,987.80
25612 · Guardian Loan on 2023 F 150	48,440.23

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Accrual Basis

Aqua-Tots Swim School Holding LLC  
**Balance Sheet**  
As of March 27, 2024

	<u>Mar 27, 24</u>
25615 · Note Payable 2022 BMW 540	38,488.58
26000 · Inter Company Scuba	-1,587.47
26100 · InterCompany ATSS	2,851.07
26200 · InterCompany WSS	-3,359.13
26300 · National Marketing Fund	840,428.99
26610 · Intercompany - Sunset Lake	-718.44
26550 · Intercompany KTR	-2,195.30
26600 · InterCompany ATD	-16,153.60
26700 · InterCompany Greenfield HQ	-1,098.55
26710 · InterCompany - PKS Group	-2,392.29
26770 · Aqua Tots - Gilbert	-5,146.08
26800 · UB Greenfield Ilc	-98.98
26850 · I/C Level Up Glendale dba KTR	-805.31
26950 · I/C Level Up Mesa	-954.98
26970 · I/C AT Nevada	-8,853.73
27100 · Payable Due Kuwait - Master Dev	-4,942.68
<b>Total Other Current Liabilities</b>	<u>963,534.64</u>
<b>Total Current Liabilities</b>	<u>1,284,047.63</u>
<b>Total Liabilities</b>	<u>1,284,047.63</u>
<b>Equity</b>	
30300 · Distributions R. Sciarro	-7,727,793.73
30400 · Capital R. Sciarro	44,107.59
30500 · Distributions P. Preston	-7,727,793.72
30600 · Capital P. Preston	44,107.59
32000 · Retained Earnings	18,148,393.68
<b>Net Income</b>	<u>1,141,817.50</u>
<b>Total Equity</b>	<u>3,922,838.91</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>5,206,886.54</u></u>

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Accrual Basis

**Aqua-Tots Swim School Holding LLC**  
**Profit & Loss**  
January 1 through March 27, 2024

	Jan 1 - Mar 27, 24
Ordinary Income/Expense	
Income	
40000 · Franchise Initiation Fees	
40050 · Franchise Renewal Fees	2,500.00
40000 · Franchise Initiation Fees - Other	56,000.00
	58,500.00
Total 40000 · Franchise Initiation Fees	58,500.00
40100 · Software License Fees	183,984.58
40200 · Franchise Royalty Fees	
40210 · Franchise Royalty Fees - USA	1,592,373.70
40220 · Franchise Royalty Fees - Canada	115,363.47
40230 · Franchise Royalty Fees Int'n	134,193.48
40200 · Franchise Royalty Fees - Other	2,691.47
	1,844,622.12
Total 40200 · Franchise Royalty Fees	1,844,622.12
40300 · AT Merchandise	6,917.52
40550 · Other Income	7,427.74
40555 · Management Fee	7,500.00
42000 · National Marketing Fund Fees	
42001 · Digital Marketing Fees - NMF	112,454.05
42002 · Digital Income - Adwords	261,030.68
42003 · Digital Income - Social Media	204,016.39
42004 · Digital Income - Programmatic	111,970.45
42000 · National Marketing Fund Fees - Other	513,133.17
	1,202,604.74
Total 42000 · National Marketing Fund Fees	1,202,604.74
42030 · International Marketing Fund Fe	18,298.17
46000 · Training Class Revenue	279,165.94
48700 · Reimbursed wages	84,668.98
	3,693,689.79
Total Income	3,693,689.79

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Accrual Basis

Aqua-Tots Swim School Holding LLC  
Profit & Loss  
January 1 through March 27, 2024

	<u>Jan 1 - Mar 27, 24</u>
Gross Profit	3,693,689.79
Expense	
60000 · Advertising and Promotion	
60002 · Facebook Ads Reimbursed	134,958.72
60007 · PPC/Google ADs Reimbursement	493,841.63
60008 · SEM Campaign Setup	125,441.20
60000 · Advertising and Promotion - Other	35,596.92
	<u>789,838.47</u>
Total 60000 · Advertising and Promotion	789,838.47
60005 · Marketing Fund Franchisee	160.32
60010 · Bank Service Charges	1,380.27
60017 · Marketing Other	
60011 · Business Listings & Directory	20,809.50
60012 · Website & SEO	94,209.24
60013 · Social Media	12,456.67
60016 · Graphics & Video	40.77
60018 · Campaigns & Programs	5,875.08
	<u>133,391.26</u>
Total 60017 · Marketing Other	133,391.26
60030 · Computer and Internet Expenses	237,274.24
60031 · Tech Fee Expenses	115,613.85
60035 · Donations/Charity	-84,949.95
60040 · Automobile Expense	3,508.13
60045 · Bad Debt Expense	3,000.00
60050 · Dues and Subscriptions	14,871.44
60055 · Breakroom Supplies	2,588.61
60065 · Rent Expense	35,633.24
60078 · Equipment Lease	34,743.81
60080 · Insurance Expense	
60090 · Health Insurance	-12,447.30

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Accrual Basis

Aqua-Tots Swim School Holding LLC  
Profit & Loss  
January 1 through March 27, 2024

	<u>Jan 1 - Mar 27, 24</u>
60105 · Worker's Compensation	413.86
60110 · Insurance - Auto	2,804.69
<b>Total 60080 · Insurance Expense</b>	<b>-9,228.75</b>
60115 · Professional Fees	4,805.82
60120 · Master Developer Fees	
60121 · Master Developer Royalties	45,735.84
<b>Total 60120 · Master Developer Fees</b>	<b>45,735.84</b>
60123 · Culture Budget-EmployeeBenefit	56.41
60124 · Employee Parties	33,239.01
60125 · Client Business Meals	23,612.13
60126 · Travel Expense	186,812.61
60127 · 401k Matching Contributions	22,361.40
60135 · Office Supplies	8,988.45
60140 · Equipment	250.08
60150 · Postage and Deliveries	4,777.86
60155 · Repairs and Maintenance	6,909.93
60165 · Payroll Expenses	
60168 · Employee Health and Wellness	2,294.70
60170 · Payroll Tax expense	60,961.28
60165 · Payroll Expenses - Other	707,203.31
<b>Total 60165 · Payroll Expenses</b>	<b>770,459.29</b>
60175 · Supplies for Franchisee Classes	463.43
60180 · Telephone Expense	4,596.50
60195 · Seminars and Education	26,351.58
60200 · Utilities	2,212.80

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Accrual Basis

Aqua-Tots Swim School Holding LLC  
Profit & Loss  
January 1 through March 27, 2024

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	<u>Jan 1 - Mar 27, 24</u>
60205 · Interest Expense	901.46
60214 · Foreign Tax Expense	28,139.23
60246 · Contractor	83,286.52
63500 · Janitorial Expense	4,340.45
68500 · Uniforms	15,452.42
Total Expense	<u>2,551,578.16</u>
Net Ordinary Income	1,142,111.63
Other Income/Expense	
Other Income	
40500 · Interest Income	787.64
Total Other Income	787.64
Other Expense	
60020 · Depreciation Expense	459.06
60220 · Amortization Expense	622.71
Total Other Expense	<u>1,081.77</u>
Net Other Income	<u>-294.13</u>
Net Income	<u><u>1,141,817.50</u></u>



**EXHIBIT C**

**Franchise Agreement**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

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**EXHIBITS**

Attachment I	Accepted Location and Territory
Attachment II	Electronic Payment Authorization
Attachment III	Proposed Trade Name and Delegation of Authority
Attachment IV	Confidentiality and Covenant not To Compete Agreement
Attachment V	Lease Assignment Agreement
Attachment VI	Full and Final Mutual Release
Attachment VII	Americans with Disabilities Act
Attachment VIII	Assignment of Agreement to Entity and Guaranty of Performance
Attachment IX	Payment and Performance Guarantee
Attachment X	Renewal Addendum

**THE AQUA-TOTS SWIM SCHOOL HOLDING LLC**  
**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, (the “Effective Date”), by and between AQUA-TOTS SWIM SCHOOL HOLDING LLC, an Arizona Limited Liability Company, having its principal offices at 1110 S. Greenfield Rd., Suite 201, Mesa, Arizona 85206 US (the “Franchisor”) and \_\_\_\_\_, (“Franchisee”).

**1. DEFINITIONS**

1.01 “Accepted Location” means the Premises within the Territory and as described in Attachment I at which Franchisee may operate the Outlet using the System.

1.02 “Assets” means the Outlet, including all inventories, supplies, furnishings, equipment, fixtures, land, buildings and improvements, and other tangible items.

1.03 “Business” means the right which is granted to Franchisee to operate an Aqua-Tots Swim School as set forth in this Agreement.

1.04 “Business Records” means evidence of each business transaction, and all financial, marketing, and other operating aspects of the Business, and all evidence and records with respect to customers, employees, and other service professionals relating the Business including, without limitation, all databases in print, electronic or other form, including all names, addresses, phone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other records created and maintained by Franchisee in operation of the Business.

1.05 “Confidential Information” means all methods for establishing, operating and promoting the Business pursuant to the Franchisor’s distinctive business format, plans, methods, data, processes, supply systems, marketing systems, formulas, techniques, designs, layouts, operating procedures, Marks and information and know-how of the Franchisor and such other information as may be further developed periodically by the Franchisor.

1.06 “Designated Marketing Area” means that area included in a Regional Marketing Co-Operative.

1.07 “Effective Date” means the date Parties enter into the Agreement, as indicated in the first paragraph.

1.08 “Franchise” means the Aqua-Tots Outlet which Franchisee is granted the right to operate in conformity with the requirements of this Agreement.

1.09 “Gross Revenue” means the total of all revenues derived from services performed at the Swim School, whether the receipts are evidenced by cash, credit, checks, gift certificates, scrip, coupons, services, property, or other means of exchange. “Gross Revenue” shall exclude only sales tax receipts that Franchisee must by law collect from customers and that Franchisee pays to the government, promotional or discount coupons to the extent that Franchisee realizes no revenue, and employee receipt of services, if free, or any portion not paid for by an employee.

1.10 “Manual” means Franchisor’s operations manual and other written materials, including information posted on Franchisor’s Web site and information sent to or accessed by Franchisee in print or electronic form, manuals, written procedures, memoranda and their supplements loaned to Franchisee by Franchisor. All materials will be provided in English. Any translation of the manual and materials is at the expense of the franchisee.

1.11 “Marks” means Franchisor’s trade names, trademarks, service marks, logos, decor, trade dress, lay out, and commercial symbols, and similar and related words or symbols, now or in the future associated with Franchisor, the System or the Outlet, whether or not they are registered, including, but not limited to, “Aqua-Tots.”

1.12 “Multi-Area Marketing Programs” means regional, national, or international programs designed to increase business, such as marketing to multi-area customers, Internet, shows, events, yellow pages, directories, affinity marketing, vendor programs, and co-branding programs. Such programs may require Franchisee’s cooperation and participation, including refraining from certain channels of marketing and distribution, and payment of commissions or referral fees. Franchisee must also adhere to maximum pricing to the extent permitted by law. All such programs are proprietary trade secrets of Franchisor.

1.13 “National Marketing Fund” means the bank account used by Franchisor for the purposes specified in this Franchise Agreement. The Marketing Fund is not a trust or escrow account and is managed by Franchisor in its sole discretion.

1.14 “Outlet” means the franchised Business. It refers to the Business operated at the Accepted Location.

1.15 “Premises” means the one Accepted Location within the Territory and as described in Attachment I at which Franchisee may operate the Outlet using the System.

1.16 “Regional Advertising Cooperative” means an advertising cooperative made up of franchisees who are located in or near Designated Marketing Areas, as determined by Franchisor, and managed by franchisees elected by the group. The cooperative, if established, may adopt its own written governing regulations, which you must follow but these regulations are subject to consent by us. These regulations will be made available to the Franchisee upon written request.

1.17 “Swim School” means the Aqua-Tots Swim School which Franchisee is granted the right to operate in conformity with the requirements of this Agreement.

1.18 “System” means, collectively, Franchisor’s valuable know how, information, trade secrets, methods, Manuals, policies, standards, designs, methods of trademark usage, copyrightable works, products and service sources and specifications, proprietary software, confidential electronic and other communications, methods of Internet usage, marketing programs, and research and development connected with the operation and promotion of the Outlet, as modified by Franchisor at any time.

1.19 “Territory” means the territory described in Attachment I of this Agreement, subject to any reservations or exceptions contained in this Agreement.

1.20 “Trade Secret” is the whole or any portion of know-how, knowledge, methods, specifications, processes, procedures, and improvements regarding the System that is valuable and secret in the sense that it is not generally known to competitors of Franchisor.

1.21 “Transfer” means to voluntarily or involuntarily transfer, assign, sell, or encumber any interest in or ownership or control of, the Outlet, substantial assets of the Outlet, or of this Agreement.

## **2. GRANT OF FRANCHISE**

2.01 Grant of License. Subject to the terms and conditions of this Agreement, Franchisor grants to Franchisee an exclusive license to operate an Aqua-Tots Swim School Outlet at the Accepted Location, as designated in this Agreement and described in Section 4, using the System and the Marks for the term of this Agreement. Franchisee may use the Marks and System only in accordance with the terms and conditions of this Agreement. and unless otherwise agreed to in writing by Franchisor, will continually operate the Outlet at the Accepted Location throughout the term of this Agreement.

2.02 Modification of System. Franchisor reserves the right to periodically change, improve, or further develop the System, or any part of the System. Franchisee must promptly accept and comply with any change to the System and make any reasonable expenditure as necessary to comply.

2.03 Ownership and Principal Contact of Franchisee. If Franchisee assigns this Agreement to a business entity, each of the officers, directors, and/or members of the entity, plus any individual who owns, directly or indirectly, an interest in the entity must also sign the Confidentiality and Covenant Not to Compete Agreement (Attachment IV) and the Assignment of Agreement to an Entity (Attachment VIII). Franchisee shall also provide to Franchisor a resolution signed by all members, directors or partners, as appropriate, designating the principal contact for the Business. This principal contact must be a managing member, general partner or controlling shareholder. Such representative shall have the sole authority to speak for and bind Franchisee in all matters pertaining to this Agreement, and all matters relating to the Business. (Attachment III).

## **3. TERM AND RENEWALS**

3.01 Term of Agreement. This Agreement begins on the Effective Date and will continue for a period of ten (10) years, unless earlier terminated as provided under this Agreement.

3.02 Rights Upon Expiration. At the end of the term of this Agreement, Franchisee may renew its license for one successive period of ten (10) years, provided Franchisor does not exercise its rights of refusal as set forth below.

3.03 Right of Refusal to Renew. Franchisor may refuse, in Franchisor’s sole discretion, to renew Franchisee’s license if Franchisee:

- a) fails to remedy, in the time frame set forth in this Agreement, any breach of this Agreement specified by Franchisor in a written notice;
- b) has committed two (2) or more material breaches of this Agreement in the preceding twenty-four (24) months prior to expiration, and said breaches have not been remedied.
- c) fails to give notice of Franchisee's intent to renew at least six (6) months, but no more than twelve (12) months, prior to the expiration of this Agreement. Failure to give timely notice will be considered an election not to renew this Agreement; or
- d) is not current in payment obligations to Franchisor or its subsidiaries and affiliates and to trade creditors, landlords, or mortgage holders at the time Franchisee delivers its notice of renewal or on the date this Agreement is scheduled to expire.
- e) Fails to pay or refuses to pay the renewal fee.
- f) Fails to execute or refuses to execute Franchisor's then current form of franchise agreement as further described in Section 3.04.
- g) Upon receipt of Franchisee's intent to renew, we shall inspect your Outlet to determine the extent of any required updating, remodeling, redecorating or other refurbishment for the Outlet in order to bring the Outlet up to our then-current image and standards for new Aqua-Tots outlet. We will provide notice to you of the modifications you shall be required to make, and you shall have six (6) months from the date of such notice to effectuate such modifications. If you fail or refuse to make the required modifications in any material respect, we shall have the right to refuse ~~terminate~~ the Renewal Franchise Documents

If Franchisor intends not to renew Franchisee's license, Franchisor shall give Franchisee at least one-hundred fifty (150) days' notice of non-renewal prior to expiration of the term.

3.04 Renewal Agreement. When the initial term expires, and Franchisee desires to stay in the system, Franchisee must execute a new franchise agreement and all other legal agreements in Franchisor's then-current form for new franchisees. These agreements may vary in material aspects from this Agreement, including, but not limited to, higher royalty and advertising fees, additional fees, as well as adjusting the boundaries of the Territory. These agreements may also include a general release in favor of Franchisor and its related parties, in a form prepared by Franchisor, to be executed by Franchisee as well as its guarantors. Franchisee must also make capital expenditures that are reasonably required for the renovation and modernization of the Swim School, signs, or any other required equipment to reflect the then-current image of Franchisor.

3.05 Renewal Fee. Upon signing a renewal franchise agreement, Franchisee will not be required to pay another Initial Franchise Fee but will be required to pay a \$10,000 (USD) renewal fee.

#### **4. TERRITORY**

4.01 Accepted Location. Franchisee may operate the Outlet only at the Premises, which is the Accepted Location as identified in Attachment I to this Agreement and may not relocate the Premises without Franchisor's prior written approval, which may be withheld at Franchisor's sole discretion.

4.02 Territory. During the term of this Agreement and any extensions, neither Franchisor nor its affiliates will own, operate or franchise (other than to the Franchisee) an Outlet for the operation of any other Aqua-Tots Swim School within the Territory, as designated in this Agreement and

Attachment I. You will receive a territory (“Territory”) surrounding your premise that we will negotiate with you and that will be specified in the Franchise Agreement. We base our negotiations on factors that include the population density, medium income levels and other potential factors, and our future development plans. Once established, and unless otherwise agreed, the boundaries of Franchisee’s Territory will not be adjusted during the initial term of your Franchise Agreement without Franchisor’s written consent, regardless of whether the population of Franchisee’s Territory increases or decreases over time. However, Franchisor reserves the right to adjust the boundaries of the territory upon the renewal or extension of the initial term.

4.03 Soliciting Outside the Territory. Franchisee may not solicit or advertise to potential customers who reside outside the Territory without the express written permission of Franchisor.

4.04 Reservation of Rights. Franchisor reserves the rights, among others:

- a) to own, franchise, or operate Swim Schools at any location outside of the Territory, regardless of the proximity to the Accepted Location.
- b) to use the Marks and System to sell any services, similar to those which Franchisee will sell through alternative channels of distribution within or outside of the Territory, other than through the Swim School at the Accepted Location.
- c) to purchase or be purchased by, or merge or combine with, any businesses wherever located, including a business that competes directly with Franchisee’s Swim School.
- d) to implement multi-area marketing programs which may allow Franchisor or others to solicit or sell to customers anywhere, as set forth in Section 9. Franchisee will still have the option of servicing any customer within its Territory. Franchisor also reserves the right to issue mandatory policies to coordinate such multi-area marketing programs.

## 5. FEES AND ROYALTIES

5.01 Payment of Fees and Royalties. All payments required under this Section are imposed by and payable to Franchisor or its affiliates and are non-refundable except as expressly provided below. Franchisee must sign an Authorization for Electronic Withdrawal, and Franchisor may require Franchisee to submit any payments electronically. All payments to Franchisor and dollar amounts stated in this Agreement are in U.S. dollars unless otherwise expressed. Franchisor will not require Franchisee to deposit all Franchisee’s revenue into an account that Franchisor controls, or from which withdrawals may be made only with Franchisor’s consent, except to secure a loan or financing arrangement by Franchisor.

5.02 Initial Franchise Fee. Franchisee must pay an initial franchise fee (“Initial Franchise Fee”) of \$50,000 (USD) for the franchise at signing of the Franchise Agreement. Initial Franchise Fees are fully earned upon payment and are non-refundable under any circumstances. All franchise fees will go into our general operating fund to be used to defray our costs of recruiting and qualifying new franchises, as well as other operating expenses associated with our business.

5.03 Royalties. Franchisee must pay to Franchisor a royalty payment in the amount of six percent (6%) of Gross Revenues in USD on or about the 10<sup>th</sup> day of each month for the preceding calendar

month. Royalties are collected on any swimming related amenity or product conducted sold within the awarded territory including but not limited to, swim lessons, water aerobics, swim products, parties, etc. The royalty payment is due to Franchisor, without notice from Franchisor and will be collected electronically on or about the 10<sup>th</sup> day of each month.

5.04 Conference Fees, Pursuant to section 8.05, Franchisor reserves the right to hold and require Franchisee to attend annual conferences. Franchisee will be required to pay a conference fee of up to \$1,500 per person attending,

5.05 Software Fee/Technology Fee, Franchisee must use our required software vendor, and pay a monthly fee for this software to Us of between \$249 and \$349 and depends on whether you use our proprietary digital tool with this software, plus tax where applicable. In addition, a Technology Fee of \$70 is also payable to us on a monthly basis. These Fees are subject to change based on any upgrades or changes to the software agreement with the vendors.

5.06 Advertising and Marketing Fees:

- a) National Marketing Fund: Franchisee will be required to pay a fee into the National Marketing Fund to advertise the System on a regional, national, or international level. Franchisee may be required to pay a National Marketing Fund contribution equal to two percent (2%) of Franchisee's Gross Revenue in USD on the 10<sup>th</sup> day of each month for the preceding calendar month and in the same manner as the royalty fee.
- b) Other Advertising Fees: We may implement additional marketing programs in which we may charge fees to you for digital platforms such as email, text, and social media expenses. We will charge you at our cost for these programs and will not make any profit. These programs will be in addition to any local, regional, national or cooperative programs that may already be in place.

5.07 Late Charges and Other Fees. Unless otherwise stated, Franchisee must pay interest at the rate of one- and one-half percent (1.5%) per month for any late payments due under this Agreement, or the maximum interest rate allowed by applicable law, whichever is less. Franchisee must pay any damages, expenses through mediation, appeal, collection costs, and reasonable attorneys' fees Franchisor incurs in connection with Franchisee's failure to make any required payments.

5.08 Bank Fees and Credit Card Transaction Fees. Franchisee will pay a \$45 fee per occurrence for any transactions that are declined by Franchisee's bank, such as Non-Sufficient Funds (NSF). Generally, all fees due to Franchisor are drafted by wire or EFT from Franchisees bank account. However, any fees collected by credit card payment may incur a 3% Transaction Fee.

5.09 Administrative Fees Non-Compliance. A fee of \$200 for each separate incident will be assessed against Franchisee for each day that Franchisee is non-compliant with the System. Examples include, but not limited to, overdue reports, non-compliance with maintenance standards or non-correction of notified defaults.

5.10 Administrative Fees Lease Assistance. A fee of \$200 per occurrence will be charged if Franchisee requires Franchisor to assist with a lease or purchase for the premises.

5.11 Initial Franchise Training/Additional Persons. Initial Franchise Training for Franchisee and one additional person is included with the Initial Franchise Fee. Additional persons may be trained at Franchisor's discretion for a fee of \$495 per person, per day. Franchisee is responsible for all travel related expenses and payroll for every person who attends.

5.12 Additional Assistance at Franchise. Should Franchisee request, or Franchisor determines necessity, Franchisor may send a company representative to the Franchisee's location for additional training or consulting services. Franchisee will pay Franchisor a fee of \$1,295 per person sent per day as well as travel, and accommodations, for this assistance.

5.13 Liquidated Damages. Franchisee will promptly pay us within 45 days after the effective date of termination liquidated damages equal to the average monthly Royalty Fees you paid or owed to us during the 12 months of operation preceding the effective date of termination multiplied by the number of months remaining in the Agreement had it not been terminated.

5.14 Taxes and Debts. Franchisee will promptly pay when due all taxes, fees, debts, expenses, and assessments of the Outlet, including payroll taxes. Franchisee will not permit a tax sale, seizure, levy, execution, and bankruptcy, assignment of assets for or by creditors, or similar action to occur.

## **6. MARKS**

6.01 Marks. Franchisee must only use the Marks in the conduct of the Business as specified in this Agreement. Any unauthorized use of the Marks by Franchisee will constitute a breach of this Agreement and an infringement on Franchisor's rights in and to the Marks. As between Franchisor and Franchisee, Franchisor has a prior and superior claim to the Marks, and Franchisee has no rights in the Marks other than the right to use them in the operation of the Business in compliance with this Agreement. The registration of the trademarks is under both American and the EU Member States' jurisdiction.

6.02 Authorized Marks. Franchisee will use no trademarks other than "Aqua-Tots Swim Schools" or, "Aqua-Tots Swim School", or any other Marks that Franchisor may specify for use in the identification, marketing, promotion, or operation of the Business. If Franchisee cannot lawfully use the Marks in the Territory, Franchisee must obtain Franchisor's written approval to use other marks. Franchisee must also follow the copyright guidelines as specified by Franchisor in the Manual.

6.03 Change of Marks. Franchisor may add, modify, or discontinue any Marks to be used under the System. Within a reasonable time of receiving written notification of any change, Franchisee must comply with the change, at Franchisee's sole expense.

6.04 Limitations on Franchisee's Use of the Marks. Franchisee must use the Marks as the sole identification of the Business but must also identify itself as the independent owner of the Business in the manner prescribed by Franchisor. All Marks must be displayed in the manner prescribed by the Franchisor. Franchisee may not use the Marks, or any words or symbols similar to the Marks, alone or with any prefix, suffix, modifying words, terms, designs, or symbols:

- a) as part of any entity or business name.
- b) in conjunction with any documents, contracts, licenses, permits and other official documents. Any reference to the Marks in any document must state that Franchisee's use of the Marks is limited by this Agreement.
- c) in any form on the Internet, including, but not limited to, addresses, domain names, links, metatags, locators, and search techniques.
- d) in connection with the performance or sale of any unauthorized services or products; or
- e) in any other manner not expressly authorized by Franchisor.

6.05 Marks on the Internet. Franchisor retains the sole right to use the Marks and market on the Internet, including all use of Web sites, domain names, URLs, linking, advertising, and co-branding arrangements. Franchisee may not establish a presence on the Internet except as we may specify, and only with our prior written consent. Franchisee will provide Franchisor with content for Franchisor's Internet marketing, and Franchisee must sign the Internet and intranet usage agreements when developed by Franchisor. Franchisor retains the right to approve any linking to or other use of Aqua-Tots' Web site.

6.06 Marks in Advertising. Subject to Section 9.03, Franchisee must obtain Franchisor's prior written approval for any use of any item of printed, audio, visual, Internet, electronic media, or multimedia material of any kind bearing any of the Marks, unless supplied by Franchisor. Franchisee must indicate that it is "independently owned and operated."

6.07 Goodwill. All usage of the Marks by Franchisee and any goodwill associated with the Marks, including any goodwill that might be deemed to have arisen through Franchisee's operation of the Business or other activities will inure to the exclusive benefit of Franchisor.

6.08 Infringement. Franchisee must notify Franchisor in writing within three (3) days of obtaining knowledge of any possible infringement or illegal use by others of a trademark which is the same as or confusingly similar to the Marks. Franchisor may, in its sole discretion, commence or join any claim against the infringing party, and bear the reasonable costs associated with the action.

6.09 Signage. As specified by Franchisor, Franchisee must display signage bearing the Marks and identifying the Premises as an Aqua-Tots Swim School, and signage indicating that the Business is independently owned and operated as an Outlet of the Franchisor. All signage must remain current with the System's standards as Franchisor may modify periodically.

## **7. MANUAL AND CONFIDENTIAL INFORMATION**

7.01 Confidential Information. The System, the Manual, and other Confidential Information are proprietary, involve trade secrets of Franchisor, and are disclosed to Franchisee solely on the express condition that Franchisee agrees, and Franchisee does hereby agree to:

- a) fully and strictly adhere to all security procedures prescribed by Franchisor, in its sole discretion, for maintaining the proprietary information as confidential.

- b) disclose such information to its employees only to the extent necessary to market services and for the operation of the Business in accordance with this Agreement.
- c) not use any such information in any other business or in any manner not specifically authorized or approved in writing by Franchisor; and
- d) exercise the highest degree of diligence and make every effort to maintain the absolute confidentiality of all such information during and after the term of this Agreement, and follow Franchisor's security procedures, which include the execution of approved nondisclosure agreements, and intranet, extranet and Internet usage agreements when developed by Franchisor, by Franchisee and any employee or agent who is allowed access.

7.02 Standards and Authorized Use. Franchisee must maintain strict compliance with the Manual as presently set forth and as subsequently amended and revised.

7.03 Unauthorized Use. Franchisee must not copy or otherwise reproduce any Confidential Information and must establish procedures to prevent unauthorized use by any other person. Unauthorized use of the Manual or the System will constitute a breach of this Agreement and an infringement of our proprietary rights, including trade secrets and copyrights. You must promptly report any unauthorized use of the Manual or other Confidential Information.

7.04 Manual. Franchisor will provide access to Franchisee, during the term of the franchise, access to Franchisor's confidential digital operating Manual, on an access code-protected company intranet or extranet, or through other media. Franchisor reserves the right to require Franchisee to use the Manual in only an electronic format. The Manual will at all times remain the property of Franchisor, and Franchisee will immediately lose access to the Manual upon expiration, termination, or Transfer of this Agreement. Franchisor may periodically update and revise the Manual. Franchisee acknowledges that its entire knowledge of the operation of the Business is and shall be derived from information disclosed to Franchisee by Franchisor and that certain of such information is proprietary, confidential and a Trade Secret of Franchisor. Franchisee shall maintain the absolute confidentiality of all such Trade Secrets during and after the term of this Agreement and shall not use any such information in any other business or in any manner not specifically authorized or approved in writing by Franchisor. Franchisee is bound by the standards for maintaining the privacy of the Manual in the same manner as all other Confidential Information set forth above.

7.05 Nondisclosure and Non-competition Agreements. Franchisee and, in the event of a subsequent transfer to an entity, the entity's its owners, members, managers, partners or shareholders, officers, directors, agents, beneficial owners, and principal employees shall execute Franchisor's standard Nondisclosure and Non-competition Agreement before performing any work at the Business or otherwise having access to Franchisor's Confidential Information. A copy of all such signed agreements shall be delivered to Franchisor within one week of their execution.

7.06 Ownership of Business Records. Franchisee acknowledges and agrees that the Franchisor has access to all Business Records with respect to customers, employees, and other service professionals of, and related to, the franchised Swim School including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, phone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other Business

Records created and maintained by Franchisee. Franchisee further acknowledges and agrees that, at all times during and after the termination, expiration or cancellation of this Agreement, Franchisor may access such Business Records, and may utilize, transfer, or analyze such Business Records as Franchisor determines to be in the best interest of the System, in Franchisor's sole discretion.

## **8. FRANCHISOR'S DUTIES**

8.01 Services Provided by Franchisor. Franchisor will provide initial and continuing services as it deems necessary or advisable in furthering Franchisee's Business and the business of the System as a whole and in connection with protecting the Marks and goodwill of Franchisor. Provision of services by Franchisor, either initial or continuing, is independent from the payment of the Initial Franchise Fee or the continuing royalty fees. Franchisor will provide the services listed below on a continuing basis.

8.02 Site Selection. Franchisee must, during the first 9 months after signing the Franchise Agreement, obtain suitable premises for the swim school's Accepted Location by either lease or purchase. Franchisee must exercise control of the premises. Franchisee's site must be at least 5,500 square feet. Franchisee may not operate the Swim School out of a residential pool. Site selection is the responsibility of the Franchisee, but Franchisor will assist in the location selection process by considering population density, traffic patterns, and proximity of the proposed site to other Aqua-Tots Swim Schools or any other reasonable criteria. If Franchisor, in its sole discretion, does not accept the proposed site being submitted, Franchisee must continue to submit proposed sites until Franchisor accepts a site, such acceptance will not be unreasonably withheld. Franchisor will evaluate and will either accept or reject a proposed site within 30 days after receipt of the notice of the proposed site. Franchisee understands and agrees that the location of the Swim School is a factor in the potential for success of the Business. However, Franchisor's assistance and/or acceptance of a proposed premises in no way constitutes a representation or warranty with respect to the property, the lease or the potential success of the Outlet. The Franchise Agreement cannot be terminated due to failure to agree on site selection; however, if Franchisor determines that Franchisee is not making commercially reasonable efforts to lease or purchase a suitable location by the end of the ninth (9th) month after signing a Franchise Agreement, we may terminate the Franchise Agreement and retain all monies received. You will still be liable for all non-competition and non-disclosure provisions. In addition, if we determine that you are not making commercially reasonable efforts to open your Franchised Unit to the public by the end of the twenty-fourth (24th) month after signing a Franchise Agreement, we may terminate the Franchise Agreement and retain all monies received. Franchisee may purchase or lease the required real property and improvements from any source upon terms approved by Franchisor in writing. If Franchisor assists Franchisee with the lease, Franchisor will charge Franchisee an administrative fee of \$200 per occurrence pursuant to Section 5.09 for such assistance. Franchisor will provide Franchisee with standard sample floor layouts and architectural plans, but all final plans must be approved by Franchisor.

8.03 Equipment, Inventory, Advertising and Services. Franchisor will specify or approve certain equipment, inventory, and supplies used in the Business, as provided elsewhere in this Agreement. Franchisor may negotiate marketing programs with suppliers and obtain advertising allowances or

rebates for doing so and may utilize such allowances or rebates in any manner in which Franchisor elects, in its sole discretion.

8.04 Initial Franchise Training. Franchisor will provide initial franchise training and assistance, as Franchisor may reasonably determine to be appropriate, within ninety (90) days of signing this Agreement or as mutually agreed upon between the parties. Franchisor will provide the initial training program through the use of virtual reality, as well as at Aqua-Tots University (ATU) in Mesa, Arizona, for up to two persons. Franchisee and a designated manager must attend and satisfactorily complete the initial training program. The entire Initial Training program lasts for approximately four (4) weeks and averages eight hours per day. Franchisee is responsible for personal travel, accommodation, and other costs of its employees while attending training. Franchisee will be charged Franchisor's current training fee for any additional persons attending training.

8.05 Ongoing Training. Franchisor reserves the right to hold and require Franchisee to attend training classes and conferences to discuss on-going changes in our system and the industry, sales techniques, personnel training, bookkeeping, accounting, inventory control, performance standards, and advertising programs. We currently hold an annual conference, which is not mandatory, however, Franchisee will be required to pay a conference fee of up to \$1,500 per person attending, as well as all personal travel and living expenses for all of its employees attending the conference. Conferences will be held at Franchisor's corporate headquarters or at an alternate location chosen by Franchisor. We reserve the right to hold Mandatory Conferences in the future and to require the Franchisee to attend.

8.06 Opening and Continuing Assistance. Franchisor may provide on-site assistance at your swim school and assistance with respect to opening activities within the first four weeks of the operation of your swim school at an additional cost. Franchisor may also provide reasonable ongoing assistance by telephone, email, or other form of communication to Franchisee during normal business hours. If Franchisee requires additional on-site assistance, Franchisee will be charged Franchisor's then-current additional assistance fee per day, plus travel and living expenses for Franchisor's representative.

8.07 Advertising and Promotional Programs. Franchisor will provide advertising and promotional programs as set forth in Section 9.

8.08 Development of Programs. Franchisor may develop new products and service methods, as Franchisor deems beneficial to the System. Franchisor will offer such new products and service methods to Franchisee on terms reasonably determined by Franchisor and Franchisee must comply with such products and service methods.

8.09 Modification of System. Franchisor will periodically continue to improve, modify, and revise the Manual and the specifications, standards, and operating procedures and rules of the System, as set forth in Sections 2.02 and 7.04.

8.10 Central Purchasing. Franchisor reserves the right to implement a centralized purchasing system for franchisees and negotiate prices and terms with suppliers and to receive rebates from such

purchases by Franchisees. Franchisor may utilize such rebated funds in any manner it chooses at Franchisor's sole discretion. Franchisee may elect to not participate in central purchasing.

8.11 Web Site. Franchisor will provide information regarding Franchisee's Business on its Web site, as set forth in Section 9.02.

## **9. SOLICITATION AND ADVERTISING**

9.01 Solicitation. Franchisee may not market to or solicit customers who reside outside the Territory and Franchisee will have the right to service customers within the Territory generated by Multi-Area Marketing Programs, without Franchisor's prior written consent, which will not unreasonably be withheld.

9.02 Franchisee Advertising. Franchisee will be required to spend between \$26,000 and \$45,000 on local advertising and marketing in Franchisee's Territory prior to opening and during the first three months of operation. Franchisee may not advertise in any media with a primary circulation outside Franchisee's Territory, without Franchisor's prior written consent, which will not unreasonably be withheld. All digital marketing is a part of National Advertising Programs and must be coordinated through and approved by Franchisor.

9.03 Advertising and Marketing Materials. Franchisor will provide digital artwork to Franchisee for all advertising and marketing materials which may include, but are not limited to, video and audiotapes, multimedia, print-ready advertising materials, posters, banners, and other items. Franchisee is responsible for any costs associated with the purchase of print and publication of all advertising materials. Franchisee may develop and produce additional advertising and marketing materials, at Franchisee's own expense, but any advertising and marketing materials must be approved in writing by Franchisor in advance of Franchisee's use of such materials. Franchisor will approve or disapprove of materials submitted by Franchisee within fifteen (15) days of receipt. Franchisor also reserves the option of utilizing the advertising, without cost, developed by Franchisee and providing the advertising to other franchisees.

9.04 Regional Advertising Cooperatives. We have the right to require that advertising cooperatives be formed, changed, dissolved or merged. We reserve the right to require that a Cooperative be implemented, once 3 franchises are open and operational, within a specific Metro Area, in an area which may include your Franchise in the future, and once implemented, you will be required to participate in an amount not to exceed 2% of your Gross Revenue. Aqua-Tots does not currently collect any of these fees, but may in the future, and they will be held in a separate bank account formed and managed by the Cooperative. Any contributions made to the Advertising Cooperative will be in addition to any contributions due to the National Marketing Fund, which target customers and potential customers on a local, regional, and/or national level, including Internet and email marketing, telemarketing, radio, television, and any other marketing which may include Franchisee's Territory; provided. You will have the first right to provide services which are mandatory elements of the System to any customers within your Territory (if applicable). Areas for Advertising cooperatives shall be those Designated Marketing Areas (DMA) defined by the Franchisor or its successor to demarcate the primary coverage of broadcast and print media in given markets. The boundaries of a

particular DMA shall be determined by reference to television coverage. We do not administer any cooperatives; however, we have the right to provide advice and/or direction for your marketing. Each Cooperative will operate from a written set of By-Laws, and hold periodic meetings, to which a representative from Aqua-Tots Swim School Holding LLC may attend. Following the close of each fiscal year, Franchisor will require an audit of the Co-op's books and records. Such reports of audits are to be presented to Aqua-Tots Swim School Holding LLC by January 15<sup>th</sup> for the preceding year and will present it to the members of the Co-op at the next scheduled meeting. The Treasurer shall prepare a quarterly and year-end financial statement to be filed with Aqua-Tots Swim School Holding LLC. We also reserve the right to issue mandatory policies to coordinate such marketing programs. Franchisor-owned outlets in the cooperative area will be required to participate in these cooperatives but will have no control on any fees imposed by the cooperative but would abide by the decision of the majority of the outlets in the cooperative.

9.05 National Marketing Fund. Franchisee will be required to pay a fee into the National Marketing Fund to advertise the System on a regional, national, or international level. Franchisee may be required to pay a National Marketing Fund contribution equal to two percent (2%) of Franchisee's Gross Revenue in USD on the 10<sup>th</sup> day of each month for the preceding calendar month and in the same manner as the royalty fee. Franchisor will hold the National Marketing Fund contributions in a bank account of Franchisor's choosing, including Franchisor's corporate bank account. Franchisor will use the National Marketing Fund for local, regional, national, or international advertising, marketing or development programs, including maintenance, related expenses and/or agency costs of such programs. These programs may include, but are not limited to, the Internet, e-commerce, any media format, telemarketing or other marketing vehicles which target customers or potential customers, including those customers inside Franchisee's Territory. Franchisor may also use the funds to offset or partially rebate the franchisee local media and printing expenses. Franchisee acknowledges and agrees that expenditures from the National Marketing Fund may or may not be proportionate to contributions made by Franchisee or provide a direct or any benefit to Franchisee. Franchisor is not required to spend any amount on advertising in any Franchisee's particular territory. The National Marketing Fund will be spent at Franchisor's sole discretion, and Franchisor has no fiduciary duty with regard to the National Marketing Fund. Franchisor may accumulate these funds, and the balance may be carried over to subsequent years and used for the purposes stated in this Agreement. If the National Marketing Fund operates at a deficit or requires additional funds at any time, Franchisor reserves the right to loan such funds to the National Marketing Fund on any terms Franchisor determines. Franchisor may also utilize the National Marketing Fund to reimburse itself for administrative expenses incurred in administering the National Marketing Fund. Franchisor will provide an unaudited financial statement of the NMF for the previous year to Franchisees, upon request, as the financial statements are prepared and available, and in any event no later than the Franchisor's annual conference. We are not required to have any Fund statement audited, but if we choose to have the Fund audited it will be at the Fund's expense.

9.06 National Marketing Committee. We have instituted a National Marketing Committee (NMC), and we periodically meet with the Committee to seek its input. Members of the Committee are and will be selected by us among existing Franchisees. We will give due consideration to all input from

the NMC, but we retain the ultimate decision-making authority and responsibility for all of these matters.

9.07 Other Advertising Programs: We may implement additional marketing programs in which we may charge fees to you for digital platforms such as email, text, and social media expenses. We will charge you at our cost for these programs and will not make any profit. These programs will be in addition to any local, regional, national or cooperative programs that may already be in place.

## **10. CONSTRUCTION AND MAINTENANCE OF SWIM SCHOOL**

10.01 Swim School Construction. Franchisee must construct or convert a building and equip the Swim School, at Franchisee's expense, in a good and workmanlike manner as specified by Franchisor. All construction or conversion work must be completed in accordance with the standards and specifications of Franchisor and must conform to all applicable zoning and other requirements of local authorities. Construction or conversion must begin as soon as possible after obtaining the Franchise location and must be operational no later than twenty-four (24) months after signing this agreement, unless otherwise agreed to in writing by both parties. If Franchisor determines that Franchisee is not making a commercially reasonable effort to open the Franchised Unit to the public by the end of the twenty-fourth (24th) month after signing a Franchise Agreement, Franchisor may terminate the Franchise Agreement and retain all monies received. Franchisee will still be liable for all non-competition and non-disclosure provisions. Franchisee must exercise exclusive control over the property in which the swim school will be operated.

10.02 Property. Franchisee must, during the first nine (9) months after signing the Franchise Agreement, obtain suitable premises for the swim school's Accepted Location by either purchase or lease. Franchisee may not operate the Swim School out of a residential pool and must have complete control of the premises. Franchisee's site must be at least 5,500 square feet. Site selection is the responsibility of the Franchisee, but Franchisor will assist in the location selection process by considering population density, traffic patterns, and proximity of the proposed site to other Aqua-Tots Swim Schools or any other reasonable criteria. If Franchisor does not accept the initial location submitted, Franchisee must continue to submit proposed sites until a site is accepted by Franchisor, such acceptance will not be unreasonably withheld. Franchisor will evaluate and will either accept or reject your site within 30 days after receipt of the notice of the location. The Franchise Agreement cannot be terminated due to failure to agree on site selection, however, If Franchisor determines that Franchisee is not making commercially reasonable efforts to lease or purchase a suitable location by the end of the ninth (9th) month after signing a Franchise Agreement, Franchisor may terminate the Franchise Agreement and retain all monies received. Franchisee will still be liable for all non-competition and non-disclosure provisions. Our assistance in no way constitutes a representation or warranty with respect to the property or the potential success of the Outlet. Franchisee may purchase or lease the required real property and improvements from any source upon terms accepted by Franchisor in writing. If Franchisor assists Franchisee with the lease or purchase, Franchisor will charge Franchisee an administrative fee of \$200 per occurrence pursuant to Section 5.09 for such assistance. Franchisor will provide Franchisee with standard sample floor layouts and architectural plans, but all final plans must be approved by Franchisor.

10.03 Lease Riders. In conjunction with Attachment V of this Agreement, if Franchisee leases the Premises at the Accepted Location, the lease must contain the following provisions:

- a) on termination of this Agreement for any reason, Franchisor or its designee will have the option for thirty (30) days to assume Franchisee's remaining lease obligations without accruing any liability regarding the lease prior to the effective date of any assignment; or Franchisor will have the right to execute a new lease for the remaining term on the same terms and conditions;
- b) all notices of default to Franchisee under the lease must be sent contemporaneously to Franchisor;
- c) in the event Franchisee defaults under the lease, Franchisor or its designee will have an opportunity, but not the obligation, to cure such default and to assume Franchisee's remaining obligations under the lease, but will not have any obligation to do so; and
- d) a provision reserving to Franchisor the right, at Franchisor's sole and absolute election, to receive an assignment of the leasehold interest from Franchisee upon termination or expiration of the initial term or any renewal term, or any termination of Franchisee, and the right to reassign the lease without becoming liable on the lease and without further approval from the landlord or additional charge.

10.04 Maintenance and Upgrades. Subject to the terms of this Section, Franchisee must at all times comply with Franchisor's then current standards, specifications, processes, procedures, requirements and instructions regarding the Swim School's physical facilities, including the layout of furnishings and fixtures. Franchisee must maintain the Swim School and any parking areas in good and safe condition, as specified in the Manual. Franchisee must remodel or upgrade the Swim School at its own cost in accordance with Franchisor's reasonable standards and requests. Should the estimate for any remodel or upgrade be less than \$10,000, Franchisee must complete the project within three months following notification by Franchisor. Should the estimate for any remodel or upgrade be at least \$10,000 but no more than \$25,000, Franchisee must complete the project within six months following notification by Franchisor. Should the estimate for any remodel or upgrade be over \$25,000, Franchisee will have one year to complete the project. Should Franchisee fail to meet these time periods, Franchisee will be charged an administrative fee of \$200 per day for any such non-compliance.

## **11. RECORDS AND REPORTS**

11.01 Records. Franchisee must keep and transmit complete and accurate Business Records on a current basis relating to the Business in the form, time, and manner that Franchisor prescribes. Franchisee must provide Franchisor with all hard copies, and access to electronic reports, as reasonably prescribed. Franchisee must maintain an accounting system, which accurately reflects all operational aspects of the Swim School including uniform reports as may be required by Franchisor. Franchisee must submit to Franchisor current financial statements and other reports as Franchisor may reasonably request to evaluate or compile research data on any operational aspect of the Swim

School. Franchisor reserves the right to require that Franchisee make available its sales records and files by way of an Internet connection. Business Records will specifically also include:

- a) tax returns;
- b) daily reports;
- c) statements of Gross Revenues and expenses, to be prepared and submitted each month for the preceding month;
- d) balance sheet and profit and loss statements to be prepared each month for the preceding month with year-to-date profit and loss statement; prepared and submitted by the 15th of the following month.
- e) profit and loss statements, to be prepared at least quarterly and submitted by request.;
- f) profit and loss statements and balance sheets, to be prepared at least annually by an independent Certified Public Accountant and submitted upon request.
- g) Franchisee must keep accurate records relating to the Outlet for a period of six (6) years after the termination or expiration of this Agreement.

**11.02 Records Standards.** Franchisee must prepare all financial reports in accordance with generally accepted accounting principles, consistently applied, in a form approved by Franchisor. Franchisee must periodically deliver to Franchisor copies of accounting, tax and other documents and information, within ten (10) business days of Franchisor's requests. Franchisee must provide Franchisor with a copy of its annual financial statements including a profit and loss statement and a balance sheet containing complete notes and disclosures and be delivered to Franchisor within ninety (90) days after Franchisee's fiscal year end.

**11.03 Overdue Reports.** Any records or reports not presented to Franchisor by Franchisee within 90 days of the due date will incur an administrative fee of \$200.00 per day until such record or report is thereafter presented to Franchisor.

**11.04 Audits.** Franchisee must provide Franchisor, or its agents, access to Franchisee's Business and computer systems to examine and audit Franchisee's business, at any reasonable time without notice. Franchisor will bear the cost of the audit, unless Franchisee fails to report as required or understates Gross Revenue by one percent (1%) or more for any reported time period, in which case Franchisee will pay the audit cost plus interest on understated costs of one and one-half percent (1.5%) per month. Franchisee must immediately pay to Franchisor all sums owed in addition to any other remedies provided in this Agreement or by law.

## **12. FRANCHISEE'S DUTIES**

**12.01 Compliance with Applicable Laws.** Franchisee agrees to (i) comply with all applicable laws, ordinances and regulations or rulings, or licensing requirements, of every nature whatsoever which in any way regulate or affect the operation of its Business, (ii) pay promptly all taxes and business expenses, and (iii) comply with all laws covering occupational hazards. Franchisee agrees, at its expense, to modify its Swim School, if necessary, to comply with any such applicable laws or regulations. Franchisee shall not engage in any activity or practice that result, or may reasonably be anticipated to result, in any public criticism of the System or any part thereof.

12.02 System Compliance. Franchisee must comply with the System, the Manual, systems, procedures and forms, as in effect and as amended by us in our discretion. All mandatory, specifications, standards, and operating procedures prescribed by Franchisor in the Manual, or otherwise communicated to Franchisee in writing, shall constitute provisions of this Agreement as if fully set forth herein. Accordingly, all references in this Agreement to Franchisee's obligations under this Agreement, including to the Swim School, procedures, products and materials, shall include such mandatory specifications, standards, and operating procedures. Franchisor may require Franchisee to add additional services or concepts to the Business in the future, at Franchisee's expense.

12.03 Uniformity and Image. In order to maintain uniform standards of quality, appearance, and marketing, it is essential that Franchisee conform to Franchisor's standards and specifications. While Franchisee will manage its own operations and employees, Franchisee must agree and conform to all the requirements of this Section.

12.04 Operations. Franchisee must operate the Business in accordance with the System and Manual, as amended by us in our discretion. Franchisee, or a fully trained and qualified manager ("Manager") must participate personally and full-time in the Business.

12.05 Right of Entry and Inspection. Franchisee must permit Franchisor or its authorized agent or representative to enter the Premises during normal business hours and to reasonably inspect the operations of the Outlet. Without any liability to Franchisee, Franchisor may confiscate any materials which Franchisor, in its reasonable judgment, determines to be either illegal or in violation of this Agreement. Franchisor shall have the right to observe Franchisee and its employees rendering services, to confer with Franchisee's employees and customers and to generally review the Business operations for compliance with the standards and procedures set forth in the Manual.

12.06 Restrictions on Services. Franchisee is prohibited from offering or selling any services not authorized by Franchisor as being a part of the System. Franchisee shall purchase all equipment, services, supplies and materials required for the operation of the Business as approved by Franchisor. However, if Franchisee proposes to offer, conduct or utilize any services, products, materials, forms, items, supplies or services for use in connection with or sale through the Business which are not previously approved by Franchisor as meeting its specifications, Franchisee shall first request approval in writing from Franchisor. Franchisor may, in its sole discretion, for any reason whatsoever, elect to withhold such approval; however, in order to make such determination, Franchisor may require submission of specifications, information or samples of such products, services, materials, forms, items or supplies. Franchisor will advise Franchisee within a reasonable time whether such products, services, materials, forms, items or supplies meet its specifications. Approved product descriptions are prescribed in the Manual. If there is no designated or approved supplier for particular items, Franchisee may purchase from suppliers approved in advance by Franchisor who meet all of Franchisor's specifications and standards as to quality, composition, finish, appearance and service, and who shall adequately demonstrate their capacity and facilities to supply Franchisee's needs in the quantities, at the times, and with the reliability requisite to an efficient operation of the Business.

12.07 Limitations on Supply Obligations. Nothing in this Agreement shall be construed to be a promise or guarantee by Franchisor as to the continued existence of a particular product, nor shall

any provision herein imply or establish an obligation on the part of Franchisor and its affiliates to sell products to Franchisee if Franchisee is in arrears on any payment to Franchisor or its affiliates or otherwise in default under this Agreement. If Franchisee fails to pay in advance in full for each shipment of products purchased, Franchisor or its affiliates shall not be obligated to sell products to Franchisee. In addition, Franchisor may impose interest on any late payments on the terms described in Section 5.04.

12.08 Insurance. Franchisee must keep in force insurance policies as prescribed by Franchisor in the Manual by an insurance company acceptable to Franchisor at all times during the term of this Agreement and any renewals. Insurance coverage must include: general liability, combined single limit, bodily injury and property damage insurance including, fire and lightning, extended coverage, theft, vandalism and malicious mischief, flood (if the Swim School is in a Designated Flood Hazard Area), and sprinkler leakage insurance for premises operations, products liability and all other occurrences against claims of any person, employee, customer, and agent or otherwise in an amount per occurrence of not less than such amount set forth in the Manual and adjusted by Franchisor from time to time. Insurance policies must insure both Franchisee and Franchisor, its officers and directors, as additional insureds against any liability which may accrue against them by reason of the ownership, maintenance or operation by Franchisee of the Business. The policies must also stipulate that Franchisor shall receive a thirty (30) day prior written notice of cancellation. Original or duplicate copies of all insurance policies, certificates of insurance or other proof of insurance acceptable to Franchisor shall be furnished to Franchisor together with proof of payment within thirty (30) days of issuance thereof. In the event Franchisee fails to obtain the required insurance and keep the same in full force and effect, Franchisee shall pay Franchisor upon demand the premium cost thereof, which Franchisor shall then forward to the insurance carrier. Notwithstanding the foregoing, failure of Franchisee to obtain insurance constitutes a material breach of this Agreement entitling Franchisor to terminate this Agreement pursuant to the provisions of this Agreement. Franchisee will also procure and pay for all other insurance required by state or federal law, including, without limitation, workers' compensation and unemployment insurance.

12.09 Appearance and Customer Service. Franchisee and its employees shall (i) maintain a clean and attractive appearance, (ii) give prompt, courteous and efficient service to the public, and (iii) otherwise operate the Business in strict compliance with the policies, practices and procedures contained in the Manual so as to preserve, maintain and enhance the reputation and goodwill of the System. Franchisee may not alter, change, or modify the System, including the Swim School, in any way without the prior written consent and approval of Franchisor.

12.10 Signs. All signs to be used on or in connection with the Business must be approved in writing by Franchisor prior to their use by Franchisee.

12.11 Training. Franchisee must complete Franchisor's initial training program described in Section 8.04 above. Franchisee shall train its employees according to standards and procedures established by Franchisor.

12.12 Correction of Defects. Should Franchisor notify Franchisee at any time of defects, deficiencies or unsatisfactory conditions in the appearance or conduct of the Business, Franchisee shall

immediately commence the correction of such items. Any safety hazard must be corrected within 24 hours. Other infractions must be corrected within 7 days following notification. If any violation is not corrected according to the respective time schedule, an administrative fee of \$200 per day will be imposed until the violation is corrected.

Franchisee shall establish and maintain an image and reputation for the Business consistent with the standards set forth in this Agreement, the Manual, or as otherwise specified by Franchisor. Franchisee shall keep its Swim School clean and in good order and repair at all times.

**12.13 Indemnification.** Franchisee agrees to indemnify, defend and hold harmless Franchisor, its parent corporation, its subsidiaries and affiliates, and their respective shareholders, directors, officers, employees, agents, successors and assignees against all claims and liabilities directly or indirectly arising out of the operation of the Business or arising out of the use of the Marks and System in any manner not in accordance with this Agreement. For purposes of this indemnification, claims shall mean and include all obligations, actual and consequential damages and costs reasonably incurred in the defense of any claim, including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. Franchisor shall have the right to defend any such claim against it. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

**12.14 Computer Systems.** Franchisee must acquire, maintain, and upgrade computer, information processing and communication systems, including all applicable hardware, software, and Internet and other network access providers, and Web site vendors, as prescribed in the Manual. Franchisee must comply with any separate software or other license agreement that Franchisor or its designee uses in connection with providing these services.

**12.15 Computer Problems, Viruses, and Attacks.** Franchisee acknowledges and understands that computer systems are vulnerable to computer viruses, bugs, power disruptions, communication line disruptions, Internet access failures, Internet content failures, date-related problems, and attacks by hackers and other unauthorized intruders. Franchisor has taken reasonable steps so that these problems will not materially affect the System. Franchisor does not guarantee that information or communication systems supplied by Franchisor or its suppliers will not be vulnerable to these problems. Franchisee acknowledges and agrees that Franchisee is solely responsible for protecting itself from these problems. Franchisee must also take reasonable steps to verify that Franchisee's suppliers, lenders, landlords, customers, and governmental agencies on which Franchisee relies, are reasonably protected. This may include taking reasonable steps to secure Franchisee's systems, including, but not limited to, firewalls, access code protection, anti-virus systems, and use of backup systems.

**12.16 Hazardous Materials.** Franchisee must not cause or permit any toxic or hazardous waste, substances, or materials, as defined under applicable government laws and regulations to be used, generated, stored or disposed of near, on, under, about or transported to or from the Premises or any of Franchisee's vehicles except as necessary for Franchisee's operation of the Outlet and in accordance with the Manual. Franchisee shall conduct such permissible hazardous materials

activities in strict compliance, and at Franchisee's expense, with all applicable federal, state, and local laws, rules and regulations now or hereafter in effect and using all necessary and appropriate precautions. Franchisor will not be liable for any of these activities. Franchisee must provide Franchisor with a copy of all hazardous materials inventory statements and updates filed by any governmental agency or regulation and must immediately notify Franchisor both by telephone and in writing of any spill or unauthorized discharge of hazardous materials or of any conditions constituting an imminent hazard.

### **13. DEFAULT AND TERMINATION**

13.01 Termination by Franchisee. Franchisee may terminate this Agreement only if Franchisor violates a material provision of this Agreement and fails to remedy or fails to make substantial progress toward curing the violation within ninety (90) days after receiving an initial written notice from Franchisee detailing the alleged default. Termination by Franchisee shall be effective ten (10) days after Franchisor receives a subsequent written notice of termination following the referenced ninety (90) days only if Franchisor has not cured the violation or made substantial progress toward curing the violation. If Franchisee terminates this Agreement under this provision, Franchisee must follow the termination procedures as set forth in Sections 13.03 (b) through (g) below.

13.02 Termination by Franchisor. Subject to applicable law to the contrary, Franchisor may, at its option, terminate this Agreement before its expiration as set forth below:

- a) With Notice of 30 Days. This Agreement will terminate thirty (30) days after Franchisor gives written notice to Franchisee and Franchisee fails to cure the defect within the 30-day period, in the event that:
  - i) Franchisee fails or refuses to maintain and operate the Outlet in compliance with this Agreement, the System, or the Manual;
  - ii) compliance with this Agreement, the System, or the Manual;
  - iii) Franchisee fails to pay Franchisor or its affiliates or suppliers for obligations under this Agreement;
  - iv) Franchisee fails to comply with any material federal, state, or local law, or regulation applicable to the operation of the Business; or
  - v) Franchisee is in breach of any other term, condition or provision or Attachment of this Agreement, or any other Agreement or Attachment executed by Franchisee and relevant to the nature of this transaction.
- B) Without Notice. This Agreement and license will immediately terminate without notice in the event that:
  - i) Franchisee misrepresented or omitted material facts which induced Franchisor to enter into this Agreement;
  - ii) Franchisee fails to complete the required initial training or has failed to designate an acceptable site pursuant to Section 10;
  - iii) A permanent or temporary receiver or trustee for the Swim School or all or substantially all of Franchisee's property is appointed by any court, or any such appointment is consented to or not opposed through legal action by Franchisee, or Franchisee makes a

general assignment for the benefit of Franchisee's creditors or Franchisee makes a written statement to the effect that Franchisee is unable to pay its debts as they become due, or a levy or execution is made on the license, or an attachment or lien remains on the Swim School for thirty (30) days unless the attachment or lien is being duly contested in good faith by Franchisee and Franchisor is advised in writing;

- iv) Franchisee loses possession or the right of possession of all or a significant part of the Swim School through condemnation, casualty, lease termination or mortgage foreclosure and the Swim School is not relocated or reopened as provided in Section 16;
- v) Franchisee contests the validity of, or Franchisor's ownership of, any of the Marks in any court or proceeding;
- vi) Franchisee makes an unauthorized Transfer;
- vii) Franchisee is a business entity, and any action is taken which purports to merge, consolidate, dissolve or liquidate the entity without Franchisor's prior written consent.
- viii) Franchisee voluntarily abandons or ceases operation of the Business for more than five (5) consecutive days; or
- ix) The Franchisee or any owner of the Franchisee entity or operator is charged or convicted of a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in the sole opinion of the Franchisor, to materially and unfavorably affect the Aqua-Tots System, Marks, goodwill or reputation.

13.03 Effect of Termination. Upon any termination or expiration of this Agreement, all obligations that by their terms or by reasonable implication survive termination, including those pertaining to non-competition, confidentiality, and indemnity, will remain in effect, and Franchisee must immediately:

- a) If such termination is initiated by us, pay us within 45 days after the effective date of termination liquidated damages equal to the average monthly Royalty Fees you paid or owed to us during the 12 months of operation preceding the effective date of termination multiplied by the number of months remaining in the Agreement had it not been terminated;
- b) return to Franchisor all copies of the Manual, customer lists, records, files, instructions, brochures, advertising materials, agreements, Confidential Information and any and all other materials provided by Franchisor to Franchisee or created by a third party for Franchisee relating to the operation of the Business, and all items containing any Marks, copyrights, and other proprietary items;
- c) cancel or assign within five (5) days all registrations relating to its use of any of the Marks, in Franchisor's sole and absolute discretion. Franchisee must notify the telephone, Internet, email, electronic network, directory, and listing entities of the termination or expiration of the Franchisee's right to use any numbers, addresses, domain names, locators, directories and listings associated with any of the Marks, and must authorize their transfer to the Franchisor or any new franchisee as may be directed by the Franchisor. The Franchisee acknowledges as between the Franchisor and the Franchisee, the Franchisor has the sole rights to, and interest in, all numbers, addresses, domain names, locators, directories and listings used by Franchisee to promote the System. The Franchisee hereby irrevocably appoints the Franchisor, with full power of substitution, as its true and lawful attorney-in-fact, which appointment is coupled

with an interest, to execute such directions and authorizations as may be necessary or prudent to accomplish the foregoing;

- d) cease doing business under any of the Marks, cancel any assumed name registration that includes any of the Marks, assign all domain names and Internet directory listings that contain the Marks to Franchisor, and refrain from identifying itself as an Aqua-Tots franchisee;
- e) allow Franchisor or representatives access to the Business and the computer systems to verify and secure Franchisee's compliance with the obligations under this Agreement;
- f) allow Franchisor to make a final inspection and audit of your computer system, books, records and accounts; and
- g) abide by the terms of the required non-competition covenant.

13.04 Failure to Cease or Remove Identification. If, within thirty (30) days after termination of this Agreement by Franchisor, Franchisee fails to remove all displays of the Marks from the Swim School which are identified or associated with the System, Franchisor may enter the Swim School to effect removal; all associated costs will be the responsibility of the Franchisee. In this event, Franchisor will not be charged with trespass nor be accountable or required to pay for any displays or materials. If, within thirty (30) days after termination Franchisee has not taken all steps necessary to amend or terminate any registration or filing of any fictitious name or any other registration or filing containing the Marks, Franchisee hereby irrevocably appoints Franchisor as Franchisee's true and lawful attorney for Franchisee, for the purpose of amending or terminating all registrations and filings, this appointment being coupled with an interest to enable Franchisor to protect the System.

13.05 Other Claims. Termination of this Agreement will not affect, modify or discharge any claims, rights, causes of action or remedies, which Franchisor may have against Franchisee, whether such claims or rights arise before or after termination.

## 14. TRANSFER

14.01 Prohibited Acts. Any unauthorized Transfer or other conveyance, by operation of law or otherwise, or any attempt to do so, shall be deemed void, a breach of this Agreement, and grounds for termination of this Agreement by Franchisor.

14.02 Transfer by Franchisor. Franchisor's obligations under this Agreement are not personal, and Franchisor can unconditionally assign and transfer, in its sole and absolute discretion, this Agreement to another person or business entity at any time. Franchisor does not need permission of Franchisee for the transfer and may transfer free of any responsibility or liability whatsoever to the Franchisee, provided the transferee assumes the Franchisor's material obligations. Franchisor may also:

- a) sell or issue its stock, other ownership interests, or assets, whether privately or publicly;
- b) merge with, acquire, or be acquired by another entity, including an entity that competes directly with Franchisee; or
- c) undertake a refinancing, recapitalization, leveraged buyout, or other economic or financial restructuring.

14.03 Transfer by Franchisee. Franchisee's obligations under this Agreement are personal and may not be voluntarily or involuntarily sold, pledged, assigned, transferred, shared, subdivided, sub franchised, encumbered or transferred in any way without the prior express written approval of Franchisor. Franchisor will not unreasonably withhold, delay or condition its consent to any proposed transfer or assignment by Franchisee which requires Franchisor's consent under Section 14.04 of the Franchise Agreement.

14.04 Conditions for Transfer or Assignment. No Transfer of this Agreement will be approved by Franchisor or be effective unless and until:

- a) Franchisee is under no default in the performance or observance of any of its obligations under this Agreement or any other agreement with Franchisor at the time Franchisee requests permission to assign this Agreement or at the time of the assignment;
- b) Franchisee has settled all outstanding accounts with Franchisor, and Franchisee, and every principal and guarantor of Franchisee's entity, have executed a general release in favor of Franchisor its related parties in a form prepared by Franchisor;
- c) the proposed transferee pays to Franchisor a fee to transfer the Business (the "Transfer Fee") in the amount of \$5,000.00 unless the transferee is:
  - i) a corporation of which Franchisee is the majority stockholder, or a child, parent, sibling or spouse of Franchisee, in which case no Transfer Fee will be required, or
  - ii) another franchisee of Aqua-Tots, in which case the Transfer Fee will be \$3,000.00;
- d) the proposed transferee executes a separate franchise agreement with Franchisor, using the then-current form of franchise agreement, which may vary in material aspects from this Agreement, including, but not limited to, higher royalty and advertising fees, and additional fees;
- e) the proposed transferee pays for, attends, and satisfactorily completes the training program for new franchisees unless:
  - i) the transferee is a current franchisee in good standing in the System, or
  - ii) the transferee is and has been a Manager for a period of one year or more of a Swim School in good standing;
- f) the individual proposed transferee, or each of the direct and indirect owners, including the stockholders, partners, members, or trustees and beneficiaries of a proposed entity transferee, each execute a non-compete and a personal guarantee, jointly and severally guaranteeing non-competition and the performance of the proposed transferee's obligations;
- g) the proposed transferee demonstrates to Franchisor's satisfaction that it, in all respects, meets Franchisor's standards applicable to new franchisees regarding experience, personal and financial reputation and stability, willingness and ability to devote his or her full time and best efforts to the operation of the Outlet, and any other conditions as Franchisor may reasonably apply in evaluating new franchisees. Franchisor must be provided all information about the proposed transferee as it may reasonably require. Because of the confidential information available to a franchisee, no assignment to a competitor of the System will be permitted;

14.05 Transfer to an Entity. Notwithstanding the preceding sub-section, if the initial Franchisee(s) is comprised of one or more individuals and after obtaining Franchisor's written consent, the franchise granted hereunder may be assigned by the initial franchisee(s) without charge, once only, to a newly formed corporate entity (such as a corporation, limited partnership or limited liability company) which shall conduct no business other than the franchise granted hereunder, which is actively managed by the initial franchisee(s) and in which all of the principal individuals shall own and control the same percentage ownership interests as they held as individual franchisees. Franchisor shall be provided with a copy of the entity's organizational documents, and the initial franchisee(s) and the entity shall execute an "Assignment of Agreement to an Entity" in our standard form, wherein each of the principals shall execute guarantees in our favor.

In the event of such an assignment by you of the franchise granted hereunder to a corporate entity which you control, you agree, as a condition of being permitted to make such assignment, forthwith to cause the entity and its directors/managers and owners to acknowledge this Agreement and to agree in writing to be bound by the provisions hereof, cause the entity in its articles of organization to provide in effect that its object or business is confined exclusively to the operation of an Aqua-Tots Swim School Business as provided in this Agreement, and cause the entity to restrict the issue of, and its directors/managers and owners to restrict the transfer of, ownership interests of the entity.

14.06 Death of Franchisee. Upon the death of an individual Franchisee, the rights granted by this Agreement may pass (without payment of any Transfer Fee) to the next of kin or legatees, provided that Franchisee's legal representatives will within one hundred twenty (120) calendar days of Franchisee's death apply in writing to Franchisor for the right to transfer to the next of kin or legatee Franchisee's rights under this Agreement. Franchisor will not unreasonably withhold permission so long as the proposed transferees meet each of the then-current requirements of franchisees.

14.07 Right of First Refusal. Franchisee grants Franchisor the right to purchase the Business on the same terms and conditions specified in a bona fide written offer from a qualified third party. Within seven (7) days after receipt of the bona fide offer acceptable to Franchisee to transfer all or part of the Business, Franchisee must forward a signed copy of the written offer to Franchisor. Franchisor will then have access to all Franchisee's Business Records in order to evaluate the offer and may purchase the Business upon notification to Franchisee within sixty (60) days.

14.08 Election of Right / Set Offs. If Franchisor elects to exercise its option to purchase under this Agreement, Franchisor will have the right to set off against any payment all amounts due from Franchisee.

14.09 Rights After Refusal. If Franchisor does not exercise its right to purchase within the required timeframe, Franchisee may transfer the Business to the third party, but not at a lower price or on more favorable terms than disclosed to Franchisor in writing. Such transfer remains subject to Franchisor's prior written approval and other conditions specified in this Agreement. If Franchisor does not transfer the Outlet to the transferee on the same terms offered to Franchisor, then Franchisee must again extend the right of first refusal to Franchisor in the manner described above, before another desired transfer.

## 15. GENERAL PROVISIONS

15.01 Covenants Not to Compete. During the term of this Agreement and for two (2) years after termination, transfer, or expiration of this Agreement for any reason, neither Franchisee, nor persons associated with Franchisee, including owners, spouses, managers, member, shareholders, officers or directors, Guarantors and their spouses, may participate directly or indirectly or serve in any capacity in any business engaged in the sale of services or products the same as, similar to, or competitive with the System. Franchisee's key personnel will, to the extent permitted by law, be required to sign the then current Non-Disclosure and Non-Compete Agreement as provided by Franchisor. This covenant not to compete applies: (i) during the term of the Agreement, within any state in which Franchisor, Franchisor's affiliates, or franchisees do business; and after termination within a fifty (50) mile radius from the boundary of Franchisee's Territory, and from any franchised, Franchisor-owned or affiliated company-owned premises; (ii) on the Internet; and (iii) on any other Multi-Area Marketing channels used by Franchisor.

15.02 This covenant not to compete is given in part in consideration for training and access to Franchisor's Trade Secrets, and which, if used in a competitive business without paying royalties and other payments, would give Franchisee an unfair advantage over Franchisor and Franchisor's franchisees and affiliates. The unenforceability of all or part of this covenant not to compete in any jurisdiction will not affect the enforceability of this covenant not to compete in other jurisdictions, or the enforceability of the remainder of this Agreement. The time period in this covenant not to compete will be tolled during any period of noncompliance.

15.03 If Franchisee is an entity, each of Franchisee's owners must execute the attached "Payment and Performance Guarantee" (the "Guarantee"). By executing the Guarantee, each owner will be individually bound by the provisions stated in this Agreement. A violation of any provision in this Agreement by any owner will constitute a violation of Franchisee's obligations under this Agreement. The individuals executing this Agreement under the Guarantee represent that they are, in fact, owners of Franchisee. The term "owner" in this Agreement includes all shareholders of a corporation, all members of a limited liability company, all general and limited partners of a limited partnership, and the grantor and the trustee of a trust. If any owner required to sign a Guarantee is a business entity, then each of owner and parent in such Owner's chain of ownership will execute the Guarantee; it being the intent of the parties that each entity and natural person holding a beneficial interest in the franchise and in Franchisee, either directly or indirectly through one or more business entities, be considered an "owner" under this Agreement.

## 16. DISPUTE RESOLUTION

For purposes of this Section 16, "you" includes all of your owners, Affiliates and their respective employees, and "we" includes all of the "Franchisor-Related Persons/Entities."

16.01 Negotiation. The parties will first attempt to resolve any dispute relating to or arising out of this Agreement by negotiation. Franchisor will provide a procedure for internal dispute resolution as set forth in the Manual, and this procedure may be revised periodically in Franchisor's discretion.

16.02 Mediation / Arbitration Except as specifically provided under this Agreement, any dispute or claim relating to or arising out of this Agreement must be resolved exclusively by mediation, then mandatory arbitration by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) or another arbitration service agreed to by the parties. Mediation / Arbitration will be conducted solely on an individual, not a class-wide, basis, unless all parties so agree. No award in arbitration involving Franchisor will have any effect of preclusion or collateral estoppel in any other adjudication or arbitration. A single mediator / arbitrator shall be selected in accordance with standard AAA procedure, and the proceedings will be conducted at its office nearest to Mesa, Arizona, office. Each party shall bear all of its own costs and attorneys’ fees and one-half of the arbitrator’s expenses. The decision of the arbitrator shall be final and binding.

16.03 Applicability. This dispute resolution section applies to claims by and against all parties and their successors, owners, managers, officers, directors, employees, agents, and representatives, as to claims arising out of or relating to this Agreement, except as stated above. This dispute resolution clause shall survive the termination or expiration of this Agreement.

16.04 Governing Arbitration Law. Notwithstanding any choice of law provision of this Agreement, all issues relating to arbitration or the enforcement of the agreement to arbitrate contained in this Agreement are governed by the U.S. Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the U.S. Federal common law of arbitration. This federal act preempts any state rules on arbitration, including those relating to the site of arbitration. Judgment on an arbitration award, or on any award for interim relief, may be entered in any court having jurisdiction, and will be binding.

16.05 Governing Law/Consent to Venue and Jurisdiction. Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. § 1051 *et seq.*) or other federal law, this Agreement shall be interpreted under the laws of the state of Arizona and any dispute between the parties shall be governed by and determined in accordance with the substantive laws of the state of Arizona, which laws shall prevail in the event of any conflict of law. Franchisee and Franchisor have negotiated regarding a forum in which to resolve any disputes which may arise between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving Franchisee, its officers, directors, managers or partners (collectively, “Franchisee Affiliates”) and Franchisor, its parent, subsidiaries or affiliates and their respective officers, directors and sales employees (collectively, “Franchisor Affiliates”) the parties agree that the exclusive venue for disputes between them shall be in AAA office nearest to Mesa, Arizona or the state or federal court having such jurisdiction and each party waives any objection they may have to the personal jurisdiction of or venue in such AAA office or to such courts. Franchisor, Franchisor Affiliates, Franchisee and Franchisee Affiliates each waive their rights to a trial by jury. The parties hereto recognize, and any arbitrator or judge is affirmatively advised, that certain provisions of this Agreement describe Franchisor’s right to take (or refrain from taking) certain actions in the exercise of Franchisor’s business judgment based on Franchisor’s assessment of the overall best interests of the System and/or franchise network. Where such discretion has been exercised, and is supported by Franchisor’s business judgment, neither an arbitrator nor a judge shall substitute his or her judgment for the judgment so exercised by Franchisor.

16.06 Injunctive Relief. Nothing herein contained shall bar our right to seek injunctive relief from state or federal courts without the posting of any bond or security to obtain the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement relating to your (i) use of the Marks; (ii) assignment or proposed assignment of a Swim School, (iii) enforcement of a covenant not to compete this Agreement or (iv) any ownership interest in you. We also shall be able to seek injunctive relief to prohibit any act or omission by you or your employees that constitutes a violation of any applicable law, is dishonest or misleading to your customers or the public, or which may impair the goodwill associated with the Marks; and you agree to pay all costs and reasonable attorneys' fees incurred by us in obtaining such relief.

16.07 Limitations on Actions. Except for payments owed by one party to the other, and unless prohibited by applicable law, any legal action or arbitration proceeding brought or instituted with respect to any dispute arising from or related to this Agreement or with respect to any breach of the terms of this Agreement must be brought or instituted within a period of two (2) years from the date of discovery of the conduct or event that forms the basis of the legal action or proceeding.

## **17. RELATIONSHIP OF THE PARTIES**

17.01 Independent Contractor. Franchisee is an independent contractor and is not an agent, partner, joint venturer, or beneficiary of Franchisor, nor is Franchisor a fiduciary of Franchisee. Neither party will be bound or obligated by the other, except as set forth in this Agreement. Franchisee may not act as an agent in the Franchisor's name or on behalf of the Franchisor for any purpose whatsoever.

17.02 Operations and Identification. Franchisee must conspicuously identify itself in all dealings with the public as "independently owned and operated" separate from Franchisor. Franchisee's employees are employees of the Franchisee alone and are not, for any purpose, considered employees under the control of Franchisor. Franchisor and Franchisee must file separate tax, regulatory, and payroll reports for each party's own operations, and must indemnify the other for any liability arising from the other's reports.

## **18. MISCELLANEOUS**

18.01 Entire Agreement. This Agreement, together with all written related agreements, exhibits and attachments, constitutes the entire understanding of the parties and supersedes all prior negotiations, commitments, and representations. Nothing in the Agreement or in any related agreement is intended to disclaim the representations Franchisor made in the franchise disclosure document.

18.02 Modification. No modifications of the terms of this Agreement shall be valid unless made in writing and executed by both Franchisor and Franchisee. However, the Manual may be periodically modified by Franchisor and shall be fully enforceable against Franchisee.

18.03 Waiver. Franchisor's waiver of any particular right by Franchisee will not affect or impair Franchisor's rights as to any subsequent exercise of that right of the same or a different kind; nor will any delay, forbearance or omission by Franchisor to execute any rights affect or impair Franchisor's rights as to any future exercise of those rights.

18.04 Severability. If any part of this Agreement, for any reason, is declared invalid by an arbitrator or court of the United State of America, the declaration will not affect the validity of any remaining portion. The remaining portion will remain in force and effect as if this Agreement were executed with the invalid portion eliminated or curtailed. All partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable.

18.05 Conflict with Local Law. If any provision of this Agreement is inconsistent with a valid applicable law, the provision will be deemed amended to conform to the minimum standards required. The parties may execute an Addendum setting forth certain of these amendments applicable in certain jurisdictions, which will apply only so long as and to the extent that then applicable laws referred to in the addendum remain validly in effect.

18.06 Section Headings. Titles of articles and sections are used for convenience of reference only and are not part of the text, nor are they to be construed as limiting or affecting the construction of the provisions.

18.07 Legal Costs. If either party institutes a legal proceeding, including court proceeding and arbitration, and prevails entirely or in part in any action at law or in equity against the other party based entirely or in part on the terms of this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to any judgment, reasonable attorneys' fees, court costs and all of the prevailing party's expenses in connection with any action at law.

18.08 Obligations. Franchisor has no liability for Franchisee's obligations to any third party whatsoever.

18.09 Continuation of Agreement. The provisions of this Agreement, which by their terms or by reasonable implication require performance by Franchisee after assignment, expiration or termination, remain enforceable notwithstanding the assignment, expiration or termination of this Agreement, including those pertaining to non-competition, intellectual property protection, confidentiality and indemnity. This Agreement inures to the benefit of and is binding on the respective heirs, legal representatives, successors, and permitted assigns of the parties.

18.10 Delivery. All notices and other communications required by this Agreement must be in writing and must be delivered in person, sent by return receipt email, Federal Express or U.S. Mail overnight delivery, or by registered or certified mail, return receipt requested, or in any other manner Franchisor may designate. Communications sent to Franchisor must be sent to the attention of the Legal Department at Franchisor's address or at any other address we designate in writing. Communications to Franchisee will be sent to Franchisee at Franchisee's last known business address, or at any other address Franchisee designates in writing. Any notice is considered given and received, when delivered in person, or on the third business day following the mailing, if mailed.

18.11 Joint and Several Liability. If two or more persons or entities or any combination sign this Agreement, each will have joint and several liability. All owners and controllers of an entity or association which comprise the Franchisee are jointly and severally liable for the obligations of the Franchisee under this Agreement.

18.12 Cumulative Remedies. Rights and remedies under this Agreement are cumulative. No enforcement of a right or remedy precludes the enforcement of any other right or remedy.

18.13 Set Off. Franchisee may not set off any amounts owed to Franchisor under this Agreement nor may Franchisee withhold any amounts owed to Franchisor due to any alleged non-performance by Franchisor under this Agreement. Franchisee waives any right to set off.

Franchisor may not set off any amounts owed to Franchisee under this Agreement, nor may Franchisor withhold any amounts owed to Franchisee due to any alleged non-performance by Franchisee under this Agreement. Franchisor waives any right to set off.

18.14 Completion of Agreement. The parties agree to acknowledge, execute and deliver all further documents, instruments or assurances and to perform all further acts or deeds as may be reasonably required to carry out this Agreement.

18.15 Approvals. Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefore and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing. Franchisor makes no warranties or guarantees upon which Franchisee may rely and assumes no liability or obligation to Franchisee or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or services to Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request, therefore.

18.16 Withholding Payments. Franchisee will not, for any reason, withhold payment of any royalty or other amounts due to Franchisor, or to any of Franchisor's affiliates, or any other fees or payments due under this Agreement. Franchisee will not have the right to withhold or offset any liquidated or unliquidated amounts, damages, or other monies allegedly due to Franchisee against any amounts due to Franchisor. No endorsement or statement on any check or payment of any sum less than the full sum due to Franchisor will be construed as an acknowledgment of payment in full, or an accord and satisfaction, and Franchisor may accept and cash any such check or payment without prejudice to Franchisor's right to recover the full balance due, or pursue any other remedy provided in this Agreement, or by law. Franchisor may apply any payments made by Franchisee against any of Franchisee's past due indebtedness as Franchisor deems appropriate. Franchisor shall set-off sums Franchisor owes to Franchisee against any unpaid debts owed by Franchisee to Franchisor.

18.17 Reasonable Business Judgment. For the purposes of applying the intent and purpose of this Agreement, and any of the documents referenced herein, the terms or concepts of "reasonable business judgment," or "good faith and fair dealing," or their equivalents, are hereby agreed to mean that the determinations or choices of Franchisor will prevail, even if other alternatives are also reasonable or arguably preferable, if Franchisor intends to benefit, or is acting in a way that could

benefit, the System (by, for example, enhancing the value of the Marks increasing customer satisfaction, minimizing possible customer confusion as to the Marks or the location of any of Franchisor's franchises or affiliated Locations, or increasing Franchisor's financial strength). Franchisee agrees to this concept and interpretation of "reasonable business judgment," and/or "good faith and fair dealing," in acknowledgment of the fact that Franchisor should have at least as much discretion in administering its System as a corporate board of directors has in directing a corporation, and because the long-term interests of Franchisor's System, and of the franchisees within the System, require that Franchisor have the latitude to exercise such discretion and judgments. Franchisor shall not be required to consider Franchisee's particular economic or other circumstances, or to slight Franchisor's own economic or other business interests, when exercising "reasonable business judgment," or dealing "in good faith and in the normal course of business." Franchisee further acknowledges that:

- a) Franchisor has a legitimate interest in seeking to maximize its profits;
- b) The fact that Franchisor benefits economically from an action will not be relevant to showing that Franchisor did not exercise "reasonable business judgment," or did not "deal fairly and in good faith" with Franchisee. Neither Franchisee, nor any third party (including, but not limited to, any third party acting as a trier of fact) shall substitute franchisees, or its judgment, for Franchisor's "reasonable business judgment," or "good faith and fair dealing."

18.18 No Effect Until Executed by Franchisor. This Agreement and the rights of the parties hereunder, will not take effect unless and until this Agreement is executed and signed by an authorized representative of Franchisor. Execution of this Agreement by the prospective Franchisee alone will therefore have no effect, and will not be construed, under any circumstances, to constitute the acceptance of an offer made by Franchisor. The completion of the process of offer and acceptance shall not occur unless, and until, this Agreement is executed by an authorized representative of Franchisor. Additionally, no actions, of whatever kind, which may be taken by the prospective Franchisee may be considered, under any circumstances, to have been taken in reasonable reliance upon any actions or representations of Franchisor, or its agents, employees or representatives, with regard to the prospective creation of a franchise relationship, the prospective Franchisee expressly recognizing that no such actions should be undertaken until this Agreement is signed by an authorized representative of Franchisor.

18.19. Force Majeure / Time of Essence. It is of material importance to Franchisor that Franchisee timely performs all obligations under this Agreement. Should Franchisee be unable to meet any obligation as the result of force majeure which includes strikes, material shortages, fires, floods, earthquakes, and other acts of God, or by force of law and which Franchisee could not have avoided by the exercise of due diligence, such obligation will be extended by the amount of time during which such force majeure existed.

## **19. ACKNOWLEDGMENT**

BY SIGNING THIS AGREEMENT, FRANCHISEE ACKNOWLEDGES THAT:

19.01 FRANCHISEE HAS RECEIVED THE FRANCHISE DISCLOSURE DOCUMENT REQUIRED BY THE FEDERAL TRADE COMMISSION WITH APPLICABLE EXHIBITS AT LEAST FOURTEEN (14) CALENDAR DAYS

BEFORE THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED AND HAS RECEIVED A COPY OF THE COMPLETE AQUA-TOTS FRANCHISE AGREEMENT AT LEAST SEVEN (7) CALENDAR DAYS BEFORE THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED.

19.02 UNDER APPLICABLE U.S. LAW, INCLUDING WITHOUT LIMITATION EXECUTIVE ORDER 1224, SIGNED ON SEPTEMBER 23, 2001 (THE "ORDER"), FRANCHISOR IS PROHIBITED FROM ENGAGING IN ANY TRANSACTION WITH ANY PERSON ENGAGED IN, OR WITH A PERSON AIDING ANY PERSON ENGAGED IN ACTS OF TERRORISM AS DEFINED IN THE ORDER. ACCORDINGLY, FRANCHISEE DOES NOT AND HEREAFTER WILL NOT, ENGAGE IN ANY TERRORIST ACTIVITY. IN ADDITION, FRANCHISEE IS NOT AFFILIATED WITH AND DOES NOT SUPPORT ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST ACTIVITY.

**IN WITNESS WHEREOF**, the parties hereto have executed, sealed and delivered this Agreement in two (2) or more counterparts on the day and year first below written.

**FRANCHISOR:**  
**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

By:

\_\_\_\_\_  
Paul Preston, President

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

**FRANCHISEE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed name]

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

Home Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

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

Home Address

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

**Attachment I to the Franchise Agreement**

**Accepted Location and Territory**

This Attachment to that once certain AQUA-TOTS SWIM SCHOOL HOLDING LLC Franchise Agreement (“Agreement”) is between AQUA-TOTS SWIM SCHOOL HOLDING LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) and is made effective as of the date of the Franchise Agreement.

1. Accepted Location (“the Premises”). Franchisee’s business will be located at:

\_\_\_\_\_

2. Territory. Subject to Franchisee’s full compliance with the terms of the Franchise Agreement and, if applicable, a Multi-Unit Development Agreement, Franchisor will not own, operate, or license a business for the operation of another Aqua-Tots Swim School Franchise within the area described below:

\_\_\_\_\_

**FRANCHISOR:**  
**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

By:

\_\_\_\_\_  
Paul Preston, President  
Date signed: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed name]  
Date signed: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]  
Date signed: \_\_\_\_\_

**Attachment II to the Franchise Agreement**

**ELECTRONIC PAYMENT AUTHORIZATION**

Franchisee / Assignee Franchisee, the owner of the financial account referenced below, hereby authorize and requests Aqua-Tots Swim School Holding LLC., (the “Franchisor”) to obtain payment for all royalty amounts, National Marketing Fund amounts and any other amounts agreed to in the Franchise Agreement, or any other payment authorized by franchisee, that Assignee Franchisee owes to the Franchisor pursuant to the Franchise Agreement between Franchisor and the Original Franchisee, as those amounts become due by initiating a payment entry to Assignee Franchisee’s financial account. The account number, name of financial institution, payment amount and date (if known) on or immediately after which payment should be deducted from the account are identified below or will be provided to the named Financial Institution.

In addition, Assignee Franchisee authorizes and requests Financial Institution to accept the payment entries, presented to the Financial Institution by Franchisor, and to deduct said payments from Assignee Franchisee’s account without responsibility for the correctness of these payments.

Assignee Franchisee also agrees to maintain the designated account as “open” to prevent rejected or returned entries. Assignee Franchisee understands that items returned or rejected by the Financial Institution will be subject to additional fees as stated in the Franchise Agreement

ORIGINAL FRANCHISEE: \_\_\_\_\_

ASSIGNEE FRANCHISEE: \_\_\_\_\_

**BUSINESS ACCOUNT**

Bank, Financial Institution: \_\_\_\_\_

Account Number: \_\_\_\_\_ Routing Number: \_\_\_\_\_

Please attach a check marked ‘void’ if this is a business checking account.

**Approved and Authorized:**

Your Name(s): \_\_\_\_\_  
(please print)

Signature(s): \_\_\_\_\_

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

Note: This Authorization Form must be properly signed and submitted to Franchisor prior to the commencement of business.

**Attachment III to the Franchise Agreement**

**PROPOSED TRADE NAME / PROPOSED ASSUMED NAME and DELEGATION OF AUTHORITY**

1. Franchisee shall not commence operation of the franchise, unless and until the Franchisor approves (a) the name of franchisee’s operating entity and (b) the assumed name under which Franchisee will operate the business. The name of Franchisee’s operating entity shall not include the word(s): “Aqua-Tots”. The assumed name (DBA) under which Franchisee will present itself to the public shall include the word(s): “Aqua-Tots”.

Franchise’s proposed name of its operating entity: \_\_\_\_\_

Franchisee’s proposed assumed (DBA) name: \_\_\_\_\_

The proposed name of Franchisee’s entity and the proposed assumed name (DBA) under which Franchisee will present itself to the public are approved by the Franchisor.

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Approved

2. In accordance with Section 2.03 of the Franchise Agreement, if the Franchisee is comprised on two or more individuals (example: a partnership, and LLC, an INC or a husband & wife), the individuals must designate the name of the one individual that has final and ultimate authority to represent and make binding decisions on behalf of the other individual(s) to/with the Franchisor.

In compliance with the above sentence, we hereby designate \_\_\_\_\_  
as the sole individual who has authority to act on our behalf.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

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

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

## Attachment IV to Franchise Agreement

### **CONFIDENTIALITY and COVENANT NOT TO COMPETE AGREEMENT**

*Instructions: This "Confidentiality and Covenant Not to Compete Agreement" must be completed and signed by certain individuals. The signed original(s) of the Agreement must then be immediately delivered to the Franchisor by the Franchisee.*

*If the Franchisee is an entity, then these individuals must sign this document: each Member, Manager, shareholder, officer, director and partner of the entity, each spouse of such Member, shareholder, officer, director and partner, each Guarantor of the Franchisee, the spouse of each Guarantor. This is an ongoing requirement that continues beyond the execution of the Franchise Agreement.*

*If the Franchisee is not an entity, then these individuals must sign this Agreement: the spouse of the Franchisee, each Guarantor of the Franchisee, the spouse of each Guarantor.*

This Agreement is made and entered into between \_\_\_\_\_ ("Franchisee"), and/or \_\_\_\_\_ ("Franchisee Affiliate") and is intended to benefit both the Franchisee and Aqua-Tots Swim School Holding LLC ("Franchisor"),

#### **Recitals**

*Whereas,* Franchisor has developed a unique system (the "System") and is engaged in the business of offering, selling or granting franchises or licenses for the operation of a location to provide a swim instruction school that offers the public small group, in home and private swim instruction and lessons, and pool parties to the public ("Business"), known as "AQUA-TOTS SWIM SCHOOL"; and,

*Whereas,* Franchisor has granted to Franchisee the limited right to develop an AQUA-TOTS SWIM SCHOOL using the System, the Licensed Marks and the Trade Secrets, pursuant to a previously signed Franchise Agreement ("Franchise Agreement"), by and between Franchisor and Franchisee; and,

*Whereas,* the System includes, but is not limited to, certain trade names, service marks, trademarks, logos, emblems and indicia of origin ("Licensed Marks"), including, but not limited to, the Marks "AQUA-TOTS SWIM SCHOOLS" and "Aqua-Tots Swim School" and other trade names, service marks, trademarks, logos, insignia, slogans, emblems, designs and commercial symbols as Franchisor may develop in the future to identify for the public the source of services and products marketed under such marks and under the System and representing the System's high standards of quality, appearance and service and distinctive marketing, uniform standards, specifications and procedures for performing services, merchandising, management and financial control; operations; quality and uniformity of services offered; training and assistance; and advertising, marketing and promotional programs; all of which may be changed, improved and further developed by Franchisor from time to time and are used by Franchisor in connection with the operation of the System ("Trade Secrets"); and,

*Whereas,* the Licensed Marks and Trade Secrets provide economic advantages to Franchisor and are not generally known to, and are not readily ascertainable by proper means by, Franchisor's competitors who could obtain economic value from knowledge and use of the Trade Secrets; and,

*Whereas,* Franchisor has taken and intends to take all reasonable steps to maintain the confidentiality and secrecy of the Trade Secrets; and,

*Whereas,* Franchisor and Franchisee have agreed in the Franchise Agreement on the importance to Franchisor and to Franchisee and other licensed users of the System of restricting the use, access and dissemination of the Trade Secrets; and,

*Whereas,* It will be necessary for key employees, agents and independent contractors of Franchisee, or any entity having an interest in Franchisee ("Franchisee Affiliates") to have access to and to use some or all of the Trade Secrets in the management and operation of Franchisee's AQUA-TOTS SWIM SCHOOL using the System; and,

*Whereas,* Franchisee has agreed to obtain from those Franchisee Affiliates written agreements protecting the Trade Secrets and the System against unfair competition; and,

*Whereas,* Franchisee Affiliate desires to or will become associated with the Franchisee; or is or will become involved with the Company in the capacity of an officer, partner, director, agent, principal, or as a beneficial owner of the person or entity that has acquired the right to operate a Business of the Company ("Franchisee"), or as an immediate family member of the Franchisee and will become privileged as to certain Confidential Information; and,

*Whereas,* Franchisee Affiliate desires and needs to receive and use the Trade Secrets in the course of his employment or association in order to effectively associate with or perform services for Franchisee; and,

*Whereas,* Franchisee Affiliate acknowledges that receipt of and the right to use the Trade Secrets in such relationship constitutes independent valuable consideration for the representations, promises and covenants made by Franchisee Affiliate herein; and,

*Whereas,* Franchisee Affiliate is a (*check appropriate space(s)*):

- \_\_\_\_\_ The spouse of the Franchisee,
- \_\_\_\_\_ Manager, Member, Shareholder, Officer or Director of the Franchisee,
- \_\_\_\_\_ Guarantor of the Franchisee,
- \_\_\_\_\_ Spouse of each Guarantor
- \_\_\_\_\_ Other: Please describe: \_\_\_\_\_

*Now Therefore,* in consideration of the mutual covenant and obligations contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### **CONFIDENTIALITY AGREEMENT**

1. Franchisor and/or Franchisee may disclose to Franchisee Affiliate some or all of the Trade Secrets relating to the System. All information and materials, including, without limitation, manuals, drawings, marketing techniques, specifications, techniques and compilations of data that Franchisor provides to Franchisee and/or Franchisee Affiliate shall be deemed confidential Trade Secrets for the purposes of this Agreement.

2. Franchisee Affiliate shall receive the Trade Secrets in confidence and shall, at all times, maintain them in confidence, and use them only in the course of his association with a Franchisee and then only in connection with the development and/or operation by Franchisee of an AQUA-TOTS SWIM SCHOOL for so long as Franchisee is licensed by Franchisor to use the System.

3. Franchisee Affiliate shall not at any time make copies of any documents or compilations containing some or all of the Trade Secrets without Franchisor's express written permission.

4. Franchisee Affiliate shall not at any time disclose or permit the disclosure of the Trade Secrets except to key employees of Franchisee and only to the limited extent necessary to train or assist other employees of Franchisee in the development or operation of an AQUA-TOTS SWIM SCHOOL.

5. Franchisee Affiliate shall surrender any material containing some or all of the Trade Secrets to Franchisee or Franchisor, upon request, or upon conclusion of the use for which such information or material may have been furnished to Franchisee Affiliate.

6. Franchisee Affiliate shall not at any time, directly or indirectly, do any act that would or would likely be injurious or prejudicial to the goodwill associated with the Licensed Marks, the Trade Secrets or the System.

7. All manuals are loaned by Franchisor to Franchisee for limited purposes only and remain the property of Franchisor and may not be reproduced, in whole or in part, without Franchisor's written consent.

## **COVENANTS NOT TO COMPETE**

1. In order to protect the goodwill and unique qualities of the System and the confidentiality and value of the Trade Secrets, and in consideration for the disclosure to Franchisee Affiliate of the Trade Secrets, Franchisee Affiliate further agrees and covenants that Franchisee Affiliate will not without the prior written consent of Franchisor:

- a. Have any direct or indirect interest as a disclosed or beneficial owner in a Competitive Business, except with Franchisor's approval;
- b. Perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business wherever operating except with Franchisor's approval;
- c. Employ, or seek to employ, any person who is at the time or was within the preceding 180 days employed by Franchisor, any of its affiliates or any of its franchisees, or otherwise directly or indirectly induce such person to leave that person's employment; or
- d. Divert or attempt to divert, directly or indirectly, any business, business opportunity or customer of AQUA-TOTS SWIM SCHOOL to any competitor;
- c. Make any disparaging remarks, or otherwise take any action or do anything that could reasonably be anticipated to cause loss or damage to the business or business opportunities, affairs, reputation and goodwill of, or otherwise negatively reflect upon, Franchisor, the System or the Licensed Marks; and

The term "Competitive Business" as used in this Agreement means any business (other than an AQUA-TOTS SWIM SCHOOL operated under a franchise agreement with Franchisor) the primary activity of which is a swim instruction school that offers the public small group, in home and private swim instruction and lessons, and pool parties to the public under the AQUA-TOTS SWIM SCHOOLS trademarks, trade names, service marks, and logos ("Marks") or the offering of any product or service offered by Franchisor or by Franchisor's approved vendors.

2. This Covenant Not to Compete shall apply:

- a. during the term of Franchisee Affiliate's relationship, association with Franchisee anywhere within the United States; and,
- b. for the two years following the termination of Franchisee Affiliate's association with Franchisee:

- (i) within Franchisee's Territory or any area serviced by Franchisee;
- (ii) within counties adjacent to Franchisee's Territory or within a Territory then operated by or under development by Franchisor or another franchisee of Franchisor;
- (iii) within a fifty-mile radius from the boundary of Franchisees Territory or from any other franchised or company-owned AQUA-TOTS SWIM SCHOOL, or
- (iv) on the Internet or on any other Multi-Area Marketing channels used by Franchisor.

Franchisee Affiliate, Franchisee, and its officers, directors, shareholders, managers, members and partners expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section will not deprive them of their personal goodwill or ability to earn a living.

## **MISCELLANEOUS**

1. Franchisee shall make all commercially reasonable efforts to ensure that Franchisee Affiliate acts as required by this Agreement.
2. Franchisee and Franchisee Affiliate agree that in the event of a breach of this Agreement, Franchisor would be irreparably injured and be without an adequate remedy at law. Therefore, in the event of such a breach, or threatened or attempted breach of any of the provisions hereof, Franchisor shall be entitled to enforce the provisions of this Agreement and shall be entitled, in addition to any other remedies that are made available to it at law or in equity, including the right to terminate the Franchise Agreement, to seek a temporary and/or permanent injunction and/or a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm and without being required to furnish a bond or other security. Franchisee and Franchisee Affiliate agree that Franchisee's and/or Franchisee Affiliate's sole remedy in the event of the entry of such injunctive relief shall be dissolution of such injunctive relief, if warranted, upon hearing duly had; provided, however, that all claims for damages by reason of the wrongful issuance of any such injunction are hereby expressly waived by Franchisee and by Franchisee Affiliate.
3. Franchisee Affiliate agrees to pay all expenses (including court costs and reasonable attorneys' fees) incurred by Franchisor and Franchisee in enforcing this Agreement.
4. Any failure by Franchisor to object to or take action with respect to any breach of this Agreement by Franchisee Affiliate shall not operate or be construed as a waiver of or consent to that breach or any subsequent breach by Franchisee Affiliate.
5. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA. FRANCHISEE AFFILIATE HEREBY IRREVOCABLY SUBMITS HIMSELF TO THE JURISDICTION OF THE STATE COURTS OF MARICOPA COUNTY, ARIZONA OR THE U. S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA. FRANCHISEE AFFILIATE HEREBY WAIVES ALL QUESTIONS OF PERSONAL JURISDICTION OR VENUE FOR THE PURPOSE OF CARRYING OUT THIS PROVISION. FRANCHISEE AFFILIATE HEREBY AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON HIM IN ANY PROCEEDING RELATING TO OR ARISING UNDER THIS AGREEMENT OR THE RELATIONSHIP CREATED BY THIS AGREEMENT BY ANY MEANS

ALLOWED BY ARIZONA OR FEDERAL LAW. FRANCHISEE AFFILIATE FURTHER AGREES THAT VENUE FOR ANY PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT SHALL BE IN MARICOPA COUNTY, EITHER THE PROPER STATE COURT OF ARIZONA OR THE U. S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA; PROVIDED, HOWEVER, WITH RESPECT TO ANY ACTION THAT INCLUDES INJUNCTIVE RELIEF OR OTHER EXTRAORDINARY RELIEF, FRANCHISOR OR FRANCHISEE MAY BRING SUCH ACTION IN ANY COURT IN ANY STATE THAT HAS JURISDICTION.

6. The parties acknowledge and agree that each of the covenants contained herein are reasonable limitations as to time, geographical area, and scope of activity to be restrained and do not impose a greater restraint than is necessary to protect the goodwill or other business interests of Franchisor. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in any unappealed final decision to which Franchisor is a part, Franchisee Affiliate expressly agrees to be bound by any lesser covenant embraced within the terms of such covenant that imposes the maximum duty permitted by law as if the resulting covenant were separately stated in and made a part of this Agreement. If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason, by any court of competent jurisdiction, government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect.

7. This Agreement contains the entire agreement of the parties regarding the subject matter hereof. This Agreement may be modified only by a duly authorized writing executed by all parties.

8. The rights and remedies of Franchisor under this Agreement are fully assignable and transferable and shall inure to the benefit of its respective affiliates, successor and assigns. The respective obligations of Franchisee and Franchisee Affiliate hereunder may not be assigned by Franchisee or Franchisee Affiliate without the prior written consent of Franchisor.

9. The waiver by Franchisor of any breach of any provision of this Agreement by Franchisee or Franchisee Affiliate shall not operate or be construed as a waiver of any subsequent breach thereof.

10. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by the court in a final judgment or decree, shall pay the successful party or parties all costs, expenses and reasonable attorneys' fees incurred therein by such party or parties (including without limitation such costs, expenses and fees on any appeals), and if such successful party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included as part of such judgment.

11. All notices and demands required to be given hereunder shall be in writing and shall be sent by personal delivery, expedited delivery service, certified or registered mail, return receipt requested, first-class postage prepaid, facsimile, telegram or telex (provided that the sender confirms the facsimile, telegram or telex by sending an original confirmation copy by certified or registered mail or expedited delivery service within three business days after transmission), to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other parties.

If directed to Franchisor, the notice shall be addressed to:  
Aqua-Tots Swim School Holding LLC  
1110 S. Greenfield Rd, STE 201, Mesa, Arizona 85206  
Attention Legal Department  
Email: paul@aqua-tots.com

If directed to Franchisee, the notice shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

If directed to Franchisee Affiliate, the notice shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Any notices sent by personal delivery shall be deemed given upon receipt. Any notices given by facsimile shall be deemed given upon transmission, provided confirmation is made as provided above. Any notice sent by expedited delivery service or registered or certified mail shall be deemed given three business days after the time of mailing. Any change in the foregoing addresses shall be affected by giving 15 days' written notice of such change to the other parties. A "business day" for the purpose of this Agreement excludes Saturday, Sunday and national holidays.

The effective of Agreement shall be the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**FRANCHISEE:** \_\_\_\_\_

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

**FRANCHISEE AFFILIATE:** \_\_\_\_\_

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

Relationship to the Franchisee: \_\_\_\_\_

## Attachment V to the Franchise Agreement

### LEASE ASSIGNMENT AGREEMENT

This Addendum modifies that one certain Lease, dated \_\_\_\_\_, between \_\_\_\_\_ “Landlord” and \_\_\_\_\_ “Tenant” (Franchisee) describing the Property known as \_\_\_\_\_.

*Whereas*, Aqua-Tots Swim School Holding LLC (“ATSSH”) owns the rights to franchise Aqua-Tots Swim School (the “System”) and Tenant is one of its Franchisees; and,

*Whereas*, the parties recognize that under the Franchise Agreement between ATSSH and its Franchisee (Tenant herein), certain contractual rights must be conveyed to ATSSH, the third-party beneficiary herein, for the benefit of the ATSSH franchise system; and,

*Whereas*, the parties now desire to clarify and modify certain provisions of the Lease,

*Now therefore*, in consideration of the recitals set forth above and other valuable consideration, receipt of which is hereby acknowledged by Landlord and Tenant, the parties agree as follows:

1. To the extent that the terms of this Addendum are in conflict with the provisions of the Lease, the terms set forth herein shall govern the rights and obligations of the parties. All terms used herein shall have the meaning set forth in the Lease, provided they are not in conflict with the provisions of this Addendum.
2. The sign package for a standard Aqua-Tots Swim School building, as set forth on Exhibit A to this Addendum and attached hereto or as otherwise provided to the Landlord, is approved by the Landlord provided that such signage is approved by the regulating governmental authority. Landlord, upon termination or expiration of the Lease, consents to Tenant’s removal (at Tenant’s expense) of the exterior and interior signs and trade fixtures, so long as Tenant makes repairs caused by the removal of these items.
3. Landlord will provide to ATSSH (at the same time and manner sent to Tenant) a copy of all signed Lease Amendments and Assignments, all letters and notices sent to Tenant relating to the Lease or the leased premises. Landlord agrees to provide notice of any default by Tenant to ATSSH and a reasonable time to cure any such default under the Lease. “Notice of any default by Tenant” shall be as defined in the Lease but modified for purposes herein to be no less than 15 business days after ATSSH’s receipt of the notice.

Within fifteen (15) business days of receipt of such notice of default, ATSSH may elect, at its sole discretion, to assume all rights and obligations under this lease by providing written notice to Landlord thereof within said 15-day period, and upon such election, this lease shall be deemed assigned to ATSSH. Upon such occurrence, ATSSH shall have the option of assigning the Lease to another designated qualified franchisee or executing a new lease for the remaining term on the same terms and conditions, with Landlord’s consent not to be unreasonably withheld or delayed, and without payment of any assignment fee or similar charge or any increase in rent.

Failure by the Landlord to provide such "Notice of any default by Tenant" will toll any right to cure or other time frame under the Lease. Copies and Notices shall be sent to ATSSH at:

AQUA-TOTS SWIM SCHOOL HOLDING LLC  
Attn: Lease Administrator,  
1110 S. Greenfield Road, Suite 201, Mesa, Arizona 85206

4. At any time during the terms of the Lease, ATSSH shall have the right to enter the Leased Premises to make any modifications or alterations, at its own cost, necessary (in the opinion of ATSSH) to protect the System and the Marks and to cure, within the time periods provided by the Lease, any default under the Lease, all without being guilty of trespass or other tort.

5. During the term of the Lease, Tenant may assign the Lease to ATSSH (or a qualified designee of ATSSH) with Landlord's consent, not to be unreasonably withheld or delayed, and without payment of any assignment fee or similar charge or any increase in rent. Tenant will remain solely responsible for all obligations, debts, and payments under the Lease accruing before the effective date of any assignment to ATSSH or its designee.

6. Landlord will not amend or otherwise modify the Lease in any manner which would affect any of the foregoing requirements, the Term of the Lease, the use of the Premises, nor shall the same have any effect, without ATSSH's prior written consent, which shall not be unreasonably withheld or delayed.

7. Landlord and Tenant agree that default of the Lease may constitute a default under Tenant's Franchise Agreement with ATSSH and that termination or expiration of such franchise agreement between Tenant and ATSSH shall constitute an automatic offer to assign Tenant's leasehold rights to ATSSH. In such event, Tenant shall remain solely responsible for all obligations, debts and payments accruing prior to the effective date of any such subsequent transfer to ATSSH.

8. The Addendum is hereby incorporated fully into the Lease by this reference.

Landlord and Tenant have hereby executed this ADDENDUM TO LEASE on the date and year first written above.

LANDLORD: \_\_\_\_\_  
Signed: \_\_\_\_\_  
its: \_\_\_\_\_  
Title

TENANT: \_\_\_\_\_  
\_\_\_\_\_

Note: Add the Sign package and identify as "Exhibit A"

## **Attachment VI to the Franchise Agreement**

### **FULL AND FINAL RELEASE**

*(To be used at time of Transfer of Franchise and for other Designated Purposes)  
(Should not be signed at time of award of Initial Franchise)*

FOR AND IN CONSIDERATION of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties, the parties agree, and covenant as follows:

1. In consideration for Franchisor's consent to Franchisee's proposed transfer the undersigned Franchisee and Guarantors (on behalf of themselves and their respective heirs, executors, insurers, representatives, attorneys, successors, and assigns) and any individual or entity claiming by, through, or under any of the foregoing (collectively, the "Releasing Parties"), freely and without influence hereby fully releases, acquits, and forever discharges Aqua-Tots Swim School Holding, LLC ("Franchisor"), its affiliates, and each of the Franchisor's and foregoing's respective present and former officers, directors, owners, members, managers, stockholders, partners, employees, agents, attorneys, servants, representatives, predecessors, successors, and assigns, in their individual and corporate capacities ("Released Parties"), of and from any and all losses, damages, obligations, claims, demands, debts, accounts, covenants, promises, agreements (whether written or oral), liabilities, costs, attorneys' fees, actions, and causes of action whatsoever, whether known or unknown, direct or indirect, vested or contingent (collectively, "Claims") that any of the Releasing Parties now own or hold or may at any time have owned or held from the beginning of time through the Execution Date of this Amendment, including, without limitation, any and all agreements (whether oral or in writing) entered into between any of the Released Parties and any of the Releasing Parties, the relationships created thereunder, the operation and establishment of any Aqua-Tots Swim School franchised business connected in any way to any of the Releasing Parties ("Releasing Parties Schools"), and/or the offer, sale, establishment, or operation of the Releasing Parties Schools (and franchise opportunity).

2. It is understood and agreed that the settlement evidenced by this Release is a compromise of all claims herein specified, whether past, present or future, that such claims are doubtful and disputed, and that execution of this Release is not to be construed as an admission of liability on the part of any party. Rather, liability is expressly denied.

3. The consideration expressly mentioned herein is the only consideration provided by said parties. No representations as to damages or liability have been made. The parties acknowledge that no other party, or agent, or attorney of any other party, has made any promise, or representation or warranty to induce this Release, not herein expressly set forth, and no such promises, representations or warranties are relied upon as a consideration for this Release, or otherwise, but any and all of the parties' respective claims, of whatever nature are hereby fully and forever released, compromised and settled. Full and complete compromise, settlement, and accord and satisfaction are hereby acknowledged, and it is expressly agreed by the undersigned parties never to sue any of the other parties hereby released on any alleged promise, representation or warranty for this Release not herein expressly set forth.

4. This Agreement contains the entire agreement and understanding between the parties as to the matters specified herein and supersedes and replaces all prior negotiations or proposed agreements on this subject matter, whether written or oral. The terms contained herein may not be modified or amended except in writing signed by the parties. The terms of this Release are contractual and not a mere recital. Since the purpose of this Release is to end this matter forever, should it develop that there are any errors, mistakes or any omissions in this instrument, whether legal or factual and whether mutual or unilateral, which would cause the release of the parties herein released to be defective or less than complete, then the undersigned will sign any and all documents and do any and all things necessary to effectuate a full, final and absolute release of said party.

5. The undersigned further state that they have carefully read the foregoing instrument; that they know the contents thereof; that they understand and agree to each and every term and condition contained herein; that they signed the same as their own free act and deed; and that they have not assigned any rights released hereunder to any person or organization, private or governmental.

6. The terms of this Release arose from negotiations and discussions between the parties. Accordingly, no claimed ambiguity in this Release shall be construed against any party claimed to have drafted or proposed the language in question.

7. This Release shall be governed by and construed pursuant to the laws of the State of Arizona.

8. This Release may be executed in two copies, each of which shall be deemed an original.

WITNESS OUR SIGNATURES, this on this date \_\_\_\_\_.

**FRANCHISEE:**

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

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

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

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

**GUARANTORS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed name]

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed name]

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

**Attachment VII to Franchise Agreement**

**AMERICANS WITH DISABILITIES ACT CERTIFICATION**

This Acknowledgement is an Attachment to that one certain AQUA-TOTS SWIM SCHOOL HOLDING LLC Franchise Agreement (“Agreement”) between AQUA-TOTS SWIM SCHOOL HOLDING LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”) regarding the operation of an ATSS Outlet at \_\_\_\_\_ (the “Approved Location”).

NOW THEREFORE, Franchisee stipulates that:

Franchisee certifies to Franchisor that, to the best of Franchisee’s knowledge, the Approved Location and its adjacent areas comply with all applicable federal, state and local accessibility laws, statutes, codes, rules, regulations and standards, including but not limited to the Americans with Disabilities Act.

Franchisee acknowledges that it is an independent contractor and the requirement of this certification by Franchisee does not constitute ownership, control, leasing or operation of the Outlet.

Franchisee acknowledges that Franchisor has relied on the information contained in this certification.

Furthermore, Franchisee acknowledges its obligation under this Franchise Agreement to indemnify Franchisor and the officers, directors, and employees of Franchisor in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with Franchisee’s compliance with the Americans with Disabilities Act, as well as the costs, including attorneys’ fees, related to the same.

**FRANCHISEE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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

**Attachment VIII to Franchise Agreement**

**ASSIGNMENT OF AGREEMENT TO AN ENTITY and GUARANTY OF PERFORMANCE**

This Assignment Agreement And Guaranty of Performance is by and among \_\_\_[Original Franchisee(s)]\_\_\_\_\_, \_\_\_[Assignee Entity]\_\_\_\_\_ and AQUA-TOTS SWIM SCHOOL HOLDING LLC (“Franchisor”) and shall be effective as of the date executed by the Franchisor, below.

WHEREAS, a Franchise Agreement, having an effective date of \_\_\_\_\_ was executed by \_\_\_[Original Franchisee(s)]\_\_\_\_\_, as the original Franchisee(s) and by AQUA-TOTS SWIM SCHOOL HOLDING LLC, as the Franchisor; and,

WHEREAS, \_\_\_[Original Franchisee(s)]\_\_\_\_\_, desires to assign all of his/her/their rights, but none of his/her/their obligations, under the Franchise Agreement to \_\_\_[Assignee Entity]\_\_\_\_\_, an entity duly organized in the state of \_\_\_\_\_;

NOW THEREFORE, \_\_\_[Original Franchisee(s)]\_\_\_\_\_, as Assignor, and \_\_\_[Assignee Entity]\_\_\_\_\_, as Assignee, who, in order to induce Franchisor to consent to the assignment of the Franchise Agreement to the entity in accordance with the provisions of Article 14.03 of the Franchise Agreement, hereby stipulate and agree as follows:

1. The undersigned Franchisee, signing in his/her/their individual capacity, understand and agree that he/she/they shall remain personally liable to the Franchisor under the mentioned Franchise Agreement, and hereby provide consent to this Assignment:

\_\_\_\_\_  
[Printed name of Original Franchisee]  
Date Signed

\_\_\_\_\_  
[Printed name of Original Franchisee]  
Date Signed

2. \_\_\_[Assignee Entity]\_\_\_\_\_, hereby consents to the Assignment, as indicated by the entity’s authorized representative below, accepting joint and several liability along with the original Franchisee(s), to the Franchisor for any defaults occurring under the mentioned Franchise Agreement for any acts of malfeasance or misfeasance caused in whole or in part by either \_\_\_[Original Franchisee(s)]\_\_\_\_\_ and/or by \_\_\_[Assignee Entity]\_\_\_\_\_ .

\_\_\_[Assignee Entity]\_\_\_\_\_  
By:

\_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_  
Date signed: \_\_\_\_\_

3. In consideration of the execution of the above Agreement by the named individual(s) and the Assignee entity, Franchisor, AQUA-TOTS SWIM SCHOOL HOLDING LLC hereby consents to the above assignment.

AQUA-TOTS SWIM SCHOOL HOLDING LLC  
By: \_\_\_\_\_  
Paul Preston, President  
Date Signed \_\_\_\_\_

## Attachment IX to Franchise Agreement

### PAYMENT AND PERFORMANCE GUARANTEE

In order to induce Aqua-Tots Swim School Holding, LLC ("Franchisor") to enter into an Aqua-Tots Swim School® Franchise Agreement (the "Franchise Agreement") with the Franchisee named in the Franchise Agreement to which this Payment and Performance Guaranty (the "Guaranty") is attached ("Franchisee"), I/we (collectively referred to as the "Guarantors" and individually referred to as a "Guarantor") hereby covenant and agree as follows:

1. Guarantee of Payment and Performance. Guarantors jointly and severally and unconditionally guarantee to Franchisor and its affiliates the payment and performance when due, whether by acceleration or otherwise, of all obligations, indebtedness, and liabilities of Franchisee to Franchisor, absolute or contingent, of every kind and nature, whether now existing or incurred later, whether incurred pursuant to the Franchise Agreement or otherwise, together with any holdovers, extension, renewal, or modification thereof in whole or in part, including liquidated damages due on account of the premature termination of the Franchise Agreement or early closure of the Franchised Business (the "Guaranteed Liabilities"). The Guarantors agree that if any of the Guaranteed Liabilities are not paid or performed by Franchisee when due, the Guarantors will immediately do so. The Guarantors further agree to pay all expenses (including reasonable attorneys' fees) paid or incurred in trying to enforce this Guarantee or the payment of any Guaranteed Liabilities.

2. Waivers by Guarantors. The Guarantors waive presentment, demand, notice of dishonor, protest, and all other notices, including without limitation notices of acceptance hereof, of the existence or creation of any Guaranteed Liabilities, of the amounts and terms thereof, of all defaults, disputes, or controversies between Franchisor and Franchisee and of the settlement, compromise, or adjustment thereof. This Guarantee is primary and not secondary, and shall be enforceable without Franchisor having to proceed first against Franchisee or against any or all of the Guarantors or against any other security for the Guaranteed Liabilities. This Guarantee will be effective regardless of the insolvency of Franchisee by operation of law, any reorganization, merger, or consolidation of Franchisee, or any change in the ownership of Franchisee.

3. Term: No Waiver. This Guarantee is irrevocable and unconditional and will remain in full force and effect as to each of the Guarantors until **(i)** such time as all Guaranteed Liabilities of Franchisee to Franchisor and its affiliates have been paid and satisfied in full, and **(ii)** the Franchise Agreement and all obligations of Franchisee thereunder expire, provided, however, that this Guarantee will remain in full force as to all obligations under the Franchise Agreement which by their nature continue regardless of expiration. No delay or failure on the part of Franchisor in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Franchisor of any right or remedy shall preclude other further exercise of that right or any other right or remedy.

4. Other Covenants. Guarantors furthermore shall, personally and unconditionally: be personally bound by, and personally liable for the breach of each and every provision in the Franchise Agreement (including any amendments or modifications of the Franchise Agreement), both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities including, without limitation, the non-competition, confidentiality, and transfer requirements

5. Dispute Resolution. Section 16 (Dispute Resolution) of the Franchise Agreement is incorporated here by reference and will be applicable to all disputes between Franchisor and any of

the Guarantors, as though Guarantor were the "Franchisee" referred to in the Franchise Agreement.

6. Independent Covenants. Guarantors agree that each covenant to which they are individually bound under this Guarantee will be construed as independent of any other covenant or provision of the Franchise Agreement and this Guarantee. If all or any portion of a covenant is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Guarantors expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Guarantee.

7. California Waiver. Guarantors hereby waive **(a)** all rights described in California Civil Code Section 2856(a)(1)-(2), inclusive, which includes, without limitation, any rights and defenses which are or may become available to the undersigned by reason of California Civil Code Sections 2787 to 2855, inclusive; and **(b)** California Civil Code Sections 2899 and 3433.

8. **JURY TRIAL WAIVER. GUARANTORS HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, INVOLVING FRANCHISOR, WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THE FRANCHISE AGREEMENT, THE PERFORMANCE OF ANY PARTY UNDER THE FRANCHISE AGREEMENT, AND/OR THE OFFER OR GRANT OF THE FRANCHISE.**

9. Exhaustion of Remedies. I understand that Franchisor's rights under this Guaranty shall be in addition to, and not in lieu of, any other rights or remedies available to Franchisor under applicable law.

10. Miscellaneous. This Agreement will be binding upon the Guarantors and their heirs, executors, successors, and assigns, and will be for the benefit of Franchisor and its successors and assigns.

**IN WITNESS WHEREOF**, the undersigned Guarantors have caused this Guarantee to be signed of the day and year first below written.

**GUARANTOR(S)**

Dated: \_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

## Attachment X to Franchise Agreement

### RENEWAL ADDENDUM TO AQUA-TOTS SWIM SCHOOL FRANCHISE AGREEMENT

THIS RENEWAL ADDENDUM (“Addendum”) is made effective as of \_\_\_\_\_ (“Effective Date”), by and between AQUA-TOTS SWIM SCHOOL HOLDING LLC, an Arizona limited liability company (“Franchisor” or “AQUA-TOTS”), and \_\_\_\_\_, a/an \_\_\_\_\_ (“Franchisee”), and \_\_\_\_\_, and \_\_\_\_\_, each an adult individual (“Guarantors”).

#### BACKGROUND

- A. Effective \_\_\_\_\_, Franchisor and Franchisee entered into a franchise agreement (together with all attachments and amendments, the “Original Franchise Agreement”) pursuant to which Franchisee established and currently operates the Aqua-Tots Swim School franchised business located at [address] (the “School”).
- B. Simultaneously with the execution of the Original Franchise Agreement, Guarantors personally guaranteed the obligations of Franchisee under the Original Franchise Agreement through the execution of a Guaranty of Performance (“Guaranty”).
- C. Now, however, as of \_\_\_\_\_, the Original Franchise Agreement is expiring, and Franchisee has notified Franchisor that it is electing to exercise its one-time 10-year renewal term.
- D. To that end, simultaneously with the execution of this Addendum, Franchisor and Franchisee are entering into a new franchise agreement, effective as of \_\_\_\_\_, for Franchisee’s renewal term (the “Renewal Franchise Agreement”) and pursuant to which Franchisee will continue to operate the School.
- E. Franchisor has determined that, on Franchisee’s execution of this Addendum and fulfillment of the terms hereunder, Franchisee will have met the conditions for renewal.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. Terms and Renewals: Franchisee is renewing its franchise rights for the ten-year renewal term granted under the Original Franchise Agreement, with no renewal terms remaining thereafter. As a result, the terms of the Renewal Franchise Agreement are amended accordingly:
  - a. Term of Agreement. In Section 3.01 of the Renewal Franchise Agreement, the term “ten (10) years” remains.
  - b. Rights Upon Expiration. Section 3.02 of the Renewal Franchise Agreement is deleted in its entirety.
  - c. Right of Refusal to Renew. Section 3.03 of the Renewal Franchise Agreement is deleted in its entirety.
  - d. Renewal Agreement. Section 3.04 of the Renewal Franchise Agreement is deleted in its entirety.

- e. Renewal Fee. Section 3.05 of the Renewal Franchise Agreement is deleted in its entirety.
2. Renewal Fee. As provided for in Section 3.05 of the Original Franchise Agreement, no Initial Franchise Fee is due under the Renewal Franchise Agreement and, accordingly, Section 5.02 of the Franchise Agreement is deleted; provided, however, that Franchisee agrees to pay to Franchisor, immediately on Franchisee's execution of the Renewal Franchise Agreement Franchisor's current renewal fee in the amount of \$\_\_\_\_\_.
3. Initial Franchise Training. As Franchisee has already received initial training and the School is open and operated, Section 8.04 of the Renewal Franchise Agreement is deleted in its entirety.
4. Opening and Continuing Assistance. As the School is open and operating, the first two sentences in Section 8.06 of the Renewal Franchise Agreement are deleted.
5. Release of Franchisor. Franchisee and Guarantors, on behalf of themselves, their heirs, successors, and assigns, and all other persons or entities acting on their behalf or claiming under any of them (collectively, "Franchisee Releasers") freely and without any influence, fully and forever release, discharge, and covenant not to sue Franchisor, its parents, and its affiliates and Franchisor's and each of their respective past and present officers, directors, shareholders, owners, agents, representatives, attorneys, servants, and employees, in their corporate and individual capacities (collectively, "Franchisor Releasees"), with respect to any and all claims, demands, liabilities, obligations, damages, debts, covenants, promises, agreements, costs, expenses, attorneys' fees, and causes of action of whatever kind or nature, whether known or unknown, direct or indirect, vested or contingent, suspected or unsuspected (collectively, "Claims"), that any of the Franchisee Releasers now own or hold or may at any time have owned or held from the beginning of time through the Effective Date, including, without limitation, Claims arising under federal, state, and local laws, rules, and ordinances and Claims arising out of, or related in any way to, the Franchise Agreement, the Guaranty, the School, the Renewal Franchise Agreement (excluding any claims which, by law, cannot be waived), or any other agreement between any Franchisee Releasers and any Franchisor Releasees, the establishment and operation or proposed establishment of any Aqua-Tots Swim School franchise (including the School), the offer and/or sale of a franchise to any Franchisee Releasers, the operation of any business using the Aqua-Tots Swim Schools system by any Franchisee Releasers, and/or performance by any Franchisor Releasees of any obligations under any agreement with any Franchisee Releasers (together "Released Events"). Franchisee and Guarantors (on behalf of the Franchisee Releasers) agree that fair consideration has been given for this release and fully understands that this is a negotiated, complete, full, and final release of all of Franchisee Releasers' Claims.
- a. Waiver of California Civil Code, Section 1542. The foregoing release extends to all claims whether or not existing or suspected and constitutes a waiver of each and all of the provisions of California Civil Code, Section 1542 (to the extent it would be applicable), which reads as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6. Miscellaneous. Capitalized terms will have the meanings ascribed to them in the Renewal Franchise Agreement. All other provisions of the Renewal Franchise Agreement remain in full force and effect. If any discrepancy or conflict arises between the provisions of this Addendum and the provisions of the Renewal Franchise Agreement, the provisions of this Addendum will control.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum as of the Effective Date first below written.

**FRANCHISOR**  
**AQUA-TOTS SWIM SCHOOL HOLDING LLC**  
an Arizona limited liability company

**FRANCHISEE**  
**[FRANCHISEE ENTITY]**  
a \_\_\_\_\_

By: \_\_\_\_\_  
Paul Preston, President

By: \_\_\_\_\_  
[Name], [Title]

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

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

**GUARANTORS**

\_\_\_\_\_  
[Name], Individually

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

\_\_\_\_\_  
[Name], Individually

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

**EXHIBIT D**

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Aqua-Tots Operations Manual as of April 15, 2024**

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## **EXHIBIT E**

### **MULTI STATE LAW ADDENDA TO FRANCHISE DISCLOSURE DOCUMENT, FRANCHISE AGREEMENT and MULTI-UNIT DEVELOPMENT AGREEMENT**

The following Addenda may modify and/or supersede, to the extent then required by applicable state law, certain portions of the Franchise Agreement and the Multi-Unit Development Agreement, contained within the Aqua-Tots Swim School Holding LLC. Franchise Disclosure Document, April 15, 2024

## CALIFORNIA

1. The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the franchise be delivered together with the Disclosure Document.
2. Neither the franchisor, nor any person or franchise broker in Item 2 of the FDD is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.
3. California Business and Professions Code 20000 through 20043 provides rights to the franchisee concerning termination, transfer, or non-renewal of a franchise. If the franchise agreement or multi-unit development agreement contains a provision that is inconsistent with the law, the law will control.
4. The franchise agreement and multi-unit development agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law. (11 U.S.C.A. Sec. 101 et seq.)
5. The franchise agreement and multi-unit development agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.
6. The franchise agreement and multi-unit development agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.
7. Under Current California Law, the highest interest rate allowed is 10% per annum. Item 6 of the Franchise Disclosure Document and Section 5.4 of the Franchise Agreement are amended accordingly.
8. The franchise agreement and multi-unit development agreement requires binding arbitration. The arbitration will occur in Arizona with the costs being borne by both parties. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.
9. The franchise agreement and multi-unit development agreement requires application of the laws of Arizona. This provision may not be enforceable under California law.
10. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
11. You must sign a general release if you renew or transfer your franchise. California Corporations Code §31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000 through 31516). Business and Professions Code §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).
12. OUR WEBSITE, [www.aqua-tots.com](http://www.aqua-tots.com), HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION, COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION at [www.dfpi.ca.gov](http://www.dfpi.ca.gov),

13. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**ILLINOIS**

Item 17(v) of the Franchise Disclosure Document, Section 16.06 of the Franchise Agreement and Section VIII of the Multi-Unit Development Agreement are amended to state that any provision that designates jurisdiction or venue in a forum outside the State of Illinois will not be enforceable and is amended to the extent required by Illinois law.

The governing law or choice of law clause that allows for jurisdiction or venue other than Illinois will not be enforceable under Illinois law. This governing law clause shall not be construed to negate the application of the Illinois Franchise Disclosure Act in all situations to which it is applicable. Therefore, Item 17(v)(w) of the Franchise Disclosure Document, Section 16.06 of the Franchise Agreement and Section VIII of the Multi-Unit Development Agreement are amended accordingly.

Section 5(2) of the Illinois Franchise Disclosure Act requires 14 calendar days’ disclosure prior to the signing of a binding agreement or the payment of any fees to us. Item 23 of the Disclosure Document is amended accordingly, to the extent required by Illinois law.

No action for liability under the Illinois Franchise Disclosure Act shall be maintained unless brought before the expiration of 3 years after the act or transaction constituting the violation upon which it is based, the expiration of 1 year after the franchisee becomes aware of facts or circumstances reasonably indicating that he may have a claim for relief in respect to conduct governed by the Act, or 90 days after delivery to the franchisee of a written notice disclosing the violation, whichever shall first expire. Item 17(b) of the Franchise Disclosure Document, and Section 3 of the Franchise Agreement are amended accordingly.

The conditions under which a franchise can be terminated and your rights upon nonrenewal, as well as the application by which you must bring any claims, may be affected by Sections 705/19 and 20 of the Illinois Franchise Disclosure Act of 1987, 815 ILCS 705/19 and 705/20.

Section 705(41) of the Illinois Franchise Disclosure Act states any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void. This Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of this Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.

No statement, questionnaire or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of: (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on behalf of the Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**INDIANA**

It is unlawful for any franchise agreement between any franchisor and a franchisee who is a resident of Indiana or a non-resident who is to operate the franchise in Indiana to contain a provision that requires a franchisee not to compete with the franchisor in an area greater than the exclusive territory granted in the franchise agreement or, if no exclusive territory is granted, in an area of more than reasonable size, upon Termination of a franchise agreement. (Ind. Code § 23-2-2.7-1(9)). Accordingly, both the Franchise Agreement and Item 17 of the Disclosure Document are amended to apply to the area within a 50-mile radius of the Aqua-Tots Swim School.

The Franchise Agreement requires binding arbitration. The arbitration will occur in a state other than Indiana, with costs being borne by the non-prevailing party. The provision concerning the place where arbitration will occur is deleted from the Franchise Agreement.

The Franchise Agreement and Multi-Unit Development Agreement requires application of the laws of another state. This provision is deleted from the Indiana Franchise Agreement and Multi-Unit Development Agreement.

Item 17 of the Disclosure Document, Sections (u), (v), and (w), are amended to omit any reference to selection of an out-of-Indiana forum or choice of law.

The franchise agreement requires you to sign a general release of claims as a condition of renewing or reselling the franchise. Under the law of Indiana any provision that purports to bind a person acquiring a franchise to waive compliance with the franchise laws of Indiana is void. The Franchise Agreement and Item 17 of the Disclosure Document, Sections (b) (renewal) and (k) (transfer) are amended to omit the requirement that an Indiana Franchisee sign a general release of claims as a condition of renewal or resale. This will not prevent Franchisor from requiring you to sign a general release of claims as part of a settlement of a dispute.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**MARYLAND**

**The following amends the Franchise Disclosure Document, Franchise Agreement and, Multi-Unit Developer Agreement:**

The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.). Item 17H of the FDD and Section 5.13 of the Franchise Agreement is amended to add this provision.

Item 17M of the Franchise Disclosure Document, Section 14.04(b) of the Franchise Agreement and Section VI(A) of the Multi-Unit Developer Agreement are amended to state that the general release required as a condition of sale and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

Item 17 V of the Franchise Disclosure Document, Section 16.03 of the Franchise Agreement and Section VII of the Multi-Unit Development Agreement are amended to state; A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

Item 17 U of the Franchise Disclosure Document, Section 16.06 of the Franchise Agreement and Section VIII, J. 4. of the Multi-Unit Development Agreement are amended to state; Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**MINNESOTA**

We will comply with Minnesota Statute 80C.14 subdivisions 3, 4, and 5, which require except in certain specific cases, that you be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the Franchise Agreement.

Minn. Stat. Sec. 80C.21 and Minn. Rule Part 2860.4400J, may prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Disclosure Document or Franchise Agreement or Multi-Unit Development Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

In accordance with Minnesota Rule 2860.4400J, to the extent required by law, the Disclosure Document, Franchise Agreement and Multi-Unit Development Agreement are modified so that we cannot require you to waive your rights to a jury trial or to waive rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties, or judgment notes; provided that this part shall not bar an exclusive arbitration clause.

Minnesota Rule 2860.4400D prohibits us from requiring you to assent to a general release. The Disclosure Document, Franchise Agreement and Multi-Unit Development Agreement are modified accordingly, to the extent required by Minnesota law.

Pursuant to Minn. Stat. Sec. 80C.12, Subd. 1(g), to the extent required by law, the Franchise Agreement and Item 13 of the Disclosure Document are amended to state that we will protect your right to use the primary trademark, service mark, trade name, logotype or other commercial symbol or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of our primary trade name.

Pursuant to Minn. Stat. Sec. 80C.17, Subd. 5, to the extent required by law, the Franchise Agreement, the Multi-Unit Development Agreement and Item 17 of the Disclosure Document are amended to state that no action may be commenced pursuant to this section more than three years after the cause of action accrues.

Pursuant to Minn. Stat. Sec. 604.113, Subd. 2, The maximum allowable charge for an NSF check is \$30. Item 6 of the FDD and Section 5.08 of the Franchise Agreement are amended accordingly.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

By: Paul Preston, President

\_\_\_\_\_  
Signature

**FRANCHISEE:**

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

## NEW YORK

1. The following information is added to the cover page of the Franchise Disclosure Document:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC LIBRARY FOR SERVICES OR INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.

2. The following is to be added to Item 3.

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action

brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the “Summary” sections of Item 17(c), titled “Requirements for franchisee to renew or extend,” and Item 17(m), entitled “Conditions for franchisor approval of transfer”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687(4) and 687(5) be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”: You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the “Summary” sections of Item 17(v), titled “Choice of forum”, and Item 17(w), titled “Choice of law”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

6. No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

## **NORTH DAKOTA**

Item 17(c) Disclosure Document, Section 1.2 of the Franchise Agreement and Section III of the Multi-Unit Development Agreement requiring you to sign a general release upon renewal of the franchise may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Item 17(i) of the Disclosure Document, Section 16.2 of the Franchise Agreement and Section VII(B) of the Multi-Unit Development Agreement requiring you to consent to termination or liquidated damages may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Item 17(r) of the Disclosure Document and Section 16.2 of the Franchise Agreement restricting competition are generally considered unenforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Item 17(u) of the Disclosure Document and Section 18.06 of the Franchise Agreement requiring resolution of disputes to be outside North Dakota may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law. The site of arbitration or mediation must be agreeable to all parties.

Item 17(w) of the Disclosure Document, Section 18.06 of the Franchise Agreement and Section VIII of the Multi-Unit Development Agreement, relating to choice of law, may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Sections of the Disclosure Document and Section 18.16 of the Franchise Agreement requiring you to consent to a waiver of trial by jury may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Sections of the Disclosure Document and Sections 17 and 18.16 of the Franchise Agreement requiring the franchisee to consent to a waiver of exemplary and punitive damages may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Sections of the Disclosure Document and Section 18.16 of the Franchise Agreement requiring the franchisee to consent to a limitation of claims within one year may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law.

Section 18.16 of the Franchise Agreement stipulates that the franchisee shall pay all costs and expenses incurred by the franchisor in enforcing the agreement, which may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law and are amended accordingly to the extent required by law. The prevailing party in any enforcement action is entitled to recover costs and expenses including attorney's fees.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**RHODE ISLAND**

The Rhode Island Securities Division requires the following specific disclosures to be made to prospective Rhode Island franchisees:

§19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under the Act.”

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**VIRGINIA**

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Aqua-Tots Swim School Holding LLC for use in the Commonwealth of Virginia shall be amended as follows:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**WASHINGTON**

The state of Washington has a statute, RCW 19.100.180 which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in Washington, in a place as mutually agreed upon at the time of the arbitration, or as determined by the arbitrator, to the extent required by Washington law.

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

A release or waiver of rights executed by you shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the Franchise Agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable and are amended to the extent required by law.

Transfer fees are collectible to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer, to the extent required by Washington law.

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**FRANCHISEE:**

By: Paul Preston, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**ACKNOWLEDGMENT:**

The foregoing respective state Addenda may modify and/or supersede, to the extent then required by applicable state law, certain portions of the Franchise Agreement and the Multi-Unit Development Agreement, contained within the Aqua-Tots Swim School Holding LLC. Franchise Disclosure Document.

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

By: Paul Preston, President

\_\_\_\_\_  
Signature

**FRANCHISEE:**

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

\_\_\_\_\_  
Signature

**EXHIBIT F**  
**AQUA-TOTS SWIM SCHOOL HOLDING LLC**  
**MULTI-UNIT DEVELOPMENT AGREEMENT**

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**ATTACHMENTS**

Attachment A: MUD Locations, MUD Fee, MUD Schedule and Expiration Date .....F-A-1

**EXHIBIT F**  
**AQUA-TOTS SWIM SCHOOL HOLDING LLC**  
**MULTI-UNIT DEVELOPMENT AGREEMENT**

THIS MULTI-UNIT DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_ (the “Effective Date”), by and between AQUA-TOTS SWIM SCHOOL HOLDING LLC, an Arizona Limited Liability Company, having its principal executive swim school at 1110 S. Greenfield Rd., Suite 201, Mesa, Arizona 85206 US (the “Company”) and \_\_\_\_\_ (“Franchisee”), a \_\_\_\_\_ [residence of individual or state of organization and type of entity] with its residence / principal office at \_\_\_\_\_ (“Franchisee”).

WITNESSETH:

WHEREAS, Franchisor is engaged in the business of franchising AQUA-TOTS SWIM SCHOOL (“Outlets”) under the Marks and Systems as more fully described in the AQUA-TOTS SWIM SCHOOLS Franchise Agreement, the current form of which is signed contemporaneously with this MUD Agreement and which may be amended from time to time (“Franchise Agreement”); and WHEREAS, Franchisee is aware of the benefit derived from being identified with and franchised by Franchisor in order to use the Marks and System as more fully described in the Franchise Agreement; and

WHEREAS, Franchisee has simultaneously executed a Franchise Agreement pertaining to the first AQUA-TOTS SWIM SCHOOL Outlet, which Franchisee agrees to open or have opened within the time specified in the Franchise Agreement; and

WHEREAS, Franchisee desires to obtain multi-unit development rights to establish and operate additional AQUA-TOTS SWIM SCHOOL (“subsequent Units”) from Franchisee within specific geographical areas and according to a specific time schedule; and

NOW, THEREFORE, in consideration of the covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby mutually agreed as follows:

**I. TERRITORIAL EXCLUSIVITY**

A. MUD Locations. In accordance with the terms and conditions in this Agreement, Franchisor grants to Franchisee the right during the term of this Agreement to establish and operate AQUA-TOTS SWIM SCHOOL franchised Outlets (“Units”) within the boundary defined as a “Development Area” and Franchisee accepts the obligation to establish and operate such franchised Units within the Development Area. Your Development Area is defined in Attachment A and made a part hereof for all purposes.

So long as Franchisee is not in default under this Agreement or any other agreement with Franchisor or Franchisor’s Affiliates, neither Franchisor nor its Affiliates will operate, grant, franchise or license to any other person or entity the right to operate an AQUA-TOTS SWIM SCHOOL within your Development Area. The Development Area is not an interchangeable term with a Territory. A Territory is the area surrounding a franchised Unit, within which the Franchisor will not place another franchised unit. A Territory is defined within the Franchise Agreement for a particular franchise Unit and is not determined by the boundaries of the Development Area.

As further clarification of the above paragraph: (i) it is possible that the Territory of another franchisee's Unit located outside of, but near, your Development Area may be partially within your Development Area; (ii) the Territory surrounding one of your franchised Units may be partially outside of the boundaries of your Development Area; and (iii) the Territories of neighboring Franchised Units may partially overlap each other. None of the three examples constitute a violation of either a MUD Agreement or of a respective Franchise Agreement.

B. The Rights Franchisor Retains. Except as limited by Section I.A. above, Franchisor and its Affiliates retain all rights with respect to the System, AQUA-TOTS SWIM SCHOOL Outlets, the Marks, the sale of similar or dissimilar products and services and any other activities Franchisor deems appropriate whenever and wherever Franchisor desires, including (1) the right to own or operate, or license others to own or operate AQUA-TOTS SWIM SCHOOL Outlets anywhere outside of Franchisee's Development Area; (2) the right to operate or license others to operate similar businesses or any other businesses and services under trademarks or service marks other than the Marks in any location; both inside or outside of Franchisee's Area; (3) the right to operate or license others to operate businesses that are not similar to AQUA-TOTS SWIM SCHOOL Outlets under the Marks in any location, both inside or outside of Franchisee's Development Area; and (4) the right to offer any products or services (including the products and services Franchisee offers at Franchisee's Units) through other channels of distribution (including the Internet and other outlets) both inside or outside of Franchisee's Area. Franchisor is not required to pay Franchisee if Franchisor exercises any of the rights specified in this SubSection (B).

## **II. DEVELOPMENT OBLIGATIONS**

A. MUD Schedule. Franchisee will construct, equip, open and operate the number of Units within each of the time periods described in Attachment A attached to this Agreement ("MUD Schedule"). Except as modified in Section V below, Franchisee must execute a then current form of the Franchise Agreement that Franchisor uses in the State in which the applicable Unit will be located within the time periods described in the MUD Schedule. Further, Franchisee must open each Unit within the time period described in the Franchise Agreement applicable to that Unit and in the MUD Schedule.

B. Force Majeure / Time of Essence. It is of material importance to Franchisor that Franchisee timely perform all obligations under this Agreement and the Franchise Agreement for each Unit. Should Franchisee be unable to meet the MUD Schedule solely as the result force majeure which includes strikes, material shortages, fires, floods, earthquakes, and other acts of God, or by force of law (including Franchisor's inability to deliver a Franchise Disclosure Document), and which Franchisee could not have avoided by the exercise of due diligence, the MUD Schedule will be extended by the amount of time during which such force majeure existed.

## **III. TERM**

The term of this Agreement will start on the date this Agreement is signed by both parties and Franchisee has paid Franchisor the MUD Fee. Unless terminated earlier according to the terms of this Agreement, the term of this Agreement and all multi-unit development rights granted in this Agreement will expire at the earlier of the date Franchisee signs the Franchise Agreement for the last Unit listed in the MUD Schedule or the expiration date listed on Attachment A. There is no right to renew this Agreement.

#### **IV. MUD FEE**

In exchange for the rights granted under this Agreement, Franchisee will pay to Franchisor the Fees listed in accordance with Attachment A of this Agreement. The portion of the MUD Fee attributable to each individual Unit will be credited against the Initial Franchise Fee due for each Unit under the Franchise Agreement applicable to such Unit.

Franchisee recognizes that Franchisor has incurred administrative and other expenses in relation to this Agreement, and that development opportunities have been lost or curtailed as a result of the exclusivity granted in this Agreement. For this reason, no part of the MUD Fees are refundable, even if Franchisee fails to proceed with the development of Units under this Agreement.

#### **V. FRANCHISE AGREEMENT**

A: Signing the Franchise Agreement. Franchisee will sign a Franchise Agreement for its first Unit and pay the applicable Initial Franchise Fee under that Franchise Agreement at the same time Franchisee signs this Agreement and pays the balance of MUD Fee, of which the Initial Franchise Fee for the first Franchise Agreement is a part. Within the times specified in the MUD Schedule, Franchisee must execute a separate Franchise Agreement for each subsequent Unit and pay the balance of the appropriate Initial Franchise Fee shown on Attachment A. In order for Franchisor to provide its required consent for Franchisee's proposed location of subsequent Units, Franchisee shall inform Franchisor of its proposed location for each subsequent Unit at least 90 days prior to executing a lease for the referenced location. The terms of each new Franchise Agreement for subsequent Units may be materially different from the initial Franchise Agreement being offered as of the date of this Agreement and may include higher Royalty and other Fees. In no event will Franchisee be required to sign a Franchise Agreement until such time as Franchisor has complied with any applicable waiting periods according to law.

B. Complying with the Franchise Agreement. After Franchisee signs a Franchise Agreement, it shall fully comply with all of the terms CONTAINED IN THE FRANCHISE AGREEMENT INCLUDING PAYING ALL OF THE FEES REQUIRED BY THAT FRANCHISE AGREEMENT IN A TIMELY MANNER. HOWEVER, FRANCHISEE DOES NOT OBTAIN ANY RIGHTS AS A FRANCHISEE FOR A PARTICULAR LOCATION UNTIL A FRANCHISE AGREEMENT IS SIGNED BY FRANCHISOR AND FRANCHISEE AND FRANCHISEE HAS PAID FRANCHISOR THE BALANCE OF THE INITIAL FRANCHISE FEE, IF ANY. Franchisee must submit all proposals for sites to Franchisor for Franchisor's consent. Franchisor has the right; in its absolute discretion, to withhold its consent to any site Franchisee proposes. Franchisor's consent to the site is no assurance of success.

C. Franchisor's Discretion. Franchisee acknowledges that all Units must be developed and operated according to Franchisor's standards. Franchisee agrees and recognizes that Franchisor may refuse to grant a Franchise Agreement for a subsequent Unit if Franchisor believes, in its reasonable judgment, that Franchisee does not have sufficient financial resources and other ability (including, but not limited to, experience, character, skill, aptitude, attitude, and business acumen sufficient to operate multiple locations) to properly develop and operate the proposed

subsequent Unit. Franchisor may take into account, among other things, Franchisee's past performance and financial success of Franchisee's existing Units. In order to assist Franchisor in making such a determination, Franchisee must provide Franchisor, upon Franchisor's request, the financial and other information regarding Franchisee's existing Unit(s) and the proposed subsequent unit. Franchisor's approval, however, is not deemed to be a warranty of Franchisee's financial or other ability to develop and operate the proposed subsequent Unit(s).

D. Marks. Franchisee acknowledges that Franchisor is not granting Franchisee any right to use the Marks under this Agreement. Any rights Franchisee receives regarding the use of the Marks arises from the Franchise Agreement Franchisee signed or will sign and Franchisee may only use the Marks pursuant to the terms of that Franchise Agreement.

## **VI. ASSIGNABILITY**

A. By Franchisee. Franchisor has granted these development rights in reliance upon its perception of the individual and collective character, skill, attitude, and business and marketing abilities of Franchisee, and/or Franchisee's owners. Therefore, there can be no transfer of any interest in this Agreement or in the transfer of a controlling interest of an entity Franchisee to any other individual or the controlling interest in his/her or their approved entity.

B. By Franchisor. This Agreement is fully assignable, in whole or in part, by Franchisor, without Franchisee's consent. Upon Franchisor's assignment, Franchisor is relieved of all liability under this Agreement and all rights and obligations will accrue to Franchisor's successor or assignee.

## **VII. SUBFRANCHISING**

No Subfranchising. Franchisee will not offer, sell, or negotiate the sale of AQUA-TOTS SWIM SCHOOL franchises to any third party, either in Franchisee's name or on Franchisor's behalf or otherwise subfranchise, share, divide or partition this Agreement, and nothing in this Agreement will be construed as granting Franchisee the right to do so.

## **VIII. DEFAULT AND TERMINATION**

A. Default by Franchisee. Upon written notice to Franchisee, Franchisor may terminate the term of this Agreement for cause, but without providing Franchisee an opportunity to cure, in the event of any material breach of this Agreement by Franchisee. "Material Breach", as used in this Section VII, will include, among other things, the following:

- (a) Any attempt by Franchisee to sell, assign or Transfer in violation of the terms of this Agreement;
- (b) Franchisee's failure to execute a Franchise Agreement for any of the Units, or open a Unit, on the date set forth within the Unit Schedule set forth in Attachment A;
- (c) Franchisee's bankruptcy, insolvency or general assignment for the benefit of creditors;

- (d) Any material breach by Franchisee or Franchisee's Affiliate of any Franchise Agreement or other agreement between Franchisee or Franchisee's Affiliates and Franchisor or Franchisor's Affiliates which is not cured within the applicable cure period in that agreement; or
- (e) Franchisee or Franchisee's officers, directors or controlling owners commit or are convicted of a felony or crime of moral turpitude or fraud which Franchisor believes may adversely affect the System or goodwill associated with the Marks. .

B. Rights on Termination, Expiration or Assignment. Upon expiration, assignment or termination, for any reason, of the term of this Agreement, any remaining rights Franchisee may have to enter into any subsequent Franchise Agreement or open any subsequent Unit will cease. In such case, Franchisor will be entitled to establish, or to license others to establish AQUA-TOTS SWIM SCHOOL Outlets using the Marks and System in the Development Area, subject to the provisions in any existing Franchise Agreements Franchisee or Franchisee's Affiliates have with Franchisor relating to the assigned Territory defined in those Franchise Agreements. Franchisee or Franchisee's Affiliates will continue to operate existing AQUA-TOTS SWIM SCHOOL Outlets according to the signed Franchise Agreements between Franchisee or Franchisee's Affiliates and Franchisor, if such Franchise Agreements have not been terminated. A default and termination under this Agreement does not constitute a default and termination under the Franchise Agreement of existing Units between Franchisee or Franchisee Affiliates and Franchisor.

## **IX. MISCELLANEOUS**

A. Notices. All written notices and reports permitted or required to be delivered by the provisions of this Agreement will be deemed so delivered (i) at the time delivered by hand; (ii) one (1) business day after being placed in the hands of a commercial courier service for next business day delivery, provided there is evidence of receipt; (iii) three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid; or (iv) if sent by a facsimile transmission or electronic mail transmission on the day of receipt if delivered (as indicated by delivery confirmation of the sender) by 5:00 p.m. recipient's local time, or on the next following business day if delivered after 5:00 p.m. recipient's local time, in each case addressed to the party to be notified at the address, facsimile number or electronic mail address set forth herein unless and until a different address, facsimile number or electronic mail address has been designated by written notice to the other party.

B. Severability. If any provision of this Agreement is considered to be invalid or inoperative for any reason, that part will be deemed modified to the extent necessary to make it valid and operative, or if it cannot be modified, then severed, and the remainder of the Agreement will continue in effect as if the Agreement had been signed with the invalid portion modified or eliminated.

C. Non-Waiver. Neither party's waiver of a breach or default by the other, nor delay or failure to exercise any right upon breach or default, nor acceptance of any payment, will be deemed a waiver, nor will it impair rights for other breaches or defaults of the same or a different kind. The description of any breach or default in any notice will not prevent the assertion of other defaults or breaches. Franchisor may waive any one or more of the requirements imposed under

this Agreement for the benefit of any particular franchisee or any particular Unit, but the waiver in favor of any other franchisee or Unit will not prevent Franchisor from enforcing the requirements against Franchisee, all other franchisees and all other Units.

D. Remedies. The remedies available to Franchisor are non-exclusive and nothing stated in this Agreement will act to prevent Franchisor's pursuit of any other rights or remedies arising due to termination of this Agreement which may otherwise become available to Franchisor in law or equity.

E. Attorney's Fees. If Franchisor incurs attorneys' fees or other expenses in seeking enforcement of this Agreement, Franchisee will be required to reimburse Franchisor for Franchisor reasonable costs and expenses (including attorneys' fees

F. Approval and Guarantees of Shareholders, Partners or Members. If Franchisee is a corporation, partnership or limited liability company, all shareholders, partners or members (and their shareholders, partners or members, if they are an entity and all of their spouses) will guarantee the obligations and covenants of Franchisee under each Franchise Agreement signed for Units to be developed as well as will guarantee the obligations and covenants of Franchisee under this Multi-Unit Development Agreement.

G. Except as specifically provided under this Multi-Unit Development Agreement, any dispute or claim relating to or arising out of this Agreement must be resolved exclusively in accordance with the arbitration provisions set forth in the Franchise Agreement signed contemporaneously by the parties.

H. Mediation / Arbitration Except as specifically provided under this Agreement, any dispute or claim relating to or arising out of this Agreement must be resolved exclusively by mediation, then mandatory arbitration by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") or another arbitration service agreed to by the parties. Mediation will take place near our principal place of business, currently in Mesa, Arizona. The parties agree to participate in the mediation proceedings in good faith with the intention of resolving the dispute within 30 days of the notice from the party seeking to initiate the mediation procedures. Mediation / Arbitration will be conducted solely on an individual, not a class-wide, basis, unless all parties so agree. No award in arbitration involving Franchisor will have any effect of preclusion or collateral estoppel in any other adjudication or arbitration. A single mediator / arbitrator shall be selected in accordance with standard AAA procedure. All proceedings requiring the parties' physical presence will be conducted at a suitable location near where Franchisor maintains its headquarters, at a location to be chosen by the arbitrator. Judgment upon the arbitrators' award may be entered in any court of competent jurisdiction. Each party shall bear all of its own costs and attorneys' fees and one-half of the arbitrator's expenses. The decision of the arbitrator shall be final and binding.

I. Governing Law. Franchisee acknowledges that this Agreement was accepted in the State of Arizona. Franchisee acknowledges that it has and will continue to develop a substantial and continuing relationship with Franchisor at Franchisor's principal offices in the County of Maricopa, Arizona, where Franchisor's decision-making authority is vested, and franchise

operations are conducted and supervised. Except to the extent that this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 115 U.S.C. 1051), this Agreement will be governed, to the extent permissible, by the laws of the State of Arizona without regard to principles of conflicts of law. If, however, any provision of this Agreement would not be enforceable under the laws of Arizona, and if the MUD Locations is located outside of Arizona and the provision would be enforceable under the laws of the State(s) in which the MUD Locations are located, then the provision in question (and only that provision) will be interpreted and construed under the laws of the State(s) where the MUD Locations are located. If applicable law provides Franchisee with additional rights as to notices, opportunities to cure or otherwise than as are provided by this Agreement as to termination, renewal, transfers or otherwise, Franchisor shall comply with the requirements of such laws to the extent they exceed Franchisor's obligations under this Agreement.

J. Venue. Franchisor may institute any action arising out of or relating to this Agreement in any state or federal court of general jurisdiction County of Maricopa in the State of Arizona, and Franchisee and each guarantor of this Agreement irrevocably submits to the jurisdiction of these courts and waive any objection to the application of Arizona law or to the jurisdiction or venue in these Arizona courts. If Franchisee institutes any action arising out of or relating to this Agreement, that action must be brought in the state or federal courts having jurisdiction over Maricopa County, State of Arizona, and Franchisee irrevocably submits to the jurisdiction of such courts and waives any objection Franchisee may have to either the jurisdiction or venue of such court. If a state regulator requires an amendment to this Agreement, the amendment will be attached to this Agreement. Franchisor will not, however, be precluded from contesting the validity, enforceability, or applicability or such regulator's required amendment in any action relating to this Agreement or to its rescission or termination. Despite the parties' agreement to arbitrate, each has the right to seek temporary restraining orders and temporary, interim, interlocutory, or preliminary injunctive relief from a court of competent jurisdiction. In such a case, the party seeking relief may bring related claims in the same action that would otherwise be subject to arbitration under the terms of this Agreement. Either party's application to a judicial authority for such measures will not be an infringement or a waiver of the arbitration agreement or affect the relevant powers reserved to the arbitrator. The parties hereto recognize, and any arbitrator or judge is affirmatively advised, that certain provisions of this Agreement describe Franchisor's right to take (or refrain from taking) certain actions in the exercise of Franchisor's business judgment based on Franchisor's assessment of the overall best interests of the System and/or franchise network. Where such discretion has been exercised, and is supported by Franchisor's business judgment, neither an arbitrator nor a judge shall substitute his or her judgment for the judgment so exercised by Franchisor.

K. Non-Liability of Franchisor's Affiliates. Franchisor is the only entity obligated to Franchisee under this Agreement. Franchisee may not look to any of Franchisor's officers, directors, stockholders, members, Affiliates or related companies, other business entities or individuals for performance of this Agreement.

L. Limitation of Legal Actions.

1. IN NO EVENT WILL FRANCHISOR BE LIABLE TO FRANCHISEE FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY CONDUCT ARISING OUT OF THIS AGREEMENT OR FRANCHISOR'S RELATIONSHIP WITH FRANCHISEE.
2. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP OF THE PARTIES.
3. ANY DISAGREEMENT BETWEEN FRANCHISEE (AND FRANCHISEE'S GUARANTORS AND OWNERS) AND FRANCHISOR (AND FRANCHISOR'S AFFILIATES AND OWNERS) WILL BE CONSIDERED UNIQUE AS TO ITS FACTS AND MUST NOT BE BROUGHT AS A CLASS ACTION AND FRANCHISEE (AND FRANCHISEE'S GUARANTORS AND OWNERS) WAIVE ANY RIGHT TO PROCEED AGAINST FRANCHISOR (AND FRANCHISOR'S AFFILIATES, OWNERS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS) BY WAY OF CLASS ACTION, OR BY WAY OF A MULTI-PLAINTIFF, CONSOLIDATED OR COLLECTIVE ACTION.
4. FRANCHISEE WILL BE BARRED FROM BRINGING ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FRANCHISOR'S RELATIONSHIP WITH FRANCHISEE, UNLESS A JUDICIAL PROCEEDING IS COMMENCED WITHIN ONE (1) YEAR FROM THE DATE ON WHICH FRANCHISEE KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO THAT CLAIM.

M. Receipt of the FDD. Franchisee acknowledges receipt of Franchisor's franchise disclosure document along with this Agreement, at least 14 days before Franchisee's execution of this Agreement or any payment by Franchisee to Franchisor. If any unilateral modifications have been made to this Agreement, Franchisee acknowledges that Franchisee has had at least 7 days to review all such modifications.

N. Construction of Language. The language of this Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Agreement refer to whatever number or gender the context requires; if more than one party or person is referred to as you, their obligations and liabilities will be joint and several. Headings are for reference purposes and do not control interpretation.

O. Entire Agreement. This Agreement, including all Attachments attached, constitutes the entire, full, and complete agreement between the parties concerning the subject matter hereof, and supersedes any and all prior agreements; provided, however, that nothing in this or any related agreement is intended to disclaim the representations Franchisor made in the franchise disclosure document that was furnished to Franchisee in connection with Franchisor offer to grant Franchisee a franchise to develop the Units. No amendment or modification to this Agreement will be binding on either party unless written and fully executed. All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Franchise Agreement attached hereto.

P. Adverse Change in Law. Franchisee acknowledges that the rights contemplated under this Agreement are granted on the assumption that there will be no Adverse Change of Law during the Term. If, at any time during the Term, there occurs an Adverse Change of Law, the parties agree to use their best efforts and to cooperate with each other to amend this Agreement either to bring it into conformity with the requirements of the Adverse Change of Law or to seek an alternative way to comply with the Adverse Change of Law. If, in Franchisor's judgment, this Agreement cannot be modified to comply with the Adverse Change of Law without undermining material elements of the relationship, Franchisor may, at its option, without liability for such action or any further obligation to Franchisee, terminate this Agreement and the rights granted hereby upon 30 days' written notice to you. "Adverse Change of Law" as used in this Agreement means the adoption, promulgation, or reinterpretation after the Effective Date, by any governmental or judicial authority in the United States, of any law, regulation, policy, order, circular, or similar directive which action materially and adversely affects Franchisor's ability to enjoy the economic benefits of this Agreement or to enforce its rights hereunder.

Q. Applicable Laws. You acknowledge that there may be federal, state, and local laws ("Applicable Laws") that may affect the operation of the Units, that may conflict with your obligation to comply with our Standards, and that may negatively impact the financial performance of the Franchised Business. These laws may exist today or may be enacted in the future. It is solely your responsibility, both prior to and after entering into this Agreement, to identify, understand and comply with all Applicable Laws. In entering into this Agreement, you are not relying in any way on any representation or warranty (express or implied) by us or anyone associated with us that our System complies with Applicable Laws.

## **X. INDEPENDENT CONTRACTOR / INDEMNIFICATION**

A. Independent Contractor. Franchisor and Franchisee are independent contractors, and no partnership, fiduciary, joint venture, or employment relationship exists between Franchisor and Franchisee. Franchisee will conspicuously identify itself in all dealings with the public as an independently owned business. Neither Franchisor nor Franchisee will make any agreements or representations in the name of or on behalf of the other party that their relationship is other than franchisor and franchisee.

B. Indemnification. Under no circumstances will Franchisor be liable for any act, omission, debt, or other obligation of Franchisee. To the fullest extent permitted by law, Franchisee (for itself and its employees, agents, subcontractors, successors and assigns) agrees, at Franchisee's sole cost and expense, to indemnify, defend and hold harmless, and to reimburse on demand Franchisor, and all entities related to Franchisor and Franchisor's respective directors, officers, members, employees agents, managers, partners, attorneys, licensees, affiliates successors and assigns ("Indemnified Parties") for and against any and all damages, losses, liabilities, bodily injury, property damage, obligations, penalties, fines, claims, litigation, demands, defenses, judgments, suit, proceedings, administrative orders, consent agreements, costs, disbursements or expenses of any kind or any nature whatsoever, including without limitation, reasonable attorneys' and expert fees and disbursements arising out of or related to or in any way arising out of the acts or omissions of Franchisee or Franchisee's employees, agents, officers, directors, parents, subsidiaries, affiliates, successors and assigns ("Indemnitors") arising out of or related

to (i) any act or omission, negligent or otherwise, of the Indemnitors or anyone directly or indirectly employed by them or anyone whose acts they may be liable relative to the business contemplated by this Agreement; (ii) any breach by the Indemnitors or any term or provision of this Agreement; and (iii) the cost, including, but not limited to reasonable attorney's fees, of enforcing this indemnification provision. The obligations of Indemnitors are joint and several.

This indemnification will not be construed to indemnify an Indemnified Party to the extent such indemnification is prohibited by law, including, an indemnification of any Indemnified Party from its own negligence, if prohibited by law. To the extent indemnification of any party hereunder would be prohibited by law, this provision will not apply to such party, but will continue to be effective as to all other parties with respect to whom indemnification is not prohibited by applicable law.

#### **XI. REPRESENTATIONS AND ACKNOWLEDGMENTS / CAVEATS**

A. FRANCHISEE REPRESENTS TO FRANCHISOR THAT FRANCHISEE'S SIGNATURE ON AND PERFORMANCE OF THIS AGREEMENT DOES NOT VIOLATE OR CONSTITUTE A BREACH OF THE TERMS OF ANY OTHER AGREEMENT OR COMMITMENT TO WHICH FRANCHISEE, FRANCHISEE'S GUARANTORS OR ANY OF FRANCHISEE 'S OR THEIR AFFILIATES ARE A PARTY.

B. FRANCHISEE HAS RECEIVED THE FRANCHISE DISCLOSURE DOCUMENT REQUIRED BY THE FEDERAL TRADE COMMISSION WITH APPLICABLE EXHIBITS AT LEAST FOURTEEN (14) CALENDAR DAYS BEFORE THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED AND HAS RECEIVED A COPY OF THE COMPLETE ROI FRANCHISE AGREEMENT AT LEAST SEVEN (7) CALENDAR DAYS BEFORE THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED.

C. UNDER APPLICABLE U.S. LAW, INCLUDING WITHOUT LIMITATION EXECUTIVE ORDER 1224, SIGNED ON SEPTEMBER 23, 2001 (THE "ORDER"), FRANCHISOR IS PROHIBITED FROM ENGAGING IN ANY TRANSACTION WITH ANY PERSON ENGAGED IN, OR WITH A PERSON AIDING ANY PERSON ENGAGED IN, ACTS OF TERRORISM AS DEFINED IN THE ORDER. ACCORDINGLY, FRANCHISEE DOES NOT AND HEREAFTER WILL NOT, ENGAGE IN ANY TERRORIST ACTIVITY. IN ADDITION, FRANCHISEE IS NOT AFFILIATED WITH AND DOES NOT SUPPORT ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST ACTIVITY.

D. FRANCHISEE REPRESENTS TO FRANCHISOR THAT ALL INFORMATION SET FORTH IN ANY AND ALL APPLICATIONS, FINANCIAL STATEMENTS AND SUBMISSIONS TO FRANCHISOR ARE AND WILL BE TRUE, COMPLETE AND ACCURATE IN ALL RESPECTS, AND FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR IS RELYING UPON THE TRUTHFULNESS, COMPLETENESS AND ACCURACY OF SUCH INFORMATION IN BOTH AWARDING AND CONTINUING THE RIGHTS GRANTED TO FRANCHISEE BY THIS AGREEMENT.

**SIGNATURE PAGE FOLLOWS**

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

**FRANCHISOR:**  
**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

By:

\_\_\_\_\_  
Paul Preston, President  
Date signed: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed name]

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[Printed Name]

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

**ATTACHMENT A**  
**MUD UNIT LOCATIONS, MUD FEE, MUD SCHEDULE AND EXPIRATION DATE**

**Development Area:** Your Development Area, within which your Units must be located, is defined as: \_\_\_\_\_

**Unit Locations:** In order for Franchisor to provide its required consent for Franchisee’s proposed location of subsequent Units, Franchisee must provide to Franchisor such information as Franchisor requests for the proposed location for each subsequent Unit at least 90 days prior to executing a lease for the referenced Unit.

**Unit Schedule and Fees:**

Unit #	Date by which Franchise Agreement Must Be Executed	Date by which Unit Must Be Opened	Initial Franchise Fee for this Unit	The portion of the Initial Franchise Fee to be paid upon signing the MUD Agreement	The remaining portion of the Initial Franchise Fee to be paid upon signing each individual Franchise Agreement
1			\$50,000	\$50,000	-
2			\$37,500	\$18,750	\$18,750
3			\$37,500	\$18,750	\$18,750
4			\$37,500	\$18,750	\$18,750
5			\$37,500	\$18,750	\$18,750

<b>The Multi-Unit Fee</b> , comprised of the Initial Franchise Fee of \$50,000 for Unit #1 plus the total discounted Franchise Fees for each of the subsequent Units is	<b>\$</b>
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**Expiration Date:**

The expiration date of this Agreement shall be the date by which Franchisee must sign the Franchise Agreement for Franchisee’s last Unit as set forth in the above “Unit Schedule and Fees” table.

**FRANCHISOR:**  
**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

By:

\_\_\_\_\_  
 Paul Preston, President

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

**FRANCHISEE:**

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 [Printed name]

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

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 [Printed Name]

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

**EXHIBIT G**

**AQUA-TOTS SWIM SCHOOL HOLDING LLC**

**STATE EFFECTIVE DATES**

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration, as of the Effective Date stated below.

STATE	EFFECTIVE DATE	AMENDMENT DATE
California	Pending	
Illinois	Pending	
Indiana	Pending	
Maryland	Pending	
Michigan	June 18, 2023	
Minnesota	Pending	
New York	May 30, 2023	April 19, 2024
Rhode Island	June 13, 2023	April 19, 2024
Virginia	May 16, 2023	April 19, 2024
Wisconsin	Pending	

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

## RECEIPT (FRANCHISEE COPY)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Aqua-Tots Swim School Holding LLC offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement or make a payment with the franchisor or an affiliate in connection with the proposed franchise sale.

In the States of New York and Rhode Island, the delivery of the Disclosure Document is to be received at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration to us or an affiliate in connection with the proposed franchise sale.

Michigan requires the delivery of the Disclosure Document at least 10 business days before the execution of the franchise or other agreement, or the payment of any consideration, whichever comes first.

If Aqua-Tots Swim School Holding LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and State law may have occurred and should be reported to the Federal Trade Commissioner, Washington, D.C. 20580 and the state agency listed on Exhibit F.

Date of Issuance: April 15, 2024

The franchise seller for this offering is Paul Preston, President, at 1110 S. Greenfield Rd., Suite 201, Mesa, Arizona 85206; and Phone: (480) 621-3226.

See Exhibit A for our registered agents authorized to receive service of process.

I have received a disclosure document dated April 15, 2024, on \_\_\_\_\_, that included the following Exhibits:

- A. State Administrators and Agents for Service of Process
  - B. Audited Financial Statements
  - C. Franchise Agreement, including:
  - D. Manual Table of Contents
  - E. State Addendum to the Disclosure Document and Franchise Agreement and Multi-Unit Development Agreement
  - F. Multi-Unit Development Agreement
  - G. State Effective Dates
- Last Page/Receipts

PROSPECTIVE FRANCHISEE:

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

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

Printed name: \_\_\_\_\_

Please print your name, sign and date this copy of the Receipt and retain it for your records.

## RECEIPT (FRANCHISOR COPY)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Aqua-Tots Swim School Holding LLC offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement or make a payment with the franchisor or an affiliate in connection with the proposed franchise sale.

In the States of New York and Rhode Island, the delivery of the Disclosure Document is to be received at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration to us or an affiliate in connection with the proposed franchise sale.

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PROSPECTIVE FRANCHISEE:

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

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

Printed name: \_\_\_\_\_

Please print your name, sign and date this copy of the Receipt, then return it to Aqua-Tots Swim School Holding LLC.