

FRANCHISE DISCLOSURE DOCUMENT



The Swing Bays Franchise, LLC
a Colorado limited liability company
11183 South Parker Road, Unit A
Parker, CO 80134
(720) 524-4999
www.theswingbays.com

We franchise the right to operate a premier training facility offering golf simulators, professional indoor golf lessons, full-swing and short game practice areas, club fitting, equipment repair, golf fitness instruction, as well as social event hosting, merchandise and other related products and services (each, a “Franchised Business”).

The total estimated initial investment necessary to begin operation of a Franchised Business ranges from \$226,400 to \$924,000. This includes \$40,000 to \$56,000 that must be paid to the franchisor or its affiliates.

We also offer qualified parties the right to develop multiple Franchised Businesses in accordance with a development schedule the parties agree to under our form of development agreement. The total investment necessary to begin operations under a development agreement will depend on the number of facilities we grant you the right to open, which we expect will typically be five or more, within a mutually agreed upon geographical area (your “Development Area”).

The total investment necessary to begin operation of the first Franchised Business under a development agreement for five Franchised Businesses is \$346,400 to \$1,044,000. This includes \$160,000 to \$176,000 that must be paid to the franchisor or its affiliates.

This disclosure document summarizes certain provisions of your Franchise Agreement, Development Agreement, and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this 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 governmental 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 our corporate office at 11183 South Parker Road, Unit A, Parker, CO 80134, Attn: Brenna Miller, via telephone at (319) 431-1631 or by emailing franchise@theswingbays.com.

The terms of your Franchise Agreement will govern your franchise relationship. Don’t rely on the disclosure document alone to understand your contracts. Read all of your contracts carefully. Show your contracts 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 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: August 12, 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 |
|--|---|
| How much can I earn? | 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 or Exhibit H. |
| How much will I need to invest? | 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. |
| Does the franchisor have the financial ability to provide support to my business? | Item 21 or Exhibit C includes financial statements. Review these statements carefully. |
| Is the franchise system stable, growing, or shrinking? | Item 20 summarizes the recent history of the number of company-owned and franchised outlets. |
| Will my business be the only The Swing Bays business in my area? | Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you. |
| Does the franchise have a troubled legal history? | Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings. |
| What's it like to be a The Swing Bays franchisee? | Item 20 or Exhibit H lists current and former franchisees. You can contact them to ask about their experience. |
| What else should I know? | 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 that franchise or has verified the information in this document. To find out if your state has a registration requirements, 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 and development agreement require you to resolve disputes with the franchisor by mediation and/or litigation only in Parker, Colorado. Out-of-state mediation or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate or litigate with the franchisor in Colorado than in your own state.
2. **Spousal Liability**. Your spouse must sign a document that makes your spouse liable for all financial obligations under the Franchise Agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

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.

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EXHIBITS

| | |
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ITEM 1
THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

Company

To simplify the language in this Franchise Disclosure Document, “Company,” “Franchisor,” “we” or “us” means The Swing Bays Franchise, LLC, the franchisor of this business. “You” means the person who buys the franchise and includes your owners and principals if you are a corporation or other business entity.

Franchisor

We were formed in the state of Colorado on June 25, 2024. Our principal business address is 11183 South Parker Road, Unit A, Parker, CO 80134, and our telephone number is (319) 431-1631. We do business under our corporate name and, at times, our then-current “Proprietary Marks” described and defined below in this Item.

We offer and award franchises for the establishment, development, and operation of facilities that offer professional indoor golf lessons, full-swing and short game practice areas, industry-leading technologies for indoor golf simulation and entertainment, TPI training programs, club fitting, equipment repair, and fitness instruction, as well as social event hosting, membership options, and merchandise (each, a “Facility”).

We have not and do not conduct a business of the type to be operated by you. Our affiliate The Swing Bays, LLC started operating a Facility in 2022. We have granted franchises for Facilities since August 2024.

Except as otherwise provided in this Item, we have not and do not (a) engage in any other business activities, or (b) offer franchises in any other line of business.

The Franchised Business and Offering

Each Franchised Business operates pursuant to our proprietary operating system, the characteristics of which include: (a) proprietary training methodologies for golf instruction and fitness; (b) interior and exterior Facility designs, décor, and color schemes; (c) standards and specifications for the furniture, fixtures, and equipment necessary to operate a Facility; (d) sales techniques, and merchandising, marketing, and advertising; and (e) standardized procedures for operating and managing a Facility (collectively the “System”).

We identify the System by our then-current proprietary marks (the “Proprietary Marks”), including our current principal marks THE SWING BAYS, DUSTIN MILLER’S SWING BAYS, and certain other trade names, service marks, trademarks, logos, emblems, and indicia of origin, distinctive trade dress we may now or in the future designate for use and licensing in connection with the System and our franchise network. We continue to develop, use, and control the Proprietary Marks in order to identify for the public the source of products and services marketed under the System, and to represent the System’s high standards of quality, appearance, and service.

You will operate your Facility pursuant to our current form of Franchise Agreement, which is attached to this Disclosure Document as Exhibit D. Under the Franchise Agreement, you are granted the right and obligation to open and operate a Franchised Business at a certain location (“Approved Location”) within a certain designated territory (“Territory”).

You will be required to engage an individual that will be primarily responsible for overseeing day-to-day operations of the Franchised Business, as well as a primary point of contact with us that has authorization to communicate with us directly and make management-related decisions in connection with said Franchised Businesses (the “General Manager”). The General Manager must complete our current Initial Training Program prior to the opening of your initial Franchised Business. If your General Manager is not a Professional Golfers’ Association of America (“PGA”) certified golf professional and/or a Titleist Performance Institute (“TPI”) certified professional, they must demonstrate proficient experience in the golf industry and complete additional training required by us.

Development Agreement

We also offer qualified individuals the right to open and operate multiple Facilities within a defined geographical area (the “Development Area”) by executing our current form of development agreement (the “Development Agreement”) attached as Exhibit E to this Disclosure Document, and paying our then-current development fee upon execution of your Development Agreement, which will depend on the number of Facilities you agree to open (the “Development Fee”).

Upon establishing each additional Facility under the Development Agreement, you will be required to enter into our then-current form of Franchise Agreement, which may contain materially different terms from our current form of Franchise Agreement. You will be required to execute the Franchise Agreement for your initial Facility contemporaneously with the execution of your Development Agreement.

You must then ensure that you timely develop each additional Facility in the Development Area in accordance with the mandatory development schedule set forth in your Development Agreement (the “Mandatory Development Schedule”).

Parents, Predecessors and Affiliates

We have no predecessor. Our parent company is Dustin Miller Golf LLC, a Colorado limited liability company with a principal address of 10290 Rotherwood Circle, Highlands Ranch, CO 80130. Dustin Miller Golf LLC was formed on March 6, 2017.

Our affiliate The Swing Bays, LLC, a Colorado limited liability company with a principal address of 11183 South Parker Road, Unit A, Parker, CO 80134. The Swing Bays, LLC was formed on August 19, 2021. In addition to operating a Facility, The Swing Bays, LLC is the owner of certain Proprietary Marks that we will license to you.

Other than as disclosed above, we have no additional parents, predecessors, or affiliates that offer franchises in this line or any line of business or that provide goods or services to franchisees.

Market and Competition

Your Facility will offer its products and services to the general public. Sales may have some amount a seasonality as they tend to be higher during the golf off-season in your market. The Facility will compete primarily with local, regional, and national golf courses and facilities, indoor golf courses, golf shops offering lessons, virtual golf businesses, golf retail stores, and other similar businesses.

The virtual golf industry is rapidly maturing and highly competitive. Your competitive advantage in the marketplace will be based on your adherence to our standards and guidelines, as well as your entrepreneurial and managerial abilities and focus on customer service.

Industry Specific Regulations

Your Facility will be subject to laws and regulations in your state, county, or municipality regarding the operation of similar facilities, including laws and regulations relating to the preparation and dispensation of food and alcohol products, occupational hazards and health laws, sanitation laws, and consumer protection laws.

You will also be subject to laws or regulations that are not specific to the golf training industry, but applicable to businesses in general, including zoning laws, labor laws and the Fair Labor Standards Act, workers' compensation laws, business licensing laws, tax regulations, and the Americans with Disabilities Act.

Businesses in several states are subject to consumer protection laws that specifically regulate membership models.

As your Facility will serve alcoholic beverages, you are required to obtain an alcoholic beverage license in order to serve beer, wine, and spirits from the Facility, and you must comply with all state and federal laws concerning the sale or service of alcohol. State and local agencies may periodically conduct inspections for compliance with these requirements.

Applicable laws and regulations are subject to change. You alone are responsible for determining which laws and regulations apply to the operation of your Franchised Business, regardless of any advice we may provide to you.

ITEM 2 **BUSINESS EXPERIENCE**

CEO and Founder: Dustin Miller

Dustin Miller has been our CEO and founder since our inception, and he has also served as the owner and founder of our affiliate The Swing Bays, LLC since June 2022. He is based in Parker, Colorado.

COO: Brenna Miller

Brenna Miller has been our COO since our inception, and she has also served as the operations executive of our affiliate The Swing Bays, LLC since June 2022. She is based in Parker, Colorado.

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

Franchise Agreement

You must pay us a \$40,000 initial franchise fee when you sign the Franchise Agreement for a Facility (“Initial Franchise Fee”). The Initial Franchise Fee is uniform to all franchisees and deemed fully earned and nonrefundable upon payment.

Development Agreement

Development Fee

If we grant you the right to enter into a Development Agreement, you must pay a non-refundable fee of \$40,000 multiplied by the total number of Facilities (typically, a minimum of five units) to be developed pursuant to the terms of the Development Agreement (the “Development Fee”). The payment structure of the Development Fee will depend on the number of Facilities you agree to open under the Development Agreement.

If you agree to develop between five and nine Facilities, you must pay the Development Fee in accordance with the following schedule: (i) \$120,000 upon execution of the Development Agreement to cover the entire portion of the Development Fee applicable to the first three Facilities; plus (ii) \$20,000 for each of the remaining Facilities you are obligated to develop under the Development Agreement, to cover one-half of the Development Fee applicable to each additional Facility. You must pay the remaining \$20,000 due for each of the additional Facilities upon the earlier of: (i) the date a lease or purchase agreement for the Facility is executed by you; or (ii) 90 days prior to the scheduled opening date for the Facility.

If you agree to develop 10 or more Facilities, you must pay the Development Fee in accordance with the following schedule: (i) \$200,000 upon execution of the Development Agreement to cover the entire portion of the Development Fee applicable to the first five Facilities; plus (ii) \$20,000 for each of the remaining Facilities you are obligated to develop under the Development Agreement, to cover one-half of the Development Fee applicable to each additional Facility. You must pay the remaining \$20,000 due for each of the additional Facilities on the earlier of: (i) the date a lease or purchase agreement for the Facility is executed by you; or (ii) 90 days prior to the scheduled opening date for the Facility.

Delayed Opening Fee

If your Facility does not open within 12 months of signing your Franchise Agreement, we may impose a delayed opening fee of \$50 per day for each day that the opening of your Facility is delayed, up to a maximum of 120 additional days. Therefore, the maximum fee will be \$6,000. If your Facility is not open after this additional 120-day period, then we may terminate your Franchise Agreement immediately upon notice. This fee is not refundable.

GM Certification Fee

If you or, if applicable, your General Manager is not a PGA certified golf professional or a TPI certified golf trainer, you or they will be required to complete additional training to ensure they meet The Swing Bay standards for golf instruction. The fee associated with this additional training is \$5,000. We may require follow-up or refresher training if it is determined you or your General Manager have failed to uphold the standards set forth in the initial training session.

On-Site Evaluation

If you request an on-site evaluation of your proposed location, we may charge you a fee of \$5,000. You are not required to request an on-site evaluation.

ITEM 6 **OTHER FEES**

| TYPE OF FEE (See Note 1) | AMOUNT | DUE DATE | REMARKS |
|--|---|--|--|
| Royalty Fee | 6% of weekly Gross Revenues | Currently, deducted weekly via an electronic funds transfer system (“EFT”) | See Note 2 |
| Worldwide Creative Marketing Fund | Up to 2% of weekly Gross Revenues (your “Fund Contribution”). Currently, we do not require a Fund Contribution. | Same interval and manner as your Royalty Fee | See Note 3 |
| Local Store Marketing | 1% of Gross Revenue (your “LSM” or “Local Store Marketing”) | Monthly | See Note 4 |
| Third-Party Required Software and Related Fees | Then-current fees charged by our approved suppliers. | As incurred | |
| Technology Fee | Currently, we do not charge this fee but we reserve the right to do so. | As invoiced | If imposed, the Technology Fee will only be used to reimburse us for expenses or third-party fees incurred in connection with the computer system, software or any other technological platform or technology used by franchisees. |
| Financial Records and Reports | Cost of preparing financial statements | Annually | See Note 5 |

| TYPE OF FEE (See Note 1) | AMOUNT | DUE DATE | REMARKS |
|---|---|----------------------------------|----------------|
| Taxes on Payments to Us | Amount of tax or assessment | When imposed by taxing authority | See Note 6 |
| Transfer Fee – Franchise Agreement | \$15,000 | Upon transfer | |
| Transfer Fee – Multi-Unit Operator Agreement | 50% of then-current Initial Franchise Fee | Before approval of transfer | |
| Renewal Fee | \$5,000 | Upon renewal | |
| Relocation Fee | Costs and expenses we incur in approving relocation | Upon relocation | See Note 7 |
| Insurance Reimbursement and Costs | Cost of insurance plus administrative fee | As required by insurer or broker | See Note 8 |
| Training Fees | <p>Our fee for sending more than three people to initial training is \$3,500 per trainee.</p> <p>Our fee for any requested additional training is \$1,000 per trainer, per day.</p> <p>Our fee for any remedial training that we require is \$500 per trainer, per day.</p> | At time of training | |
| Indemnification | Amount of claim or judgment | As incurred | See Note 9 |
| Supplier Approval/Testing Costs | Costs and expenses associated with approving an unapproved product or supplier | As incurred | |
| Post-Termination and Post-Expiration Expenses | Costs and expenses associated with ceasing operations and de-identifying yourself with the System | As incurred | See Note 10 |
| Late Payments Fee, Interest, and Collection Costs | \$250 late fee, plus interest at 18% or highest lawful interest rate for commercial transactions | As incurred | See Note 11 |
| Audit/Inspection Costs | Cost of audit and/or inspection | As required | See Note 12 |
| Annual Conference | Then-current registration fee, which we expect will be between \$500 and \$1,000 per attendee | As incurred | See Note 13 |

| TYPE OF FEE (See Note 1) | AMOUNT | DUE DATE | REMARKS |
|--------------------------------|---|-------------|--|
| Interim Management Support Fee | Up to 8% of Gross Revenues, plus expenses | As incurred | We may impose this fee (in addition to all regularly occurring fees such as the Royalty Fee), if we provide on-site management of your Franchised Business. See Note 14 |

Notes

Note 1. Unless otherwise indicated below, all of the fees listed below are uniformly imposed by, payable to, and collected by us and are non-refundable.

Note 2. Royalty Fee. You must pay us a weekly royalty each week equal to 6% of your Gross Revenues during the immediately preceding calendar week (“Royalty”). “Gross Revenues” includes all revenues you generate from all business conducted at or from your Approved Location during the preceding week, including amounts received from the sale or delivery of products and services, merchandise, and tangible property of any nature whatsoever, whether in cash or for credit, and whether collected or uncollected. For reporting purposes, a “week” begins on Monday and ends on Sunday. “Gross Revenues” also includes business interruption insurance proceeds. “Gross Revenues” do not include the amount of any applicable sales tax imposed by any federal, state, municipal, or other governmental authority if the taxes are stated separately when the customer is charged and you pay taxes when due to the appropriate taxing authority. Also excluded from Gross Revenues is the amount of any documented refunds, chargebacks, credits, and allowances given to customers in good faith and in accordance with our operating procedures. All barter and exchange transactions for which you furnish services or products in exchange for goods or services to be provided to you by a vendor, supplier, or customer will be valued at the full retail value of the goods or services provided to you.

You must send us a signed Gross Revenue report (“Gross Revenue Report”) with each Royalty payment setting forth your Gross Revenues generated during the previous week, your calculation of the Royalty, Fund Contribution, and any other information we may require. We may change the form and content of the Gross Revenue Report periodically. Royalty and Fund Contributions are presently collected each Monday, following receipt of each of your Gross Revenue Reports. We may require you to submit the Royalty and any other amounts due to us by an electronic funds transfer program (the “EFT Program”). Under the EFT Program, we will automatically deduct all payments owed to us under the Franchise Agreement or any other agreement between you and us, from your bank account. Upon written notice to you, we may designate another method of payment.

Note 3. Worldwide Creative Marketing Fund. We reserve the right to establish a worldwide creative marketing fund (the “Worldwide Creative Marketing Fund”) to promote, advertise, market and other develop our System and Proprietary Marks, and/or our brand generally. Currently, you are not required to make any Fund Contribution. We reserve the right to increase your Fund Contribution to up to 2% of Gross Revenues generated by your Franchised Business.

Note 4. Local Store Marketing (LSM). In addition to the Fund Contribution, you must spend the

minimum LSM during each month of operations in accordance with our brand standards. At our request, you must submit proof of your LSM expenditures on a monthly basis. You may, at your discretion, spend additional amounts on local advertising. We have the right to designate any geographic area for purposes of establishing a regional advertising and promotional cooperative (“Cooperative”). All franchisees in the designated geographical area must participate in a Cooperative. Cooperative contributions will be credited towards your LSM, and will not exceed the LSM unless a majority of the Cooperative’s members vote to spend an amount greater than the LSM on regional advertising.

Note 5. Financial Records and Reports. You must maintain for at least five fiscal years from their preparation complete financial records for the operation of the Facility in accordance with generally accepted accounting principles and must provide us, at our request, with weekly Gross Revenue Reports, monthly profit and loss statements, annual financial reports and operating statements in the form we specify, state and local tax returns and unaudited quarterly profit and loss statements, and such other reports as we may from time to time require.

Note 6. Taxes on Payments to Us. If any taxing authority, wherever located, imposes any future tax, levy or assessment on any payment you make to us, in addition to all payments due us, you must pay the tax, levy or assessment.

Note 7. Relocation Fee. You must pay us our out-of-pocket expenses if you relocate your Facility during the term of the Franchise Agreement, which you cannot do without our prior written approval.

Note 8. Insurance Reimbursement and Costs. If you fail to comply with our minimum insurance requirements, we have the right to obtain and maintain the requisite insurance coverage on your behalf, at your sole expense. You must pay us the premium cost of any insurance, plus an administrative fee equal to 18% of the premium cost for obtaining insurance on your behalf. We have the right to increase or otherwise modify the minimum insurance requirements upon 30 days prior written notice to you, and you must comply with any modification within the time specified in the notice.

Note 9. Indemnification. You and your principals must agree to indemnify, defend, and hold us, our affiliates and their respective shareholders, directors, officers, employees, agents, managers and members, successors and assignees harmless against and to reimburse them for all claims, obligations, liabilities and damages including any and all taxes, directly or indirectly arising out of, in whole or in part: (a) the operation of your Facility; (b) the use of the Proprietary Marks; (c) the transfer of any interest in the Franchise Agreement or your Facility in any manner not in accordance with the Franchise Agreement; (d) the infringement, alleged infringement, or any other violation or alleged violation by you or any of your principals of any patent, mark or copyright or other proprietary right owned or controlled by third parties; or (e) libel, slander or any other form of defamation of us, the System or any franchisee or developer operating under the System, by you or by any of your principals.

Note 10. Post-Termination and Post-Expiration Expenses. Upon termination of the Franchise Agreement by us, regardless of the cause, and upon expiration and nonrenewal or transfer of the Franchise Agreement, you must pay all costs and expenses associated with your ceasing operation of the Facility and de-identifying yourself with the System.

Note 11. Late Payments Fee, Interest, and Collection Costs. In addition to the late fee and interest, if you are in breach or default of any monetary or non-monetary material obligation under the Franchise

Agreement or any related agreement between you and us, and we engage an attorney to enforce our respective rights (whether or not we initiate formal judicial proceedings), you must pay all reasonable attorneys' fees, court costs and litigation expenses we incur. If you institute any legal action to interpret or enforce the terms of the Franchise Agreement, and your claim is denied or the action is dismissed, you must reimburse us our reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending against the action.

Note 12. Audit/Inspection Costs. If any audit reveals that you have understated your Royalty, Fund Contributions, or your LSM, by more than 2%, or if you have failed to submit timely reports and/or remittances for any two reporting periods within any 12-month period, you must pay the reasonable cost of our audit and/or inspection, including the cost of outside auditors and attorneys (if we incur these costs), together with amounts due for Royalty and other fees as a result of such underreporting and/or failure to submit reports, along with all late fees and interest which may otherwise be due under the Franchise Agreement.

Note 13. Annual Conference. We may, in our discretion, hold an annual conference at a location to be selected by us ("Annual Conference"). We may require you to attend the Annual Conference and pay our then-current registration fee, and we may impose a penalty fee if you fail to attend. All expenses, including you and your employees' transportation to and from the Annual Conference, and lodging, meals, and salaries during the Annual Conference, are your sole responsibility. We may use expenditures from the Worldwide Creative Marketing Fund for purposes related to the Annual Conference, including costs related to production, programs, and materials.

Note 14. Interim Management Support Fee. In the event of your death or disability, your default of the Franchise Agreement, absence of a qualified general manager, or other reasons, we may provide interim on-site management of your Franchised Business.

ITEM 7

ESTIMATED INITIAL INVESTMENT¹

A. SINGLE-UNIT FRANCHISE AGREEMENT

| Column 1 | Column 2 | Column 3 | Column 3 | Column 4 | Column 5 |
|--|---------------------|----------------------|--------------------------|------------------------------------|--------------------------------------|
| TYPE OF EXPENDITURE | LOW ESTIMATE | HIGH ESTIMATE | METHOD OF PAYMENT | WHEN DUE | TO WHOM PAYMENT IS TO BE MADE |
| Initial Franchise Fee ² | \$40,000 | \$40,000 | Lump Sum | When Signing a Franchise Agreement | Us |
| Lease Payments (3 Months) ³ | \$12,000 | \$54,000 | As Arranged | As Arranged | Landlord |
| Security Deposits ⁴ | \$4,000 | \$17,000 | As Arranged | As Arranged | Landlord |
| Delayed Opening Fee ⁵ | \$0 | \$6,000 | As Arranged | As Incurred | Us |

| Column 1 | Column 2 | Column 3 | Column 3 | Column 4 | Column 5 |
|---|--------------|---------------|-------------------|-------------|--------------------------------|
| TYPE OF EXPENDITURE | LOW ESTIMATE | HIGH ESTIMATE | METHOD OF PAYMENT | WHEN DUE | TO WHOM PAYMENT IS TO BE MADE |
| Architectural Fees ⁶ | \$5,000 | \$20,000 | As Arranged | As Arranged | Approved Suppliers |
| Construction & Leasehold Improvements ⁷ | \$30,000 | \$300,000 | As Arranged | As Arranged | Landlord and Contractor |
| Furniture & Fixtures ⁸ | \$8,000 | \$50,000 | As Arranged | As Arranged | Approved Suppliers |
| Signage ⁹ | \$5,000 | \$40,000 | As Arranged | As Arranged | Approved Suppliers |
| Golf Simulators & Golf Equipment ¹⁰ | \$80,000 | \$200,000 | As Arranged | As Incurred | Approved Suppliers |
| Computer System and POS System ¹¹ | \$2,000 | \$10,000 | As Arranged | As Incurred | Approved Suppliers |
| Business Licenses and Permits (Excludes Alcohol Permit) ¹² | \$500 | \$4,000 | As Arranged | As Arranged | Approved Suppliers |
| Professional Fees ¹³ | \$1,000 | \$5,000 | As Arranged | As Arranged | Third-Party Professional(s) |
| Opening Inventory & Supplies ¹⁴ | \$2,500 | \$25,000 | As Arranged | As Incurred | Approved Suppliers |
| Insurance (3 Months) ¹⁵ | \$900 | \$3,000 | As Arranged | As Arranged | Third-Party Provider or Broker |
| GM Certification Fee ¹⁶ | \$0 | \$5,000 | As Arranged | As Incurred | Us |

| Column 1 | Column 2 | Column 3 | Column 3 | Column 4 | Column 5 |
|--|------------------|------------------|-------------------|----------------------------|---|
| TYPE OF EXPENDITURE | LOW ESTIMATE | HIGH ESTIMATE | METHOD OF PAYMENT | WHEN DUE | TO WHOM PAYMENT IS TO BE MADE |
| Travel & Living Expenses for Training ¹⁷ | \$500 | \$5,000 | As Arranged | As Incurred | Third Party Vendors |
| Grand Opening Advertising ¹⁸ | \$15,000 | \$30,000 | As Arranged | As Incurred | Approved Supplier(s) |
| Ancillary Real Estate Costs ¹⁹ | \$0 | \$25,000 | As Arranged | As Incurred | Third-Party Vendors |
| On-Site Location Evaluation Fee ²⁰ | \$0 | \$5,000 | As Arranged | As Incurred | Us |
| Additional Funds – 3 Months ²¹ | \$20,000 | \$80,000 | As Required | First 90 Days of Operation | Landlord; Personnel of the Franchised Business; various other third parties; Us; etc. |
| Total Estimated Initial Investment²² | \$226,400 | \$924,000 | | | |

Explanatory Notes to Chart 7(A) above:

Note 1. All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. We do not offer direct or indirect financing.

Note 2. The Initial Franchise Fee is \$40,000 for your Facility and is described in greater detail in Item 5 of this Franchise Disclosure Document.

Note 3. You must purchase or rent a location at which to operate the Facility. The typical Facility is between 4,000 and 6,000 square feet. Your rent deposits will vary depending on the real estate market in your area. Pre-paid rent is generally non-refundable while security or other deposits may be refundable either in full or in part depending upon your lease or rental contract. It is extremely difficult to estimate lease acquisition costs because of the wide variation in these costs depending upon location. Lease costs will also vary based upon variance in square footage, cost per square footage, and required maintenance costs.

Note 4. We estimate that you will need to provide deposits for utilities. In addition, you may have to give your landlord a security deposit, and the estimate above contemplates up to a full month's rent as the security deposit. The amount of these deposits will vary depending upon the practices of the utility companies and your landlord.

Note 5. This fee's range is based on the \$50 per day fee for each day that the opening of your Facility is delayed beyond the 12-month opening deadline. You will be charged the \$50 per day fee for up to 120 days, at which point your fee will total \$6,000.

Note 6. These fees are representative of the costs for engagement of architects and engineers in connection with the construction of the Facility. These costs will vary based upon the size of the location and type of engineer/architect you hire.

Note 7. This estimate covers the cost of building out your Facility. The lower estimate assumes that your Facility has an existing buildout that is similar to that required of a System Facility, and that the landlord will complete some improvements on your behalf. The higher estimate assumes a complete upfit, where the tenant improves upon an empty commercial shell space. There are many variables that may impact your overall costs, including landlord contribution, the size of your location, rates for construction, personnel, freight, vendor pricing and taxes, overall costs and efficiencies in your market. Your cost for developing your location may be higher or lower than the estimates provided. Third-party financing may be available for qualified candidates for some of the leasehold improvement costs, however with such financing comes associated costs and fees which may cause the total cost to exceed what is indicated in this chart.

Note 8. As stated in Note 7, there are numerous variables that may impact the overall costs in acquiring furniture and fixtures. This estimate includes the cost of acquiring bar furniture, seating for inside and outside of the bays, refrigerators, sinks, and cabinets. The costs of the furniture and fixtures may differ depending on the material quality and on other factors.

Note 9. This estimate is for the cost to design, produce, print and install exterior signage including your primary entry sign, interior signage such as brand graphics for the walls and windows, and a grand opening graphics kit that includes many necessary printed items (e.g., brand signage). The low estimate is for standard production, printing and installation at a smaller location with one small sign with no LED lights, while the high estimate applies to a larger or more complex project complete with full exterior signage. You will work with our approved supplier to plan, design, and facilitate production of these materials. The use of a third party for production or installation must be approved by our supplier and us and must conform to our standards and specifications. We reserve the right to change the approved supplier in our sole discretion.

Note 10. You must purchase start-up golf simulator bay equipment meeting our standards and specifications from our designated and approved suppliers. These figures represent the purchase of the necessary equipment from suppliers to operate the Facility. The estimate includes the cost of golf simulator bays and the accompanying hardware. We expect the average Facility to accommodate four to six simulator bays. The costs listed here do not include any transportation or set up costs. Third-party financing may be available for qualified candidates for some of equipment costs; however, with such financing comes associated costs and fees which may cause the total cost to exceed what is indicated in this chart.

Note 11. This estimate includes the cost to purchase all required computers, software, the POS System, telephone system, and stereo system, as well as office equipment and related supplies. The high-end estimate accounts for two physical cash registers, three iPad kiosks, and at least one Square tap-to-pay device, while the low-end estimate assumes a smaller number of devices.

Note 12. The cost of business licenses and permits will depend upon the county or other geographic location within which you operate the Facility. This estimate does not include the cost of alcohol service permits, which are very difficult to estimate as they vary greatly depending on your locality and may dramatically increase the estimates shown above.

Note 13. These fees are representative of the costs for engagement of professionals such as attorneys and accountants. We strongly recommend that you seek the assistance of professional advisors when evaluating this franchise opportunity, this Disclosure Document, and the Franchise Agreement. It is also advisable to consult these professionals to review any lease or other contracts that you will enter into as part of starting your Franchised Business.

Note 14. You are required to purchase a beginning and on-going inventory of Titleist RCT golf balls, The Swing Bays branded retail inventory, as well as retail inventory from various other partnered brands, retail display hardware, at least three sets of right-handed rental clubs and one set of left-handed rental clubs, beverage items, and paper and plastic goods. Certain of these items must be purchased from approved and designated suppliers we may now or in the future designate for your Territory.

Note 15. This estimate is for the premium cost associated with obtaining the minimum required insurance for three months. Some insurance carriers may require that you prepay for a longer period of time. You should check with your local carrier for actual premium quotes and costs, as well as the actual cost of the deposit. The cost of coverage will vary based upon the area in which your Franchised Business will be located, your experience with the insurance carrier, the loss experience of the carrier and other factors beyond our control. You should also check with your insurance agent or broker regarding any additional insurance that you may want to carry.

Note 16. If you or, if applicable, your General Manager is not a PGA certified golf professional or a TPI certified golf trainer, you or they will be required to complete additional training to ensure they meet The Swing Bay standards for golf instruction. The fee associated with this additional training is \$5,000.

Note 17. This estimate is for the cost for you plus two additional persons, to attend the initial training program (and, if applicable, the GM certification training program) held in Parker, Colorado. Your initial trainees must include your General Manager if you have one. We do not charge tuition for up to three people attending the initial training program at our designated location, but you will be responsible for all costs associated with attending the initial training program for you and your staff. These estimates do not include salary and wages for your General Manager or other trainees.

Note 18. You are required to spend at least \$25,000 on grand opening marketing and advertising during the period 30 days immediately prior to opening and 30-60 days immediately following the opening of your Facility ("Grand Opening Advertising Requirement") if this is your first Facility in a specific market. If this is your second or any subsequent Facility in a specific market, the Grand Opening Advertising Requirement will be reduced to \$15,000.

Note 19. These amounts include additional third-party fees that may be necessary to secure a desired site for your Facility.

Note 20. This fee will only apply if you request an on-site evaluation of your proposed location prior to your execution of a lease for the site.

Note 21. The range in the chart reflects the amount of additional working capital you will need during the first

three months of operation. This total amount is based upon our affiliate's historical experience operating a Facility and information we have obtained from vendors and other third parties. We cannot guarantee that you will not incur additional expenses in starting the business that may exceed this estimate. This estimate also includes such items as initial payroll and payroll taxes, Royalty and other fees, additional advertising, marketing and promotional activities, repairs and maintenance, bank charges, miscellaneous supplies and equipment, state tax and license fees, and other miscellaneous items as offset by the revenue generated by your Facility. Please note that the high end of this range accounts for salary payable in connection with a General Manager, while the low-end estimate assumes that you or your principal will be the General Manager and will not take any salary or owner's draw during this initial period.

Note 22. This total amount is based upon our affiliate's historical experience and information we have obtained relating to the construction and operation of similar facilities. Your costs may vary based on a number of factors including but not limited to the geographic area in which you open, local market conditions, the location selected, the time it takes to build sales and your skills at operating a business. We strongly recommend that you use these categories and estimates as a guide to develop your own business plan and budget and investigate specific costs in your area.

B. DEVELOPMENT AGREEMENT (5-PACK AS AN EXAMPLE)

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|--|---------------------------------|---|--|--------------------------------------|
| TYPE OF EXPENDITURE | AMOUNT | METHOD OF PAYMENT | WHEN DUE | TO WHOM PAYMENT IS TO BE MADE |
| Development Fee ² | \$160,000 | Lump Sum | Upon Signing the Development Agreement | Franchisor |
| Initial Investment for the First Facility ³ | \$186,400 to \$884,000 | See Chart in Item 7(A) above | | |
| Total⁴ | \$346,400 to \$1,044,000 | The Estimated Initial Investment Required to Purchase a Development Area of Five Facilities and Open the First Facility | | |

Notes

Note 1. All fees and payments are non-refundable, unless otherwise stated or permitted by the payee.

Note 2. The Development Fee is described in greater detail in Item 5 of this Franchise Disclosure Document. The Table above assumes that you agree to develop five Franchised Businesses, which involves an initial Development Fee of \$160,000 due upon execution of your Development Agreement.

Note 3. This figure represents the total estimated initial investment required to open the first Facility under your first Franchise Agreement, minus the Initial Franchise Fee applicable to the first Facility since that amount is

included in the Development Fee (see the Item 7(A) Chart above for additional details).

Note 4. This figure represents the total estimated initial investment to purchase a Development Area for the right to develop a total of five Franchised Business, as well as the estimated initial investment to open your first Facility under the Development Agreement. This figure does not include the cost to develop the second and subsequent Facilities developed under the Development Agreement.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

You must operate your Facility in strict conformance with our methods, standards, and specifications which we prescribe in our confidential operations manual and various other confidential manuals and writings prepared for use by you in operating a Facility (collectively the “Operations Manual”). The Operations Manual covers nearly all aspects of your Facility’s operations, such as guest safety and training techniques, employee training, and Facility management. These standards are subject to change.

Approved Products, Services, and Suppliers

You may only offer approved products and services (“Approved Products and Services”) through your Facility. We will provide you with a list of Approved Products and Services prior to the opening of your Facility. All Approved Products and Services must meet our standards and specifications. In order to: (i) better assure the supply and quality of the Approved Products and Services; and/or (ii) enable us, in our sole discretion to take advantage of marketplace efficiencies, we have the right to require you to purchase certain Approved Products and Services only from us or other suppliers or distributors approved or designated by us. We may develop certain proprietary products that you must purchase from us and offer for sale at your Facility. If you wish to offer products or services other than those we have authorized in connection with operating your Facility, you must obtain our prior written consent.

You must at all times maintain sufficient levels of inventory to adequately meet consumer demand. You must purchase, among other items, branded merchandise, other retail inventory, computer software, and virtual golf equipment from designated or approved suppliers. You must offer products and services in the manner we prescribe, provide quality customer service, and otherwise operate your Facility in a manner which will enhance the image intended by us for the System. We reserve the right to designate ourselves or an affiliate as an approved, or the sole approved, supplier for any item you must purchase in connection with the Facility. Neither we nor our affiliates are currently an approved supplier of any required purchase. None of our officers currently own an interest in any approved supplier.

Our standards and specifications are described in the Franchise Agreement, the Operations Manual, and other written documents. We reserve the right to formulate and modify our standards and specifications for operating a Facility, including standards and specifications for products, signs, interior designs and furnishings, supplies, fixtures, inventory and equipment by written notice to you or through changes in the Operations Manual. You may incur an increased cost to comply with these changes at your own expense.

In the event you wish to purchase any unapproved item, including inventory, and/or acquire approved items from an unapproved supplier, you must provide us the name, address and telephone number of the proposed supplier, a description of the item you wish to purchase, and the purchase price of the item, if known. At our request, you must provide us with a sample of the item you wish to purchase for testing purposes. If we incur

any costs in connection with testing a particular product or evaluating an unapproved supplier at your request, you must reimburse our reasonable testing costs, regardless of whether we subsequently approve the item or supplier.

We will use our best efforts to notify you of our approval or disapproval of a particular supplier or product within 30 days of receiving all requested information. If we do not respond within 30 days, the supplier or product is deemed disapproved. We are not required to approve any particular supplier or product. We may base our approval of a proposed item or supplier on considerations relating not only directly to the item or supplier, but also indirectly to the uniformity, efficiency, and quality of operation we deem necessary or desirable in our System as a whole. We have the right to receive payments from suppliers on account of their dealings with you and other franchisees and to use all amounts we receive without restriction (unless instructed otherwise by the supplier) for any purposes we deem appropriate. We will not approve an unreasonable number of suppliers for a given item, which approval might, in our reasonable judgment, result in higher costs or prevent the effective or economical supervision of approved suppliers. Our criteria for approval of a particular supplier or product will be made available upon written request. We may revoke our approval of particular products or suppliers when we determine, in our sole discretion, that such products or suppliers no longer meet our standards. Upon receipt of written notice of such revocation, you must cease purchasing products from such suppliers. You must use products purchased from approved suppliers solely in connection with the operation of your Facility and not for any competitive business purpose.

Although we do not presently do so, we reserve the right to negotiate purchasing arrangements with suppliers in the future. Currently, you do not receive a material benefit in the form of renewal rights or rights to additional territories based on the use of our approved products, services, or suppliers.

We estimate that your required purchases will account for approximately 80% to 90% of all purchases and leases necessary to open your Facility and approximately 60% to 80% of your annual costs to operate your Facility on an ongoing basis.

We and/or our affiliates may derive revenue and/or other material consideration as a result of required purchases or leases by you, including, without limitation, for purchases made in accordance with specifications or standards required by us, or from suppliers approved by us. We were formed in 2024 and first commenced offering franchises on the issuance date of this Disclosure Document; therefore, neither us nor our affiliates have derived any revenue on account of franchisee's required purchases.

Advertising

We must approve all advertising before first publication or use. Our advertising requirements are discussed more fully in Item 11 of this Disclosure Document.

Insurance

You will be required to procure and maintain insurance in the amounts we prescribe in the Operations Manual. Presently, our insurance requirements are as follows: (i) comprehensive general liability insurance with a minimum combined limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and including business property, liquor liability, cybersecurity, and employment practices liability coverage; (ii) workers' compensation insurance as required by law; (iii) commercial umbrella coverage with a minimum limit of \$2,000,000; and (iv) any other insurance that we may specify in the Operations Manual or otherwise in writing from time to time.

You agree to provide us with proof of coverage on demand.

All insurance policies must be written by an insurance company with a Best’s Insurance Guide minimum rating of A-VIII or better. All policies must include a waiver of subrogation in favor of us. In addition to the information listed above, you agree to carry such insurance as may be required by the lease of your location, by any lender or equipment lessor you select, and such worker’s compensation insurance as may be required by applicable law. You must add us, and any parties we may designate, to all insurance contracts as additional insureds under your insurance policies at your cost.

Leases and Leasehold Improvements

You must purchase or lease a retail space for your Facility which meets our standards and specifications for a Franchised Business. We must approve your location and lease terms before you sign a lease for a Facility location. We will condition our approval of your lease upon, among other conditions, you and your landlord’s signing of a collateral assignment of lease (which is attached as an exhibit to the Franchise Agreement), through which your landlord grants us the rights to assume your rights and obligations under the lease in the event that you breach your lease agreement or your Franchise Agreement is terminated or expires.

We do not currently have a designated vendor to manage the construction and buildout of your Facility, but we reserve the right to designate one in the future. We must approve of all vendors used in the buildout of your Facility. We will provide you with a prototype layout for your architect to use in the buildout of your Facility. You must purchase and install all required furniture, fixtures, equipment, and technology.

Computer Hardware and Software Components

You must purchase the computer hardware and software we designate for use in connection with the operation of your Facility. This includes applicable hardware and software for golf simulator bays. Please see Items 6, 7, and 11 for more information regarding required computer hardware and software purchases.

ITEM 9
FRANCHISEE’S OBLIGATIONS

This table lists your principal obligations under the Franchise Agreement. It will help you find more detailed information about your obligations in this agreement and in other Items of this Disclosure Document.

| OBLIGATION | | SECTION IN FRANCHISE AGREEMENT | SECTION IN DEVELOPMENT AGREEMENT | DISCLOSURE DOCUMENT ITEM |
|------------|--------------------------------------|--------------------------------------|--|-----------------------------|
| a. | Site selection and acquisition/lease | 1.3 and 7.1 | 1 and Exhibit A | Items 7, 11 and 12 |
| b. | Pre-opening purchases/ leases | 7.4 and 7.8 | Not Applicable. | Items 7 and 8 |

| | | | | |
|----|--|--------------------------------------|-----------------|----------------------|
| c. | Site development and other pre-opening requirements | 7.1, 7.1.2, 7.1.3 | 1 and Exhibit A | Items 6, 7, 8 and 11 |
| d. | Initial and ongoing training | 7.2 and 8 | Not Applicable. | Item 11 |
| e. | Opening | 7.3 | 6 | Items 11 |
| f. | Fees | 3, 7.8, 12.5 and 12.7 | 2 | Items 5 and 6 |
| g. | Compliance with standards and policies/ operations manual | 6.1, 7.5 and 7.4.1 | Not Applicable. | Item 8 and 11 |
| h. | Trademarks and proprietary information | 4 and 5 | Not Applicable. | Items 13 and 14 |
| i. | Restrictions on products/ services offered | 7.4 and 7.5 | Not Applicable. | Item 8, 12 and 16 |
| j. | Warranty and customer service requirements | 7.6.3 | Not Applicable. | Item 15 |
| k. | Territorial development and sales quotas | 7.10 | 1 and 5 | Items 12 and 17 |
| l. | Ongoing product/ service purchases | 7.4, 7.5 and 7.6.7 | Not Applicable. | Item 8 and 11 |
| m. | Maintenance, appearance and remodeling requirements | 2.2.3, 6.2, 7.1.2, 7.1.3 and 7.19 | Not Applicable. | Item 6, 8 and 11 |
| n. | Insurance | 9 | Not Applicable. | Items 6 and 8 |
| o. | Advertising | 12 | Not Applicable. | Items 6 and 11 |
| p. | Indemnification | 13.2 | Not Applicable. | Item 6 |
| q. | Owner's participation/ management/staffing | 7.6.3, 7.6.4 and 7.6.5 | Not Applicable. | Items 11 and 15 |
| r. | Records and reports | 10 and 11 | Not Applicable. | Item 6 |
| s. | Inspections and audits | 7.1.3, 7.7, 7.8.4, 11 and 16.1.10 | Not Applicable. | Items 6 and 11 |
| t. | Transfer | 14 | 8 | Item 17 |
| u. | Renewal | 2.2 | Not Applicable. | Item 17 |

| | | | | |
|----|--------------------------|-------------|-----------------|---------|
| v. | Post term obligations | 16 and 17.2 | Not Applicable. | Item 17 |
| w. | Noncompetition covenants | 17 | Not Applicable. | Item 17 |
| x. | Dispute resolution | 18 | 12-15 | Item 17 |
| y. | Guaranty | 20 | Exhibit B | Item 15 |

ITEM 10 **FINANCING**

We do not offer direct or indirect financing. We do not guarantee your note, lease, or other 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.

Pre-Opening Obligations.

Before you open the Facility, we will perform the following obligations:

1. We will loan you a copy of our proprietary and confidential Operations Manual, which we may amend periodically. (Section 6.1 of the Franchise Agreement). The Table of Contents of the Pre-Opening Manual and Operations Manual (which we refer to collectively as the “Operations Manual”) is included as Exhibit B to this Franchise Disclosure Document. As of the issuance date of this Disclosure Document, the Operations Manual contains a total of approximately 164 pages.

2. You must attend and complete to our satisfaction our tuition-free initial training program, which will be held at our corporate office in Parker, Colorado, or any other location we may designate. We reserve the right to offer any portion of the initial training program via remote or virtual learning. We will provide the initial training program tuition-free up to three individuals. You must pay for your and your employees’ lodging, meal, and travel costs associated with attending training. If you are a partnership, corporation, or limited liability company, at least one of the trainees must be your general partner, principal shareholder, or manager as appropriate. If you have a General Manager, then the General Manager must be one of the trainees. (Section 8.1 of the Franchise Agreement). We offer our initial training program on an “as needed” basis, subject to the availability of our instructors and personnel. Our initial training program is set forth below and is subject to change from time to time:

INITIAL TRAINING PROGRAM

| Column 1 Subject | Column 2 Hours of Classroom Instruction | Column 3 Hours of On-the-Job Training | Column 4 Location |
|--|--|--|---|
| Welcome and Introductions | | 1 hour | Parker, CO or another location we designate |
| Human Resources & Recruitment <ul style="list-style-type: none"> - Policy & Procedures - Sexual Harassment - Discrimination - EEOC Laws & Record Retention - Job Positions - Scheduling; Use of Software in Scheduling Needs - Finding Instructors | 2 hours | 2 hours | Parker, CO or another location we designate |
| Facilities Management <ul style="list-style-type: none"> - Opening Checklist - Closing Checklist - Cleaning/Maintenance Checklist - FOH & BOH Maintenance Checklist - Lavatory Checklist - Safety Practices in the Facility | 1 hour | 3 hours | Parker, CO or another location we designate |
| Equipment Overview <ul style="list-style-type: none"> - Golf Simulator Operations - Required Maintenance - Trouble Shooting - Repair Contact Information | 1 hour | 3 hours | Parker, CO or another location we designate |
| The Bar & Snacks <ul style="list-style-type: none"> - Approved Drinks and Ingredients - Sanitation - The POS System and Cash Handling - TIPS Training | 1 hour | 4 hours | Parker, CO or another location we designate |
| Local Store Marketing How the External Marketing Program Works: <ul style="list-style-type: none"> - Company & Program - Basic Customer Driven Program - Other Add-on Marketing Programs Available Your Local Marketing Activity: | 2 hours | 3 hours | Parker, CO or another location we designate |

| Column 1 Subject | Column 2 Hours of Classroom Instruction | Column 3 Hours of On-the-Job Training | Column 4 Location |
|--|--|--|---|
| <ul style="list-style-type: none"> - Chamber of Commerce - Community Events - Public Relations - “Open House” Tours and Demos - Member Appreciation - Sponsorships | | | |
| Event Management <ul style="list-style-type: none"> - Event Marketing - Pre-event - During Event - Post-event | 1 hour | 2 hours | Parker, CO or another location we designate |
| Culture & Vibe <ul style="list-style-type: none"> - From the Door to the Bay - In the Bay - At the Bar - From the Bay to the Car - Maximizing the Client and Member Experience - Special Touches - Raving Fans | 2 hours | 4 hours | Parker, CO or another location we designate |
| Shadow Management | | 8 hours | Parker, CO or another location we designate |
| TOTALS | 10 hours | 30 hours | |

Our primary training instructors are as follows:

| <u>Trainer</u> | <u>Years of Experience with the Franchisor or its Affiliates</u> | <u>Years of Experience in the Industry</u> |
|----------------|--|--|
| Dustin Miller | 2 | 20 |
| Tim McQuaid | 2 | 10 |
| Colter Meek | 2 | 2 |

Before we approve or schedule you (or any of your initial personnel) to attend any portion of the Initial Training Program, you must: (i) undertake all steps to establish the EFT Account to use in connection with your Facility, including ensuring that both we and our designee has all authorizations and approvals necessary to access this EFT Account; (ii) demonstrate that you secured the approved location for the Facility; and (iii) provide us with completed and signed copies of all exhibits to your Franchise Agreement, to the extent such exhibits have

not been signed or need to be updated/completed. You must complete initial training at least 30 days prior to opening (Franchise Agreement, Section 8.1).

Our training managers may utilize other employees to assist them with all aspects of training. During initial training, we will use the training materials provided in our Operations Manual, and any other materials we may otherwise deem appropriate. You and your General Manager (if applicable) must successfully complete the initial training program before opening your Facility. (Section 8.1 of the Franchise Agreement). Should you or your employee fail to complete the initial training program to our satisfaction, at our option, the respective person may repeat the course, or in the case of an employee, you may send a replacement (the “Replacement Personnel”) to the next available initial training program. Failure by you, your employee, General Manager, or any Replacement Personnel to complete the initial training program to our satisfaction is a material breach of the Franchise Agreement and we may terminate the Franchise Agreement. (Section 8.1 of the Franchise Agreement).

We do not charge for this mandatory initial training; however, you must pay the costs of you and your employees in attending the program, including travel costs, room and board expenses, and employees’ salaries. (Section 8.1 of the Franchise Agreement). Our fee for initial training for additional persons beyond the first three individuals is \$3,500 per trainee.

3. Your other employees may be trained by you, or at your request, and subject to the availability of our personnel, we will train your additional personnel at our corporate office at a fee of \$1,000 per trainer per day. (Section 8.2 of the Franchise Agreement). All training related expenses for your additional personnel, including transportation to and from the training site, lodging, meals, and salaries during training, are your sole responsibility. We will provide you with training materials for you to use in training your personnel. (Section 8.2 of the Franchise Agreement). You may only use the training materials that we provide to you to train your personnel. Updated training materials will be provided to you as they are developed. All training materials provided to you are our property, and you agree not to challenge our or our affiliates’ title or rights in or to the training materials. You may not make any disclosure, duplication or other unauthorized use of any portion of the training materials. (Section 8.2 of the Franchise Agreement).

4. We will provide written specifications for, and designate, approved suppliers from which you agree to purchase equipment, signage, fixtures, inventory, goods, and supplies necessary for the startup and ongoing operations of the Facility. We will continue to refine and develop our System and reserve the right to create and designate proprietary products for sale at your Facility. We may, in our sole discretion, provide you with assistance in establishing pricing. (Sections 6.2, 6.3, and 6.4 of the Franchise Agreement).

5. You are required to spend at least \$25,000 on grand opening advertising during the period 30 days immediately prior to opening and 30 days immediately following the opening of your first Facility. You will be required to spend a minimum of \$15,000 in grand opening advertising for each subsequent Facility within your market. We must approve your grand opening marketing strategies. (Section 12.4 of the Franchise Agreement).

6. We will provide you with a rough architectural “blueprint” containing specifications and requirements for the buildout and equipment layout of your Facility, as we deem appropriate in our sole discretion. (Section 6.2 of the Franchise Agreement).

Site Selection and Opening

1. You will operate the Facility at the Approved Location agreed upon by you and us. It is your responsibility to obtain an approved site and negotiate a lease for your Facility. We consider factors such as size, location, traffic patterns, visibility from roadways, and available parking in approving any given site. Your leased/purchased space should generally be between 4,000 square feet and 6,000 square feet. (Sections 1.3 and 7.1 of the Franchise Agreement).

2. We do not currently have a designated vendor to manage the construction and buildout of your Facility but we reserve the right to designate one in the future. We may provide you with a prototype layout for your architect to use in the buildout of your Facility, and we must approve your final proposed plans and drawings for buildout. (Section 7.1 of the Franchise Agreement). You are solely responsible for obtaining the applicable ordinances, building codes, and permits required to operate the Facility from your Approved Location, and ensuring your compliance with all applicable laws and regulations, including the Americans with Disabilities Act. All costs connected with the design, construction, leasehold improvements, equipment, furnishings, fixtures, and signs are your responsibility. We reserve the right to approve all architects or contractors who are not designated by us and all subsequent and material changes to the plans and drawings before such changes are implemented (Section 7.1.2 of the Franchise Agreement).

3. You must submit a site for our approval within three months of signing the Franchise Agreement, and you must obtain a location acceptable to us within six months of signing the Franchise Agreement. Failure to do so may result in termination of your Franchise Agreement (Section 7.1 of Franchise Agreement).

4. We estimate that it will take approximately six to 12 months from signing the Franchise Agreement for you to open your Facility. The actual length of this period will depend upon factors such as your ability to obtain a mutually acceptable site and the lease for that site, financing arrangements, training schedules, delivery schedules for inventory and equipment and other factors including the time necessary to obtain zoning permits, licenses, and variances. Under the Franchise Agreement, you are required to open your Facility no later than 12 months after signing the Franchise Agreement. If the Facility has not been opened within this 12-month time frame, we may, at our sole discretion, elect to terminate your Franchise Agreement. However, if you have already secured an approved site and you are using your best efforts to open within this time frame, we will work with you on extending this time frame if needed. (Sections 7.3 and 15.3.4 of the Franchise Agreement).

Post-Opening Assistance

1. We will, directly or indirectly, provide you continuing consultation and advice, as we deem necessary and appropriate, regarding the management and operation of the Facility. If you request additional on-site assistance from us, subject to the availability of our personnel, we will provide you with such assistance at our then-current training fee, which is currently \$1,000 per trainer per day, plus the expenses our trainer incurs, including our travel, lodging, and meal costs. (Section 6.5 of the Franchise Agreement).

2. We may offer additional training programs and/or refresher courses to you, your manager, and/or your employees. We may require you and your employees' attendance at these programs and/or courses, at a location designated by us. These additional training programs will be provided tuition-free but you must pay for you and your employees' travel, meal, lodging, and payroll expenses while attending our additional

training programs. We reserve the right to charge a tuition fee for these additional training programs in the future in our sole discretion. We further reserve the right to require remedial training for who do not demonstrate their ability to meet our standards of operation. Our current fee for remedial training is \$500 per trainer, per day, plus the trainer's expenses. (Sections 6.5 of the Franchise Agreement).

3. We may, in our discretion, hold an Annual Conference at a location to be selected by us to update franchisees on new developments, allow System franchisees to exchange information with each other and us regarding Facility operations and programs, and recognize franchisees for their achievements. We will determine the topics and agenda for such conference. We may require you to attend the Annual Conference and pay our then-current registration fee, and we may also require that you pay a penalty fee if you fail to attend the Annual Conference. All expenses, including you and your employees' transportation to and from the Annual Conference, and lodging, meals, and salaries during the Annual Conference, are your sole responsibility. We may use contributions from the Worldwide Creative Marketing Fund for purposes related to the Annual Conference, including costs related to productions, programs, and materials. (Section 6.6 of the Franchise Agreement).

Advertising and Marketing

Worldwide Creative Marketing Fund

We reserve the right to establish a Worldwide Creative Marketing Fund for the common benefit of System franchisees. Currently, we do not require any Fund Contribution, but we may require that you contribute up to 2% of your weekly Gross Revenues and participate in Worldwide Creative Marketing Fund programs. We have the right to use Fund Contributions, in our sole discretion, to develop, produce, and distribute national, regional and/or local advertising and to create advertising and public relations materials which promote, in our sole judgment, the products offered by System franchisees. We may use the Worldwide Creative Marketing Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertising, including: (a) the cost of preparing and producing television, radio, magazine, Internet, and newspaper advertising campaigns; (b) the cost of direct mail and outdoor billboard advertising; (c) the cost of public relations activities and advertising agencies; (d) the cost of developing and maintaining an Internet website, which may be used to collect customer orders, conduct surveys; and (e) personnel and other departmental costs for advertising that we internally administer or prepare. We may reimburse ourselves out of the Worldwide Creative Marketing Fund for our reasonable administrative costs and expenses that we incur in the administration or direction of the Worldwide Creative Marketing Fund and advertising programs for System franchisees. While we do not anticipate that any part of Fund Contributions will be used for advertising which is principally a solicitation for franchisees, we reserve the right to use the Worldwide Creative Marketing Fund for public relations or recognition of our brand, and for the creation and maintenance of a website, a portion of which can be used to explain the franchise offering and solicit potential franchisees, and to include a notation in any advertisement indicating "Franchises Available." (Section 12.5 of the Franchise Agreement). Our affiliate-owned locations are currently required to contribute to the Worldwide Creative Marketing Fund in the same amount as franchised locations.

We use Fund Contributions to develop and prepare advertising which we distribute to System franchisees for their placement in the local media. The advertising is prepared by us and by outside sources. If we do not spend all Fund Contributions by the end of each fiscal year, the funds will be carried forward into the next fiscal year. There is no requirement that the Worldwide Creative Marketing Fund be audited. Upon your

written request no less than three months and no more than six months following the end of a calendar year, we will provide you with an unaudited accounting of Worldwide Creative Marketing Fund expenditures for that year.

We have the sole right to determine how to spend the Fund Contributions, or funds from any other advertising program, and the sole authority to determine the selection of the advertising materials and programs; provided, however, that we will make a good faith effort to expend such funds in the general best interests of the System. We are not required, under the Franchise Agreement, to spend any amount of Fund Contributions, or any advertising amounts in general, in your Territory and not all System franchisees will benefit directly or on a pro rata basis from our expenditures. We have the right to reimbursement from the Fund Contributions for reasonable costs and overhead, if any, as we may incur in activities which are reasonably related to directing and implementing the Worldwide Creative Marketing Fund and advertising programs for franchisees and the System, including costs of personnel for creating and implementing advertising, promotional and marketing programs. (Section 12.5 of the Franchise Agreement).

We reserve the right to establish an advertising council in connection with the franchise system (the “Advisory Council”). If established, the Advisory Council will serve in an advisory capacity to us with respect to certain advertising expenditures. At our discretion, the Advertising Council may be comprised of our management representatives, employees, you or other franchisees in the System. We will have the right to modify or dissolve an Advertising Council at any time. We do not currently have an Advisory Council.

Local Store Marketing (LSM)

In addition to the Fund Contributions described above, you must spend a minimum amount of 1% of the Gross Revenues generated by your Franchised Business each month in connection with the local advertising, marketing, and promotion of your Franchised Business within your Territory. You may spend any additional sums you wish on local advertising. You are permitted to use your own advertising materials, so long as you have submitted them to us for approval before your use. You must submit to us for our prior approval samples of all advertising and promotional materials not prepared or previously approved by us and which vary from our standard advertising and promotional materials. If we do not approve of them within 10 days, the promotional materials will be deemed disapproved and must be resubmitted for approval. You may not use any advertising or promotional materials that we have disapproved. We reserve the right to require that you purchase advertising materials from our approved suppliers. We have the right, in our discretion, to require you to submit receipts documenting this marketing activity. We are not required to spend any amount on advertising in your Territory. (Section 12.7 of the Franchise Agreement).

Grand Opening Advertising Requirement

In addition to your LSM and your contribution to the Brand Development Fund, you must spend at least \$25,000 (or at least \$15,000 if this is your second or any subsequent Facility in your market) on grand opening advertising and marketing expenses for your Facility under a marketing plan developed by you in accordance with our standards and that has been approved by us. (Section 12.4 of the Franchise Agreement).

Regional Advertising Cooperative

We have the right to designate any geographical area for purposes of establishing a Cooperative, and to determine whether a Cooperative is applicable to your Facility. If a Cooperative is established applicable to the

Facility, you must participate in and contribute to such Cooperative. Each Cooperative will be organized for the exclusive purpose of administering regional advertising programs and developing, subject to our approval, standardized advertising materials for use by the members in local advertising. No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without our prior approval. All such plans and materials will be submitted to us in accordance with the procedure set forth in the Franchise Agreement. Cooperative contributions will be credited towards your LSM, and Cooperative contributions will not exceed the LSM unless a majority of the Cooperative votes to increase that requirement. We may grant to any franchisee, in our sole discretion, an exemption for any length of time from the requirement of membership in a Cooperative, upon written request of such franchisee stating reasons supporting such exemption. (Section 12.6 of the Franchise Agreement).

Technology, Computer and POS System

We have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware be used by you, including without limitation: (i) a “back office” computer system that complies with our standards and specifications; (ii) the POS System from our designated supplier, along with registers with cash drawers and receipt printers, iPad kiosks, and a Square tap-to-pay device; (iii) hardware and software to operate golf simulator bays, including a license to use Trackman software for each golf simulator bay at the facility; (iv) at least one compliant and compatible computer screen at each golf simulator bay; and (v) Internet access mode and speed (collectively, the “Computer System”). We estimate that the cost of obtaining the required hardware comprising our POS System and Computer System components will be between \$2,000 to \$10,000.

You will also be required to purchase and maintain golf simulator bay equipment and applicable software. The approved equipment, software, and designs selected for the golf simulator bays is integral to the Franchised Business and the System as a whole. We estimate the cost of the golf simulator bay equipment to be between \$80,000 and \$200,000 depending on factors such as how many bays are installed and whether we are able to secure discounts on the equipment that we pass onto you. We require that you purchase the Trackman golf simulator software, which has an estimated annual licensing fee of \$6,000 that is subject to change.

You must also purchase, use and maintain any and all additional computer software programs which we have developed or may develop and/or designate for use for the System, and will purchase such computer hardware as may be necessary for the efficient operation of the software. Currently, our required POS software has a monthly fee of approximately \$120 plus a per-transaction fee. We estimate that the annual costs of any additional optional or required maintenance, updating, or support contracts will be between \$500 and \$1,000 annually. We also reserve the right to collect a Technology Fee directly, though we have no plans to do so in the near future.

You will strictly comply with our standards and specifications for all items associated with the Computer System and any software. You agree, at your own expense, to keep your Computer System in good maintenance and repair and install such additions, changes, modifications, substitutions, and/or replacements to the Computer System or software as we direct from time to time in writing. We do not have contractual obligations related to maintenance, repairs, updates and upgrades to your Computer System, and there are no limits on the frequency and cost of your obligations to maintain, upgrade, repair, and update your Computer System.

If and at such time we develop and custom design any software programs (“Proprietary Software Program”), you, at your own expense, agree to obtain the computer hardware required to implement the Proprietary Software Program into your Facility, and to comply with all specifications and standards prescribed by us regarding the Proprietary Software Program, as provided in the Operations Manual or otherwise in writing. This Proprietary Software Program will be proprietary to us. It is possible that we might not be able to alter the Proprietary Software Program to accommodate each and every franchisee of the System, and therefore, at such time that we require the implementation of such software, you will only utilize the program as prescribed by us. At such time as we require the implementation of such Proprietary Software Program, we or our designee agree to provide ongoing service and support to you regarding the Proprietary Software Program and will lease such Proprietary Software Program to you at our then-current rate. (Section 7.8.5 of the Franchise Agreement).

We reserve the right to have independent access to any data you collect electronically. You must install, at your expense, the necessary computer hardware and software to provide us with full and direct electronic access to all of your data, software systems, and related information. There are no contractual limitations on our right to access the information and data on your Computer System (Section 7.8.4 of the Franchise Agreement).

Internet

You must have and maintain adequate hardware and software in order to access the Internet at the speed we require from time to time. We may, but are not obligated to, establish an Internet website that provides information about the System and the products and services offered by Franchised Businesses. In the event we exercise our right to create such a website, we have sole discretion and control over the website (including timing, design, contents and continuation). We may, but are not obligated to, create interior pages on our website that contains information about your Facility and other Franchised Businesses. If we do create these pages, we may require you to prepare all or a portion of the page for your Facility, at your expense, using a template that we provide. All such information will be subject to our approval prior to posting. (Sections 12.3.1 and 12.3.2 of the Franchise Agreement).

Except as approved in advance in writing by us, you may not establish or maintain a separate website, splash page, profile or other presence on the Internet, or otherwise advertise on the Internet or any other public computer network in connection with the Facility, including any profile on Facebook, Pinterest, Twitter, LinkedIn, Instagram, YouTube or any other social media and/or networking site. If such approval is granted by us, you must: (i) establish and operate such Internet site in accordance with System standards and any other policies we designate in the Operations Manual or otherwise in writing from time to time; and (ii) utilize any templates that we provide to you to create and/or modify such site(s). (Section 12.3.3 of the Franchise Agreement).

We have the right to modify our policies regarding both our and your use of Internet websites as we deem necessary or appropriate for the best interests of the System. (Franchise Agreement, Section 12.3.4). You acknowledge that we and/or our affiliates are the lawful, rightful and sole owner of the Internet domain name www.theswingbays.com, as well as any other Internet domain names registered by us, and you unconditionally disclaim any ownership interest in such domain names and any confusingly-similar Internet domain names. You agree not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by us or our affiliates or any abbreviation, acronym, phonetic variation or visual variation of those words. (Franchise Agreement, Section 12.3.5).

Computer Network, Intranet or Extranet Participation

You are required to participate in any System-wide computer network, intranet system or extranet system that we implement and may be required by us to use such computer network, intranet system, or extranet system to, among other things: (i) submit your reports due under the Franchise Agreement to us on-line; (ii) view and print portions of or updates to the Operations Manual; (iii) download approved local advertising materials; (iv) communicate with us and other System franchisees; and (v) complete training. You agree to use the facilities of any computer network, intranet system or extranet system in strict compliance with the standards, protocols, and restrictions that we include in the Operations Manual. (Section 7.8.6 of the Franchise Agreement).

Development Agreement

Our obligations regarding additional Facilities developed under a Development Agreement will be governed by the form of single-unit franchise agreement you sign for each additional Facility.

ITEM 12 **TERRITORY**

Location and Relocation

You will operate the Facility from only the Approved Location which will be identified on the Data Sheet of the Franchise Agreement. If you have not secured a site for the Facility that we approve at the time you sign the Franchise Agreement, you must submit a site for our approval within 90 days of the effective date of the Franchise Agreement. You may relocate your Facility only with our prior written approval and payment of a relocation fee equal to the actual costs and expenses we incur in approving the relocation of your Facility. Approval will not be unreasonably withheld provided that the proposed new location meets our then-current criteria for a Franchised Business. If you do not identify a site and complete the build-out within our allotted time period, we may terminate the Franchise Agreement.

Territory Award in Connection with Franchise Agreement

You will operate your Facility at the Approved Location within the Territory that is identified in the Data Sheet. You will generally receive a Territory of a 0.25-mile radius around the Approved Location in urban areas or a two-mile radius around the Approved Location in suburban or rural areas, but there is no minimum size for a Territory. You may not, via the Internet or any other means of e-commerce, solicit customers and/or advertise outside your Territory or deliver any products or services to any destination outside your Territory without our prior written consent.

Except as otherwise provided in and during the term of the Franchise Agreement, for so long as you comply with the terms and conditions of the Franchise Agreement, we will not establish and operate, nor license any party other than you to establish and operate, any Franchised Business under the System and the Proprietary Marks within your Territory. Your territorial rights are not dependent upon meeting a certain sales quota or the opening of additional Facilities. The boundaries of your Territory will not change, even if the population within your Territory increases or decreases, during the initial term of your Franchise Agreement. Because we reserve certain rights in your Territory described below, please note the following:

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.

Development Agreement and Corresponding Development Area

If you enter into a Development Agreement, you will obtain the right to own and operate a certain number of Facilities in the Development Area where you must open each Facility in compliance with a mandatory development schedule. The size of the Development Area will depend upon the number of Facilities you are obligated to open in the Development Area but will vary based on demographics and whether the Development Area is primarily urban or suburban.

Within 60 days following the signing of the Development Agreement, you will select a certain number of trade areas, which varies depending upon how many Facilities you will be opening, where you will locate your Facilities and will designate such trade areas to us, in writing, (collectively, the “Chosen Trade Areas”). Subject to our written approval, you will then designate an intersection in each Chosen Trade Area and a radius will be drawn from such intersection in each Chosen Trade Area which will collectively become the “Development Area” under the Development Agreement. Once you select a site within a Chosen Trade Area, we will determine the Territory for that particular location, which will replace the territorial protection provided in the Chosen Trade Area.

Provided you comply with the terms of the Development Agreement, and any Franchise Agreements signed for Facilities within the Development Area, we will not locate another Facility operating under the Proprietary Marks, whether franchised or company-owned, in your Development Area.

You must comply with your development obligations in the Mandatory Development Schedule in order to maintain your Development Area exclusivity. In the event that you fail to meet your development obligations and the Development Agreement is terminated, you will retain your rights to any previously owned Facilities, including the territorial rights described in the Franchise Agreement for such Facilities, provided that the Development Agreement was not terminated as a result of your failure to comply with the terms of your existing Franchise Agreement(s). Your rights to any Facilities for which there is no Franchise Agreement and your exclusivity in the Development Area will terminate immediately upon termination of the Development Agreement. Because we reserve certain rights described below, please note the following:

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.

Reservation of Rights under the Franchise Agreement and Development Agreement

We and our affiliates will have the right, in our sole discretion, under the Franchise Agreement and Development Agreement to: (i) own and operate Facilities at any location outside your Territory/Site Selection Area/Development Area under the same or different marks, or to license others the right to own and operate Facilities at any location outside your Territory/Site Selection Area/Development Area under the same or different marks; (ii) use the Proprietary Marks and System in connection with services and products, promotional and marketing efforts or related items, or in alternative channels of distribution, and via the Internet at any location, including within the Territory/Site Selection Area/Development Area; (iii) own and operate Facilities

in non-traditional sites including, but not limited to, sports and entertainment stadiums, arenas, entertainment complexes, airports and hotels both within or outside your Territory/Site Selection Area/Development Area; (iv) own and operate facilities or businesses, or market similar products and services, at any location inside your Territory/Site Selection Area/Development Area under different marks, or to license others the right to own and operate facilities or businesses, or market similar products and services at any location(s) inside your Territory/Site Selection Area/Development Area under different marks; (v) acquire, or be acquired by, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with units located anywhere; and (vi) engage and license other parties to engage in any other activities not expressly prohibited by the Franchise Agreement or Development Agreement.


We have the exclusive right to negotiate and enter into agreements or approve forms of agreements to operate Facilities at non-traditional sites, either directly or through our affiliates, licensees, or designees, and you will not be entitled to any compensation as a result of our operation of Facilities at non-traditional sites. Certain products or services from our affiliates, whether currently existing, in research and development, or developed in the future, may be distributed in your Territory by us or our affiliates, or our franchisees, licensees or designees, in such manner and through certain channels of distribution as we determine, in our sole discretion. The Franchise Agreement grants you no rights to: (i) distribute the products as described above; or (ii) share in any of the proceeds from our activities as outlined above.


Currently, we do not have any plans to operate or franchise a business under a different trademark that is similar to the franchised business being offered in this Franchise Disclosure Document.

The Franchise Agreement and Development Agreement do not grant you any options, rights of first refusal, or similar rights to acquire additional franchises within the Territory/Development Area granted or any contiguous territories.

ITEM 13 **TRADEMARKS**

We grant you the right to operate the Facility under the word mark “The Swing Bays”. You may also use our other current or future trademarks to operate your Facility. The term “trademark” includes service marks, trade names, slogans, insignia, logos, labels, and trade dress. Our affiliate The Swing Bays, LLC has filed for each of the following Proprietary Marks on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

| MARK | REGISTRATION NUMBER | REGISTRATION DATE | REGISTER |
|---|------------------------|----------------------|-----------|
|  | Serial No: 98640314 | n/a (pending) | Principal |

| | | | |
|---|---------------------|---------------|-----------|
|  | Serial No: 98638984 | n/a (pending) | Principal |
| Dustin Miller's Swing Bays | Serial No: 98639015 | n/a (pending) | Principal |

Currently, we do not have a federal registration for our principal trademark. Therefore, our trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

We will ensure all required affidavits are filed in connection with our then-current Proprietary Marks listed in the Chart above.

There are currently no effective determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court; no pending interference, opposition, or cancellation proceedings; nor any pending material litigation involving the Proprietary Marks.

You must promptly notify us of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, our right to use and to license others to use, or your right to use, the Proprietary Marks. We have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including the right to settle the proceedings or litigation. We have the exclusive right, but not the obligation, to affirmatively prosecute actions against third parties for infringement or threatened infringement of the Proprietary Marks.

We have the right, though not the obligation, to defend you against any third-party claim, suit, or demand arising solely out of your use of the Proprietary Marks in a manner expressly authorized by us. If we, in our sole discretion, determine that you have used the Proprietary Marks in accordance with the Franchise Agreement and the Operations Manual, we will pay the cost of defending the action, including the cost of any judgment or settlement. If we, in our sole discretion, determine that you have not used the Proprietary Marks in accordance with the Franchise Agreement and the Operations Manual, you will be required to pay for the defense or to reimburse us for costs we incurred in providing the defense, including the cost of any judgment or settlement. In the event of any litigation relating to your use of the Proprietary Marks, you are required to sign all documents and assist us, as we deem necessary, to carry out the defense or prosecution including, without limitation, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Proprietary Marks in a manner not in accordance with the terms of the Franchise Agreement, we will reimburse you for your out-of-pocket costs in performing such acts.

We are the lawful and sole owner of the domain name www.theswingbays.com. You cannot register any of the Proprietary Marks owned by us or any abbreviation, acronym or variation of the Proprietary Marks, or any other name that could be deemed confusingly similar, as Internet domain names. We retain the sole right

to advertise the System on the Internet and to create, operate, maintain, and modify, or discontinue using of a website using the Proprietary Marks.

You may use only the Proprietary Marks which we designate, and may use them only in the manner we authorize and permit. Any goodwill associated with Proprietary Marks, including any goodwill which might be deemed to have arisen through your activities, inures directly and exclusively to our benefit. You may use the Proprietary Marks only for the operation of the Facility and only at the Approved Location or in advertising for the Facility. You will use all Proprietary Marks without prefix or suffix and in conjunction with the symbols “SM,” “TM,” “S” or “R,” as applicable. You may not use the Proprietary Marks in connection with the offer or sale of any services or products which we have not authorized for use in connection with the System. You may not use the Proprietary Marks as part of your corporate or other legal name. We must approve your corporate name and all fictitious names under which you propose to do business in writing before use. You must promptly register at the office of the county in which your Facility is located, or such other public office as provided for by the laws of the state in which your Facility is located, as doing business under such assumed business name.

All of your advertising must prominently display the Proprietary Marks and must comply with our standards for using the Proprietary Marks. All such advertising is subject to our prior written approval, which we will not unreasonably withhold. We reserve the right to approve all signs, stationery, business cards, forms, and other materials and supplies bearing the Proprietary Marks. You may use the Proprietary Marks including, without limitation, trade dress, color combinations, designs, symbols, and slogans, only in the manner and to the extent specifically permitted by the Franchise Agreement or by our prior written consent. You must submit to us and we must approve all advertising, publicity, signs, decorations, furnishings, equipment or other materials employing the Proprietary Marks, or related marks, before first publication or use. You must identify yourself as the owner of the Facility (in the manner we prescribe) in conjunction with any use of the Proprietary Marks including, without limitation, on invoices, order forms, receipts, and business stationery, as well as at such conspicuous locations as we may designate in writing at the Facility premises.

We reserve the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder. You must discontinue using all Proprietary Marks which we have notified you, in writing, have been modified or discontinued within 10 days of receiving written notice and must promptly begin using such additional, modified or substituted Proprietary Marks at your expense.

ITEM 14

PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

We do not own any registered patents or copyrights which are material to the franchise, however, we claim common law copyright and trade secret protection for several aspects of the franchise System including our Operations Manual, advertising, and business materials.

There are no current determinations, proceedings or litigation involving any of our copyrighted materials. Should you become aware of any unauthorized third party using any of our copyrighted materials, we request that you notify us of such unauthorized use. We may revise our System and any of our copyrighted materials in our discretion, and may require that you cease using any outdated copyrighted materials. You will be responsible for printing any revised or new advertising, marketing or other business materials.

During the term of the Franchise Agreement, you will receive information which we consider trade

secrets and confidential information. You may not, during the term of the Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any trade secrets, proprietary materials, operating procedures, sources of supply, supplier contracts, advertising materials, equipment specifications, any information contained in the Operations Manual, trade secrets, and other methods, techniques and know-how concerning the operation of the Facility, and any and all other information related to your Facilities or any Facility generally that is labeled proprietary or confidential (“Confidential Information”). You acknowledge and agree that certain information, including (i) current customer and prospective customer names and addresses, (ii) information about credit extensions to customers, (iii) customer service purchasing histories, (iv) rates charged to customers, and (v) sources of suppliers and purchasing arrangements with suppliers, also constitute our trade secrets and Confidential Information. You may divulge such Confidential Information only to your employees who must have access to it in order to perform their employment obligations. You must require your manager and any personnel having access to any of our Confidential Information to sign an agreement stating that they will maintain the confidentiality of information they receive in connection with their employment and restricting their right to work for a competitor while they are employed by you. Such agreement, which will be in a form that we prescribe, will identify us as a third-party beneficiary to the agreement and will give us independent enforcement rights.

The Franchise Agreement provides that if you, your employees, or principals develop any new concept, process or improvement in the operation or promotion of the Facility, you will promptly notify us and provide us with all necessary related information, without compensation. Any such concept, process or improvement will become our sole property and we will be the sole owner of all patents, patent applications, trademarks, copyrights and other intellectual property rights related to such new concepts. You and your principals will assign to us any rights you may have or acquire in new concepts you or your employees develop, including the right to modify such concept, process or improvement, and otherwise will waive and/or release all rights of restraint and moral rights to any new concepts you or your employees develop. You and your principals agree to assist us in obtaining and enforcing the intellectual property rights to any such concept, process or improvement in any and all countries and further agree to execute and provide us with all necessary documentation for obtaining and enforcing such rights. You and your principals will irrevocably designate and appoint us as your agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property rights related to any such concept, process, or improvement. In the event that such provisions of the Franchise Agreement are found to be invalid or otherwise unenforceable, you and your principals will grant to us a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent the Franchise Agreement, directly or indirectly infringe on your rights to the new concepts.

ITEM 15

OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

You (or at least one of your principals if you are a corporation, partnership, or other entity) must personally supervise the day-to-day operations of the Facility. You must devote your personal full-time attention and best efforts to the management and operation of the Facility. If you are a corporation, partnership, limited liability company, or other entity, you may, however, delegate the day-to-day operation of your Facility to your

General Manager. We must approve your General Manager and your General Manager must successfully complete our initial training program before assuming any managerial responsibility. If you or, if applicable, your General Manager is not a PGA certified golf professional or a TPI certified golf trainer, you or they will be required to complete additional training to ensure they meet our standards for golf instruction.

Your Facility must, at all times, be staffed with at least one individual who has successfully completed our initial training program. General Managers are not required to have an equity interest in your Facility. In the event that your General Manager resigns or is otherwise terminated, you must hire a replacement approved by us in writing who meets our then current standards for General Managers and who is approved by us, within 30 days after the resignation or termination of the former General Manager. Your new General Manager must complete required training within 30 days of hiring. Your General Manager will devote full time and best efforts to the day-to-day operation and management of the Facility and will not engage in any other business activity without our prior written consent. Your General Manager and certain key employees and their spouses will be bound by the confidentiality and non-compete covenants of the Franchise Agreement and will execute the Confidentiality and Restrictive Covenant Agreement attached as Exhibit E to the Franchise Agreement.

If you are an entity, all of your owners/shareholders/partners/members/managers (as applicable) and their respective spouses must execute the Personal Guaranty attached to the Franchise Agreement. If you are an individual, your spouse must execute the Personal Guaranty attached to the Franchise Agreement.

ITEM 16

RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You must offer and sell all of the products and services which we require and only the products and services which we authorize for the System, in the manner we prescribe. We may regulate any authorized or required equipment, including golf simulator bays, rental golf clubs, and any other related equipment required at the Facility, as well as other products and services. You may not offer to sell any merchandise, products or services that have not been approved in writing or use the premises for any other purpose other than the operation of the Facility. You may not use nor sell any products, materials, supplies, uniforms, merchandise, fixtures, furnishings, signs, or equipment which do not meet our standards and specifications.

We have the right to require you to offer and sell additional or different goods or services as we may designate. There are no limits on our right to do so. You are not allowed to solicit customers outside of your Territory without our prior written approval. You must at all times maintain sufficient levels of inventory to adequately satisfy consumer demand. You must stop offering disapproved products or services immediately upon notice that such services or products have been discontinued at your sole expense. If the law prohibits the use or sale of any product or service, use must cease immediately.

ITEM 17
RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

This table lists important provisions of the Franchise Agreement. You should read these provisions in the Franchise Agreement attached to this Franchise Disclosure Document as Exhibit D.

THE FRANCHISE RELATIONSHIP

A. SINGLE-UNIT FRANCHISE AGREEMENT

| | Provision | Section in Franchise Agreement | Summary |
|----|---|--------------------------------|---|
| a. | Term of franchise | 2.1 | 10 years. |
| b. | Renewal or extension of the term | 2.2 | You have the right to renew the Franchise Agreement for an additional 10-year period provided certain conditions are met. |
| c. | Requirements for you to renew or extend | 2.2 | You must: (i) timely notify us in writing of your intention to renew; (ii) have the right to operate the Facility at the Approved Location for the duration of the renewal term or have secured an approved substitute location; (iii) have satisfactorily completed no later than 90 days before the expiration of the then-current term, all necessary maintenance, refurbishing, renovating, updating and remodeling of the Facility premises to bring the Facility and all equipment into full compliance with our then-current System standards and specifications; (iv) not be in breach of any provision of the Franchise Agreement, or any other agreement between you and us, our affiliates, and/or our major suppliers and vendors, and you have substantially complied with all such agreements during their respective terms; (v) have satisfied all monetary obligations you owe us, our affiliates, and/or our major suppliers and vendors; (vi) execute our then-current form of franchise agreement, which may contain materially different key terms than the Franchise Agreement you initial sign; (vii) satisfy our then-current training requirements; (viii) sign a general release in the form we prescribe; and (ix) pay us a renewal fee of \$5,000. |
| d. | Termination by you | No Provision | You do not have the contractual right to terminate the Franchise Agreement. |
| e. | Termination by us without cause | No Provision | Not Applicable. |
| f. | Termination by us with cause | 15 | We have the right to terminate the Franchise Agreement with cause. Termination of the Development Agreement does not permit us to terminate the Franchise Agreement. |
| g. | Cause defined - default which can | 15.3 | We have the right to terminate the Franchise Agreement after providing you a 15-day cure period if you: (i) fail to pay any monies you owe us or |

| | Provision | Section in Franchise Agreement | Summary |
|----|---|--------------------------------|--|
| | be cured | 15.4 | <p>our affiliates or any of our system suppliers or vendors; (ii) fail to immediately endorse and deliver to us any payments due to us from any third party that is erroneously made to you; (iii) fail to maintain a sufficient inventory level; (iv) fail to obtain a site for the Facility within six months of signing the Franchise Agreement, and/or fail to open the Facility for business within six months from the date you obtain the site for the Facility; (v) fail to operate the Facility during the months, days and hours that we prescribe; (vi) fail to personally supervise Facility operations or employ adequate personnel; (vii) fail to maintain our quality controls and standards; (viii) conduct yourself in a manner which reflects adversely on the System, the Proprietary Marks, or our products; or (ix) fail to procure or maintain any licenses, certifications, or permits necessary for the operation of your Facility.</p> <p>We have the right to terminate the Franchise Agreement after providing you a 30-day cure period if you fail to perform or comply with any one or more of the terms or conditions of the Franchise Agreement or any ancillary agreement between you and us or our affiliates.</p> |
| h. | Cause defined - default which cannot be cured | <p>15.1</p> <p>15.2</p> | <p>The Franchise Agreement will automatically terminate without notice or an opportunity to cure if: (i) you make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, are adjudicated bankrupt or insolvent, file or acquiesce in the filing of a petition seeking reorganization or arrangement under any federal or state bankruptcy or insolvency law, or consent to or acquiesce in the appointment of a trustee or receiver for you or the Facility; (ii) proceedings are commenced to have you adjudicated bankrupt or to seek your reorganization under any state or federal bankruptcy or insolvency law, and such proceedings are not dismissed within 60 days, or a trustee or receiver is appointed for you or the Facility without your consent, and the appointment is not vacated within 60 days; (iii) you purport to sell, transfer or otherwise dispose of your interest in the Facility without our written approval.</p> <p>We have the right to terminate the Franchise Agreement with notice without providing you an opportunity to cure if: (i) you take part in criminal acts or misconduct; (ii) you commit fraud or misrepresentation in the operation of the Facility; (iii) you make any misrepresentations or omission in connection with the franchise application; (iv) you fail to complete our initial training program; (v) you receive two or more written notices of default within any 12- month period; (vi) you materially breach any other agreement with us or our affiliates; (vii) you misuse the Proprietary Marks or Confidential Information; (viii) you violate any health, safety or sanitation law; (ix) you violate the in-term restrictive covenants of the Franchise Agreement; (x) a lien or writ of attachment or</p> |

| | Provision | Section in Franchise Agreement | Summary |
|----|---|--------------------------------|--|
| | | | execution is placed against you, your principals or assets and is not released or bonded against within 30 days; (xi) you are insolvent; (xii) you abandon the Facility; (xiii) you offer any unauthorized or unapproved products or services in connection with the operation of your Facility; (xiv) you order or purchase supplies from unapproved suppliers; (xv) you misuse our proprietary software; (xvi) you fail to maintain adequate insurance or otherwise comply with the insurance requirements contained in the Franchise Agreement; (xvii) you fail to comply with any governmental notice of non-compliance with any law or regulation within 15 days of the notice; (xviii) any governmental action is taken against you that results in any obligation upon us; (xix) you fail to comply with any laws or regulations regarding terrorism; (xx) you take any assets or property of the Facility for your personal use; (xxi) there are insufficient funds in your bank account to cover a check or EFT payment to us three or more times in any 12 month period; (xxii) any audit reveals that you have understated your royalty or marketing payments, or your local advertising expenditures, by more than 2%, or if you have failed to submit timely reports and/or remittances for any two reporting periods within any 12-month period; or (xxiii) you default in obligations under the lease agreement for the Approved Location. |
| i. | Your obligations on termination/non-renewal | 16.1 | Upon termination or expiration of the Franchise Agreement, you must: (i) immediately cease all operations under the Franchise Agreement; (ii) immediately pay all sums you owe us, our affiliates, suppliers or vendors; (iii) immediately cease using the Proprietary Marks and System; (iv) immediately return to us the Operations Manual and all other manuals, proprietary and Confidential Information, no later than 5 calendar days after termination or expiration; (v) immediately cease using your telephone number and listing and, if we exercise our rights under the collateral assignment of telephone numbers, transfer the numbers and listings to us within 15 calendar days; (vi) vacate the Facility premises if we exercise our rights under the Collateral Assignment of Lease, no later than 15 days after the termination or expiration of the Franchise Agreement; (vii) return to us all items reflecting the Proprietary Marks and all items which are part of the trade dress within five days; (viii) immediately cease holding yourself out as our franchisee; (ix) take necessary action to amend or cancel any business name or equivalent registration which contains our trade name or Proprietary Marks; (x) allow us to inspect your financial records within one month of termination or expiration; (xi) comply with the post-term covenants contained in the Franchise Agreement; (xii) immediately cease to use in advertising or in any other manner any methods, procedures or techniques associated with us or the System; (xiii) immediately cease from engaging in any contacts with customers |

| | Provision | Section in Franchise Agreement | Summary |
|----|---|--------------------------------|---|
| | | | or former customers of the Facility; and (xiv) execute periodically any papers, documents, and assurances necessary to effectuate termination or nonrenewal. |
| j. | Assignment of contract by us | 14.5 | We have the right to assign or transfer our rights under the Franchise Agreement. |
| k. | “Transfer” by you - definition | 14.3 | A sale, transfer or assignment requiring our prior written consent occurs: (i) if you are a corporation, upon any assignment, sale, pledge or transfer of any fractional portion of your voting stock, or any increase in the number of outstanding shares of your voting stock which results in a change in ownership; (ii) if you are a partnership, upon the assignment, sale, pledge or transfer of any fractional partnership ownership interest; or (iii) if you are a limited liability company, upon any assignment, sale, pledge or transfer of any fractional portion of any interest in the limited liability company. |
| l. | Our approval of transfer by franchisee | 14.1 | You may not transfer any rights in the franchise without our prior written consent. We have the right to condition our approval of any sale, transfer, assignment or encumbrance as described below. |
| m. | Conditions for our approval of transfer | 14.3.2 | We will approve a proposed transfer if: (i) all of your accrued monetary obligations to us, affiliates, suppliers and vendors have been paid; (ii) all existing defaults under the Franchise Agreement have been cured; (iii) you and your transferee execute a general release in favor of us and our affiliates; (iv) you provide us a copy of the executed purchase agreement; (v) the transferee meets our qualifications; (vi) the transferee executes our then-current franchise agreement; (vii) you or the transferee pay us a transfer fee equal to \$7,500; (viii) the transferee satisfactorily completes our training program; (ix) you comply with the post term provisions of the Franchise Agreement; (x) the transferee obtains all necessary licenses and permits required to operate the Facility; (xi) to the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer; (xii) the transfer is made in compliance with all applicable laws; (xiii) the purchase price and terms of the proposed transfer are not so burdensome to the prospective transferee as to impair or materially threaten its future operation of the Facility and performance under its franchise agreement; (xiv) you must request that we provide the prospective transferee with our current form of disclosure document and we will not be liable for any representations not included in the disclosure document; (xv) our approval of the transfer will not constitute a waiver of any claims we may have against the transferring party; (xvi) we will have the right to disclose to any prospective transferee such revenue reports and other financial information concerning you and your Facility as you have supplied us; and (xvii) we may withhold or condition our consent to any transfer as |

| | Provision | Section in Franchise Agreement | Summary |
|----|--|--------------------------------|--|
| | | | we deem appropriate based on the circumstances of the transfer or otherwise. |
| n. | Our right of first refusal to acquire your business | 14.3.1 | You must first offer to sell to us on the same terms and conditions as those offered by a third party. We will notify you, within 30 days after receiving the offer, whether we wish to exercise our right to purchase your business. |
| o. | Our option to purchase your business | 14.6 16.2 | We have the option to purchase your business. If we exercise this option prior to the one-year anniversary of your opening date, the purchase price will be equal to 200% of your hard costs as of the date we provide notice that we are exercising the option. If we exercise this option after the one-year anniversary of your opening date, the purchase price will be equal to six times the Facility's EBITDA during the 12-month period preceding the date that we provide notice that we are exercising the option. We have an option to purchase any personal property related to your Facility upon termination or expiration of the Franchise Agreement. |
| p. | Your death or disability | 14.2 | Upon your death or disability, your rights under the Franchise Agreement may pass to your heirs or legatees, provided that, within 45 days of your death or disability, they execute the then-current franchise agreement, successfully complete our initial training program, and otherwise receive our approval. |
| q. | Non-competition covenants during the term of the franchise | 17.1 | During the term of the Franchise Agreement, neither you, your principals, or General Managers, nor any member of the immediate family of you or your principals or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation: (i) own, maintain, engage in, be employed by, lend money to, extend credit to or have any interest in any other business providing indoor golf simulators, golf instruction services, or golf fitness services (a "Competitive Business"); provided, however, that Section 17.1 does not apply to your operation of any other Facility under the System; (ii) employ or seek to employ any person who is at that time employed by us, our affiliates or any other System franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat; or (iii) divert or attempt to divert any business or customer of the Facility to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks or the System. |
| r. | Non-competition covenants after the franchise is | 17.2 | For a period of two years after the expiration and nonrenewal, transfer or termination of the Franchise Agreement, regardless of the cause, neither you, your principals, or as well as certain of your management |

| | Provision | Section in Franchise Agreement | Summary |
|----|---|--------------------------------|---|
| | terminated or expires | | <p>(General Manager) may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation enter into any Competitive Business.</p> <p>For a period of two years after the expiration, transfer or termination of the Franchise Agreement, regardless of the cause, neither you, your principals, your General Managers nor any member of the immediate family of you, your principals or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation: (i) own, maintain, engage in, be employed by, or have any interest in any Competitive Business, (a) at the Facility, (b) within the Territory, or (c) within a radius of 15 miles of the perimeter of (1) the Territory being granted hereunder or (2) any other Territory licensed by us as of the date of expiration or termination of the Franchise Agreement or (3) any other Facility; or (ii) solicit business from customers of your former Facility or contact any of our suppliers or vendors for any competitive business purpose nor solicit any of our employees, or the employees of our affiliates or any other System franchisee to discontinue employment. The two-year time period will be tolled during any default of the non-compete and confidentiality covenants.</p> |
| s. | Modification of the Franchise Agreement | 22.1 | The Franchise Agreement may not be modified other than by a written document signed by both parties. |
| t. | Integration/merger clauses | 22.1 | Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises made outside of the Disclosure Document and the Franchise Agreement may not be enforceable. |
| u. | Dispute resolution by mediation | 18.2, 18.3 | You must bring all disputes to us prior to bringing a claim before a third party. After exhausting this internal dispute resolution procedure, at our option, all claims or disputes between you and us must be submitted first to non-binding mediation in Parker, Colorado, or our then-current corporate headquarters, in accordance with the American Arbitration Association's Commercial Mediation Rules then in effect. |
| v. | Choice of forum | 18.4 | All claims not subject to mediation must be brought before a court of general jurisdiction governing Parker, Colorado, or the United States District Court presiding over Parker, Colorado. You consent to the personal jurisdiction and venue of any court of general jurisdiction in Parker, Colorado and the United States District Court presiding over Parker, Colorado (subject to state law). |
| w. | Choice of law | 18.1 | The Franchise Agreement is governed by the laws of the state of Colorado (subject to state law). |

B. DEVELOPMENT AGREEMENT

This table lists certain important provisions of the Development Agreement and related agreements. You should read these provisions in the agreements attached to this disclosure document.

| | Provision | Section in Development Agreement | Summary |
|----|---|----------------------------------|--|
| a. | Length of the development agreement term | 6 | The Development Agreement will commence on the date it is fully executed and end on the last day of the calendar month that the final Facility is required to be opened and operating under the Mandatory Development Schedule. |
| b. | Renewal or extension of the term | No Provision | Not Applicable. |
| c. | Requirements for developer to renew or extend | No Provision | Not Applicable. |
| d. | Termination by developer | No Provision | Not Applicable. |
| e. | Termination by franchisor without cause | No Provision | Not Applicable. |
| f. | Termination by franchisor with cause | 7.2 | We may terminate the Development Agreement for cause. |
| g. | Cause defined – curable defaults | 7.2 | We may terminate the Development Agreement (and any future development rights) if you fail to meet your development obligations under the Development Agreement during the Development Period and fail to cure such default within thirty (30) days of receiving notice thereof. Termination of the Development Agreement, on its own, does not permit us to terminate any existing franchise agreement(s). |
| h. | Cause defined – non-curable defaults | 7.2 | We may terminate the Development Agreement if: (i) you cease to actively engage in development activities in the Development Area or otherwise abandon your development business for three (3) consecutive months, or any shorter period that indicates an intent by you to discontinue development of the Franchised Businesses within the Development Area; (ii) you become insolvent or are adjudicated bankrupt, or if any action is taken by you, or by others against the you, under any insolvency, bankruptcy or reorganization act, or if you make an assignment for the benefit of creditors or a receiver is appointed by you; or (iii) any Franchise Agreement that is entered into in order to fulfill your development obligations under the Development Agreement is terminated or subject to termination by us, pursuant to the terms of that Franchise Agreement. Termination of the Development Agreement, on its own, does not permit us to terminate any |

| | Provision | Section in Development Agreement | Summary |
|----|---|----------------------------------|--|
| | | | existing franchise agreement(s). If the Franchise Agreement is terminated or subject to termination, your Development Agreement may be terminated upon written notice. |
| i. | Developer's obligations on termination/non-renewal | Not Applicable | Not Applicable. |
| j. | Assignment of contract by us | 9 | We have the right to assign our rights under the Development Agreement. |
| k. | "Transfer" by you - definition | 9 | Any transfer in you (if you are an entity) or your rights/obligations under the Development Agreement. |
| l. | Our approval of transfer by developer | 9 | You may not transfer any rights or obligations under the Development Agreement without our prior written consent. |
| m. | Conditions for our approval of transfer | Not Applicable | Not Applicable. |
| n. | Our right of first refusal to acquire your business | Not Applicable | Not Applicable. |
| o. | Our option to purchase your business | Not Applicable | Not Applicable. |
| p. | Your death or disability | Not Applicable | Not Applicable. |
| q. | Non-competition covenants during the term of the development business | Not Applicable | Nothing additional. Please see non-competition covenants set forth in your Franchise Agreement(s) entered into under the Development Agreement. |
| r. | Non-competition covenants after the development business is terminated or expires | Not Applicable | Nothing additional. Please see non-competition covenants set forth in your Franchise Agreement(s) entered into under the Development Agreement. |

| | Provision | Section in Development Agreement | Summary |
|----|--|----------------------------------|---|
| s. | Modification of the Development Agreement | 28 | Any modification of the Development Agreement must be in writing and signed by both parties. |
| t. | Integration/merger clauses | 28 | Only the terms of the Development Agreement are binding (subject to state law). Any representations or promises made outside of the Disclosure Document and the Development Agreement may not be enforceable. |
| u. | Dispute resolution by arbitration or mediation | 13 and 14 | You must bring all disputes before our President and/or Chief Executive Officer prior to bringing a claim before a third party. At our option, all claims or disputes between you and us must be submitted first to non-binding mediation in Douglas County, Colorado in accordance with the American Arbitration Association's Commercial Mediation Rules then in effect and if mediation is not successful, then by litigation. |
| v. | Choice of forum | 16 | All claims not subject to mediation must be brought before a court of general jurisdiction in Douglas County, Colorado, or the United States District Court presiding over Parker, Colorado. You consent to the personal jurisdiction and venue of these courts (subject to state law). |
| w. | Choice of law | 12 | The Development Agreement is governed by the laws of the Colorado (subject to state law). |

ITEM 18

PUBLIC FIGURES

We do not currently use any public figure to promote our franchise.

ITEM 19

FINANCIAL PERFORMANCE REPRESENTATION

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) a 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.

BACKGROUND

This Item contains a historic financial performance representation of gross revenues for our affiliate-owned facility operating in Parker, Colorado, which opened in 2022 and is substantially similar to the franchise offered in this Disclosure Document. The measurement period is July 1, 2023 to June 30, 2024. As a new franchise system, we did not have any franchisees operating during this measurement period.

7/1/23 – 6/30/24 Gross Revenues of Affiliate-Owned Facility: \$938,669.20

Notes to Item 19

1. “Gross Revenues” includes all revenues generated from the affiliate-owned facility. Gross Revenues do not include the amount of any applicable sales tax imposed by any governmental authority. Also excluded from Gross Revenues are the amount of any documented refunds, returns, and discounts given to customers, as well as tips collected by employees.

2. Our affiliate-owned facility operates in substantially the same manner as franchise outlets; however, our affiliate-owned facility is not subject to the same fees which a franchisee will experience. Item 6 of this Disclosure Document provides more information about the fees that will be paid by franchisees, which includes a Royalty Fee equal to 6% of Gross Revenues and a Worldwide Creative Marketing Fund Contribution of up to 2% of Gross Revenues (though we do not currently require a Worldwide Creative Marketing Fund Contribution).

Some outlets have earned this much. Your individual results may differ. There is no assurance that you’ll earn as much.

Other than the preceding financial performance representation, we do not make any financial performance representations. 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 our management by contacting our COO, Brenna Miller, c/o The Swing Bays Franchise, LLC, 11183 South Parker Road, Unit A, Parker, CO 80134, (319) 431-1631, the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20 **OUTLETS AND FRANCHISEE INFORMATION**

TABLE 1
Systemwide Outlet Summary
For Fiscal Years 2021, 2022 and 2023*

| OUTLET TYPE | YEAR | OUTLETS AT THE START OF THE YEAR | OUTLETS AT THE END OF THE YEAR | NET CHANGE |
|----------------------------|-------------|--|--------------------------------------|------------|
| Franchised | 2021 | 0 | 0 | 0 |
| | 2022 | 0 | 0 | 0 |
| | 2023 | 0 | 0 | 0 |
| Company/Affiliate Owned | 2021 | 0 | 0 | 0 |
| | 2022 | 0 | 1 | 1 |
| | 2023 | 1 | 1 | 0 |
| Totals | 2021 | 0 | 0 | 0 |
| | 2022 | 0 | 1 | 1 |
| | 2023 | 1 | 1 | 0 |

*Our fiscal year end is June 30. Therefore, the time periods referenced in this Item 20 are July 1, 2021 to June 30, 2022; July 1, 2022 to June 30, 2023; and July 1, 2023 to June 30, 2024.

TABLE 2
Transfers of Outlets from Franchisees to New Owners (other than Franchisor)
For Fiscal Years 2021, 2022, 2023

| STATE | YEAR | NUMBER OF TRANSFERS |
|--------|------|---------------------|
| Totals | 2021 | 0 |
| | 2022 | 0 |
| | 2023 | 0 |

TABLE 3
Status of Franchised Outlets
For Fiscal Years 2021, 2022 and 2023

| 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 |
|--------|------|--------------------------|----------------|--------------|--------------|--------------------------|---------------------------------|----------------------------|
| Totals | 2021 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2022 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2023 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

TABLE 4
Status of Company-Owned and Affiliate-Owned Outlets
For Fiscal Years 2021, 2022 and 2023

| STATE | YEAR | OUTLETS AT THE START OF THE YEAR | OUTLETS OPENED | OUTLETS REACQUIRED FROM FRANCHISEES | OUTLETS CLOSED | OUTLETS SOLD TO FRANCHISEES | OUTLETS AT END OF THE YEAR |
|----------|------|----------------------------------|----------------|-------------------------------------|----------------|-----------------------------|----------------------------|
| Colorado | 2021 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2022 | 0 | 1 | 0 | 0 | 0 | 1 |
| | 2023 | 1 | 0 | 0 | 0 | 0 | 1 |
| Totals | 2021 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2022 | 0 | 1 | 0 | 0 | 0 | 1 |
| | 2023 | 1 | 0 | 0 | 0 | 0 | 1 |

TABLE 5
Projected Openings as of June 30, 2024

| STATE | FRANCHISE AGREEMENTS SIGNED FOR FACILITY NOT OPENED AS OF ISSUANCE DATE OF FDD | PROJECTED FRANCHISES OPENING DURING OUR NEXT FISCAL YEAR | PROJECTED OPENINGS IN THE NEXT FISCAL YEAR BY US |
|---------------|--|--|---|
| Colorado | 0 | 1 | 0 |
| Totals | 0 | 1 | 0 |

A list of our (a) open and operating franchisees as of the end of our last fiscal year end, and (b) any System franchisees that have signed franchise agreements as of our last fiscal year end but have not yet opened, are attached as Exhibit H to this Disclosure Document. Additionally, a list of franchisees who have left the System in our past fiscal year or who have not communicated with us within the 10-week period immediately preceding the effective date of this Disclosure Document will also be attached as Exhibit H to this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the System.

As we began franchising as of the issuance date of this Disclosure Document, we do not have any franchisees that have signed provisions during our last three fiscal years restricting their ability to speak openly about their experience with us.

There is presently no trademark specific franchisee organization associated with the System that requires disclosure in this Item.

ITEM 21 **FINANCIAL STATEMENTS**

Exhibit C of this Disclosure Document contains our audited opening balance sheet as of July 8, 2024. As we have not been franchising for three years, we do not have the full set of audited financial statements that we would otherwise be required to include in this Item. Our fiscal year end is June 30 of each year.

ITEM 22 **CONTRACTS**

Exhibits D, E and F of this Disclosure Document contain all contracts proposed for use or in use regarding the offer of our franchises, including the following agreements:

Exhibit D – Franchise Agreement

Exhibit E – Development Agreement

Exhibit F – Sample Termination and Release Agreement

ITEM 23
RECEIPTS

Exhibit J of this Franchise Disclosure Document contains a detachable document, in duplicate, acknowledging receipt of this Franchise Disclosure Document by a prospective franchisee. You should sign both copies of the Receipt. You should retain one signed copy for your records and return the other signed copy to: Attn: Brenna Miller, c/o The Swing Bays Franchise, LLC, 11183 South Parker Road, Unit A, Parker, Colorado 80134, franchise@theswingbays.com.

**EXHIBIT A
TO THE
FRANCHISE DISCLOSURE DOCUMENT**

**LIST OF STATE ADMINISTRATORS
AND AGENTS FOR SERVICE OF PROCESS**

**LIST OF STATE ADMINISTRATORS AND
AGENTS FOR SERVICE OF PROCESS**

**The Swing Bays Franchise, LLC
11183 South Parker Road, Unit A
Parker, CO 80134
(720) 524-4999**

Listed on the following page are the names, addresses and telephone numbers of the state agencies having responsibility for franchising disclosure/registration laws and for service of process. We may not yet be registered to sell franchises in any or all of these states.

CALIFORNIA

(state administrators)
Department of Financial Protection and
Innovation:
320 West 4th Street, Suite 750
Los Angeles, CA 90013
(213) 576-7500 Toll Free (866) 275-2677

2101 Arena Blvd
Sacramento, CA 95834
(866) 275-2677

1350 Front Street
San Diego, CA 92101
(619) 525-4233

One Sansome St., Suite 600
San Francisco, California 94104
(415) 972-8565

(agents for service of process)
California Commissioner of the Department of
Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Commissioner of the Department of Financial
Protection and Innovation
One Sansome Street, Suite 600
San Francisco, California 94104

Commissioner of the Department of Financial
Protection and Innovation
2101 Arena Blvd
Sacramento, CA 95834

CONNECTICUT

(state administrator)
State of Connecticut
Department of Banking
Securities & Business Investments Division
260 Constitution Plaza
Hartford, CT 06103-1800
(860) 240-8230

(agent for service of process)
Banking Commissioner

| | |
|--|--|
| <p><u>HAWAII</u></p> <p>(state administrator) Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division 335 Merchant Street, Room 203 Honolulu, HI 96813 (808) 586-2722</p> <p>(agent for service of process) Commissioner of Securities of the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division 335 Merchant Street, Room 203 Honolulu, HI 96813</p> | <p><u>ILLINOIS</u></p> <p>Franchise Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465</p> |
| <p><u>INDIANA</u></p> <p>(state administrator) Indiana Secretary of State Securities Division 302 West Washington Street, Room E-11 Indianapolis, IN 46204 (317) 232-6681</p> <p>(agent for service of process) Indiana Secretary of State Securities Division 302 West Washington Street, Room E-111 Indianapolis, IN 46204</p> | <p><u>MARYLAND</u></p> <p>(state administrator) Maryland Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202 (410) 576-6360</p> <p>(agent for service of process) Maryland Securities Commissioner Office of Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360</p> |

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| <p><u>MICHIGAN</u> (state administrator) Michigan Department of the Attorney General Consumer Protection Division Attn: Franchise Section 525 W. Ottawa Street G. Mennen Williams Building, 1st Floor Lansing, MI 48933 (517) 373-7117</p> <p>(agent for service of process) Michigan Department of Attorney General Consumer Protection Division Antitrust and Franchise Unit P.O. Box 30054, 6546 Mercantile Way Lansing, MI 48909</p> | <p><u>MINNESOTA</u> (state administrator) Minnesota Department of Commerce 85 7th Place East, Suite 280 St. Paul, Minnesota 55101-2198 (651) 296-6328</p> <p>(agent for service of process) Minnesota Department of Commerce 85 7th Place East, Suite 280 St. Paul, MN 55101-2198</p> |
| <p><u>NEW YORK</u> (state administrator) NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21st Floor New York, NY 10005 (212) 416-8236</p> <p>(agent for service of process) New York Department of State One Commerce Plaza 99 Washington Avenue, 6th Floor Albany, NY 12231 (518) 473-2492</p> | <p><u>NORTH DAKOTA</u> (state administrator) North Dakota Securities Department State Capital, 5th Floor 600 East Boulevard Avenue Bismarck, ND 58505-0510 (701) 328-2910</p> <p>(agent for service of process) North Dakota Securities Commissioner State Capitol – 5th Floor 600 E. Boulevard Avenue Bismarck, ND 58505</p> |

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| <p><u>OREGON</u></p> <p>Department of Insurance and Finance Corporate Securities Section Labor and Industries Building Salem, Oregon 97310 (503) 378-4387</p> | <p><u>RHODE ISLAND</u></p> <p>(state administrator)</p> <p>Director, Department of Business Regulations Rhode Island Division of Securities 233 Richmond Street, Suite 232 Providence, RI 02903-4232</p> <p>(agent for service of process)</p> <p>Director, Department of Business Regulation Division of Securities Suite 232 233 Richmond Street Providence, RI 02903-4232</p> |
| <p><u>SOUTH DAKOTA</u></p> <p>South Dakota Division of Insurance Securities Regulation 124 S. Euclid Suite 104 Pierre, SD 57501 (605) 773-3563</p> | <p><u>VIRGINIA</u></p> <p>(state administrator)</p> <p>State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051</p> <p>(for service of process)</p> <p>Clerk of the State Corporation Commission 1300 East Main Street, 1st Floor Richmond, Virginia 23219 (804) 371-9733</p> |
| <p><u>WASHINGTON</u></p> <p>(state administrator)</p> <p>State of Washington Director, Department of Financial Institutions Securities Division 150 Israel Road, SW Olympia, WA 98501 (360) 902-8760</p> <p>(agent for service of process)</p> <p>Director, Department of Financial Institutions Securities Division 150 Israel Road S.W. Olympia, Washington 98501</p> | <p><u>WISCONSIN</u></p> <p>(state administrator)</p> <p>Wisconsin Commissioner of Securities 345 W Washington Ave., 4th Floor Madison, WI 53703 (608) 266-8550</p> <p>(agent for service of process)</p> <p>Wisconsin Commissioner of Securities 345 West Washington Avenue, 4th Floor Madison, WI 53703 (608) 261-9555</p> |

**EXHIBIT B
TO THE
FRANCHISE DISCLOSURE DOCUMENT
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THE SWING BAYS - PRE-OPENING MANUAL

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**EXHIBIT C
TO THE
FRANCHISE DISCLOSURE DOCUMENT
FINANCIAL STATEMENTS**

The Swing Bays Franchise, LLC

(A Colorado Limited Liability Company)

**Balance Sheet with Report of Independent Auditors
July 8, 2024**

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Report of Independent Auditors

To the Members of
The Swing Bays Franchise, LLC

Opinion

We have audited the accompanying financial statements of The Swing Bays Franchise, LLC (the Company), a Colorado limited liability company, which comprise the balance sheet as of July 8, 2024 and the related notes to the financial statement.

In our opinion, the financial statement referred to above present fairly, in all material respects, the financial position of the Company as of July 8, 2024, in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management 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.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for one year after July 31, 2024.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audits.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audits in order to design audit procedures that are appropriate in the circumstance, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audits, significant audit findings, and certain internal control-related matters that we identified during the audits.

DA Advisory Group PLLC

Troy, MI
July 31, 2024

The Swing Bays Franchise, LLC
BALANCE SHEET
July 8, 2024

| | <u>7/8/2024</u> |
|---------------------------------|-------------------------|
| ASSETS | |
| Current assets: | |
| Cash and cash equivalents | <u>\$ 25,000</u> |
| Total current assets | <u>25,000</u> |
| Total assets | <u><u>\$ 25,000</u></u> |
| LIABILITIES AND MEMBERS' EQUITY | |
| Current liabilities: | |
| Total current liabilities | <u>\$ -</u> |
| Total liabilities | <u>-</u> |
| Members' equity | |
| Total Members' equity | <u>25,000</u> |
| Total liabilities and equity | <u><u>\$ 25,000</u></u> |

see accompanying notes

The Swing Bays Franchise, LLC
NOTES TO FINANCIAL STATEMENTS
July 8, 2024

1. Organization

The Swing Bays Franchise, LLC operates and manages golf entertainment facilities that offer state-of-the-art golf simulators and practice areas. These facilities cater to golf enthusiasts of all skill levels, providing a fun and interactive environment for both casual play and serious practice.

For the period ended July 8, 2024, total contributed capital was \$25,000 and total distributions were \$0.

2. Summary of significant accounting policies and nature of operations

Basis of accounting

The Company prepares its financial statements on the accrual basis of accounting consistent with accounting principles generally accepted in the United States of America.

Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash and cash equivalents

Cash and cash equivalents include all cash balances on deposit with financial institutions and highly liquid investments with a maturity of three months or less at the date of acquisition.

3. Subsequent events

Subsequent events which provide evidence about conditions that existed after the statement of financial position date require disclosure in the accompanying notes. Management evaluated the activity of The Swing Bays Franchise, LLC through July 31, 2024 (the date the financial statements were available to be issued) and concluded that there are no subsequent events that would require recognition in the financial statements or disclosure in the notes to the financial statements.

**EXHIBIT D
TO THE
FRANCHISE DISCLOSURE DOCUMENT

FRANCHISE AGREEMENT**

THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

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EXHIBITS

Exhibit A - Accepted Location and Designated Territory
Exhibit B - Personal Guaranty and Guaranty of Spouses
Exhibit C - Collateral Assignment of Lease
Exhibit D - Conditional Assignment of Franchisee's Telephone Numbers and Listings
Exhibit E - Confidentiality and Restrictive Covenant Agreement
Exhibit F - Electronic Funds Withdrawal Authorization
Exhibit G – Release Agreements
Exhibit H - Franchisee Questionnaire

DATA SHEET

Franchisee:

Guarantors:

Effective Date:

THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

THIS AGREEMENT (the “Agreement” or “Franchise Agreement”) is entered into and made effective on _____ (the “Effective Date”), by and between The Swing Bays Franchise, LLC, a Colorado limited liability company with a principal business address at 11183 South Parker Road, Unit A, Parker, CO 80134 and _____ (“Franchisee”).

RECITALS

A. Franchisor and/or its principals or affiliate have developed a system for operating a training facility offering professional indoor golf lessons, full-swing and short game practice areas, technologies for indoor golf simulation and entertainment, TPI training programs, club fitting, equipment repair, and fitness instruction, as well as social event hosting, membership options, and merchandise (each, a “Facility”).

B. Franchisor is engaged in the business of granting franchisees the right to operate a Facility.

C. Franchisee desires to enter into an agreement with Franchisor to obtain the right to operate a Facility using the system developed by Franchisor or its affiliate, the characteristics of which may include: Franchisor’s proprietary standards and specifications for golf instruction, training and fitness (the “Proprietary Methods”); interior and exterior Facility designs, décor and color schemes; standard specifications for furniture, fixtures, equipment, designs and displays; sales techniques, merchandising, marketing, advertising, and inventory management systems; and procedures for operating and managing a Facility in the manner set forth in this Agreement and in the Operations Manual, as defined in Section 6.1, and modified from time to time (the “System”).

D. Franchisor and its franchisees use various trade names, trademarks and service marks including, without limitation, the mark “The Swing Bays,” in connection with the System (the “Proprietary Marks”). The rights to all Proprietary Marks Franchisor may now, or in the future designate as part of the System, will be owned exclusively by Franchisor or its affiliate and be used for the benefit of Franchisor, its affiliate and Franchisor’s franchisees to identify to the public the source of the products and services marketed thereunder.

E. Franchisee has applied to Franchisor for a franchise to operate a Facility and such application has been approved in reliance upon all of the representations made therein.

F. Franchisee hereby acknowledges that adherence to the terms of this Agreement and the standards and specifications of Franchisor are essential to the operation of Franchisee’s Facility and to the operations of the System.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, commitments and understandings contained herein, Franchisor and Franchisee hereby agree as follows:

1 GRANT OF FRANCHISE

1.1 **Grant and Acceptance.** Franchisor hereby grants to Franchisee, upon the express terms and conditions contained in this Agreement, and Franchisee hereby accepts, a franchise for the right to establish and operate one (1) Facility, under the System and Proprietary Marks identified below, and the right to use the System and Proprietary Marks in the operation of the Facility. Franchisor has the right to

supplement, improve or otherwise modify the System from time to time in Franchisor's discretion, and Franchisee agrees to comply with all changes, which may include, without limitation, the offer and sale of new or different products or services as Franchisor may specify.

1.2 Protected Territory. Except as otherwise provided in this Agreement, for so long as Franchisee complies with the terms and conditions hereof, Franchisor will not establish and operate, nor license any party other than Franchisee to establish and operate, any Facility under the System and the Proprietary Marks within the protected territory of Franchisee's Facility identified in the Data Sheet, the terms of which are incorporated herein by reference ("Protected Territory"), during the term hereof; provided, however, that Franchisor and its affiliates retain all other rights, including, without limitation, the right to distribute products and services as described in Section 1.5 hereof within the Protected Territory. Franchisor will have the right, among others, during the term of this Agreement to use, and to license others to use, the System and Proprietary Marks for the operation and licensing of other Facilities at any location outside of the Protected Territory. Franchisee may not solicit customers, or provide services outside of the Protected Territory. The foregoing grant to Franchisee does not include: (i) any right to offer any product or service via e-commerce without prior approval by Franchisor; (ii) any right to establish an independent website or to establish a URL incorporating the Proprietary Marks or any variation thereof; or (iii) any right to distribute, market, or implement Franchisor's products and services in any channel of distribution not specifically identified in this Agreement.

1.3 Approved Location. Franchisee may operate the Facility only at a location approved by Franchisor (the "Approved Location"), which will be specified in Exhibit A to this Agreement. Franchisee may not relocate the Facility without Franchisor's prior written consent.

1.4 Exclusions and Reservations. Franchisee expressly understands and agrees that Franchisor and Franchisor's affiliates will have the right, in Franchisor's sole discretion, to: (a) own and operate Facilities at any location(s) outside Franchisee's Protected Territory under the same or different marks, or to license others the right to own and operate a Facility at any location(s) outside Franchisee's Protected Territory under the same or different marks; (b) use the Proprietary Marks and System in connection with services and products, promotional and marketing efforts or related items, or in alternative channels of distribution, and via the Internet without regard to location; (c) own and operate Facilities at Non-Traditional Sites, as defined below, including, but not limited to, sports and entertainment stadiums, arenas, entertainment complexes, airports and hotels, within and outside of Franchisee's Protected Territory; (d) own and operate Facilities or businesses, or market similar products and services, at any location(s) inside Franchisee's Protected Territory under different marks, or to license others the right to own and operate Facilities or businesses, or market similar products and services at any location(s) inside Franchisee's Protected Territory under different marks; (e) acquire, merge with, engage in joint ventures with, or otherwise affiliate with, and thereafter own and operate and franchise others the right to own and operate, any business of any kind, including businesses that offer products that are similar to those provided by the Facility, within or outside the Protected Territory, or be acquired by any type of business; and (f) use and license to engage in any other activities not expressly prohibited in this Agreement.

1.5 Other Channels of Distribution. Franchisee acknowledges and agrees that certain of Franchisor's, or its affiliates', products and services, whether now existing or developed in the future, may be distributed in Franchisee's Protected Territory by Franchisor, Franchisor's affiliates, or Franchisor's franchisees, licensees or designees, in such manner and through such channels of distribution as Franchisor, in its sole discretion, will determine. Franchisee understands that this Agreement grants Franchisee no rights: (i) to distribute such products or services as described in this Section 1.5; or (ii) to share in any of the proceeds received by any such party therefrom.

1.6. **Non-Traditional Sites.** Franchisor will have the exclusive right, unless otherwise specifically delegated in writing, on behalf of itself, Franchisee, and/or other franchisees utilizing the Proprietary Marks, to negotiate and enter into agreements or approve forms of agreement to operate Facilities in non-traditional sites, including, but not limited to, sports and entertainment stadiums, arenas, entertainment complexes, airports and hotels, both within and outside of Franchisee's Protected Territory (each, a "Non-Traditional Site"). Any dispute as to whether a particular site is a Non-Traditional Site will be determined by Franchisor in its sole discretion and Franchisor's determination will be final and binding. Franchisor's or Franchisor's affiliates', licensees' or designees' operation of a Facility at a Non-Traditional Site within Franchisee's Protected Territory will not constitute a violation of this Section 1.6 relating to territorial exclusivity. Franchisee disclaims any compensation or consideration for revenues earned by others from operating Facilities at Non-Traditional Sites within Franchisee's Protected Territory.

2 TERM AND RENEWAL

2.1 **Term.** The initial term of the Franchise is for a period of ten (10) years, which will begin on the date that the Franchisor signs this Agreement.

2.2 **Renewal.** Franchisee has the right to renew this Agreement for one (1) successive, additional ten (10) year period, provided Franchisee has met the following conditions:

2.2.1 Franchisee has notified Franchisor of Franchisee's intention to renew this Agreement in writing at least ninety (90) days prior to expiration of the current term;

2.2.2 Franchisee has demonstrated, to Franchisor's satisfaction, that Franchisee has the right to operate the Facility at the Approved Location for the duration of the renewal term; or, if Franchisee is unable to operate the Facility at the Approved Location, Franchisee has secured a substitute location acceptable to Franchisor;

2.2.3 Franchisee has completed, to Franchisor's satisfaction, no later than ninety (90) days prior to the expiration of the then-current term, all maintenance, refurbishing, renovating, updating and remodeling of the Facility premises, and any updates to required hardware and software, required to bring the Facility and all equipment into full compliance with Franchisor's then-current System standards and specifications;

2.2.4 Franchisee is not in breach of any provision of this Agreement, or any other agreement between Franchisee and Franchisor, Franchisor's affiliates, Franchisor's approved/designated suppliers and vendors, and Franchisee has substantially complied with all such agreements during their respective terms;

2.2.5 Franchisee has satisfied all Franchisee's monetary obligations to Franchisor, Franchisor's affiliates, Franchisor's approved/designated suppliers and vendors;

2.2.6 Franchisee executes Franchisor's then-current form of franchise agreement, the terms of which may materially vary from the terms of this Agreement and may include, without limitation, increased royalty fees, increased marketing and advertising obligations, and a change to the size of the Protected Territory;

2.2.7 Franchisee satisfies Franchisor's then-current training requirements for

renewing franchisees at Franchisee's expense, as of the date of such renewal, if any;

2.2.8 Franchisee signs a general release, in the form Franchisor prescribes, with the release not inconsistent with any applicable state statute regulating franchises; and

2.2.9 Franchisee pays Franchisor a renewal fee in the amount of five thousand dollars (\$5,000).

3 FEES

3.1 **Initial Franchise Fee.** In consideration of the franchise granted to Franchisee, Franchisee must pay Franchisor an initial franchise fee equal to forty thousand dollars (\$40,000). The initial franchise fee is non-refundable and deemed fully earned upon payment in consideration for administrative and other expenses Franchisor incurs in granting the franchise and for Franchisor's lost or deferred opportunity to franchise to others.

3.2 **Royalty Fee.** Franchisee must pay Franchisor a weekly royalty fee on Monday of each week equal to six percent (6%) of Franchisee's Gross Revenues during the immediately preceding Business Week (as defined below) ("Royalty"). "Gross Revenues" includes all revenues Franchisee generates from all business conducted at or from Franchisee's Facility during the preceding reporting period, including amounts received from the sale and delivery of goods, services, products, merchandise, and tangible property of any nature whatsoever, whether in cash or for credit, and whether collected or uncollected. Gross Revenues, however, does not include the amount of any applicable sales tax imposed by any federal, state, municipal or other governmental authority if such taxes are stated separately when the customer is charged and Franchisee pays such amounts as and when due to the appropriate taxing authority. Also, excluded from Gross Revenues are the amounts of any documented refunds, chargebacks, credits and allowances given to customers in good faith pursuant to Franchisor's standard procedures for issuing such refunds. All barter and exchange transactions for which Franchisee furnishes services or products in exchange for goods or services to be provided to Franchisee by a vendor, supplier or customer will be valued at the full retail value of the goods or services provided to Franchisee.

3.3 **Worldwide Creative Marketing Fund Contributions.** Franchisee must contribute to the Worldwide Creative Marketing Fund that Franchisor has established to promote, advertise, market and/or otherwise develop the System, Proprietary Marks, and/or the Franchisor's brand generally (the "Worldwide Creative Marketing Fund") in an amount up to two percent (2%) of the Gross Revenues generated by the Franchised Business over the preceding reporting period (the "Fund Contribution"), which shall be due and payable at the same time as the Royalty Fee above and as detailed more fully in this Agreement.

3.4 **Training Fees.** Franchisor reserves the right to charge Franchisee a three-thousand five-hundred dollar (\$3,500) fee for any additional attendees to Franchisor's initial training program beyond the allotted three (3) attendees which are subject to no charge. Any requested additional training is subject to a one-thousand dollar (\$1,000) fee per trainer, per day. Franchisor also reserves the right to charge Franchisee five-hundred dollars (\$500) per trainer, per day for any remedial training Franchisor deems necessary in its reasonable discretion.

3.5 **Technology Fee.** Franchisor reserves the right to charge Franchisee an on-going technology fee in connection with any software or other technology-related services that Franchisor determines to associate or provide as part of the Franchised Business ("Technology Fee"). Franchisor reserves the right to designate and/or change the amount, scope, or manner of payment of the Technology

Fee, including the party to whom payment is made, at any time upon providing reasonable notice to Franchisee. Franchisor shall only impose the Technology Fee to reimburse itself for expenses or third-party fees incurred in connection with the computer system, software or any other technological platform or technology used by Franchisee and/or the System.

3.6 Local Store Marketing; Other Amounts Expended in Connection with Franchised Business. Franchisee must (a) expend the minimum amounts set forth in Section 12 of this Agreement on the local advertising and marketing of the Franchised Business within the Designated Territory (the “Local Store Marketing” or “LSM”), and (b) pay all other training fees, evaluation fees and/or other amounts due for inventory or other required item/service purchases that Franchisee must make from a supplier or provider that Franchisor designates in the Manuals or otherwise in writing (each, an “Approved Supplier”) for any item or service that Franchisee is required to purchase, lease or otherwise acquire for use in connection with the establishment and ongoing operation of the Franchised Business (each, a “Required Item”).

3.7 Gross Revenues Reports. Franchisee must send Franchisor a signed Gross Revenues report (each, a “Gross Revenues Report”) on Monday of each week stating the Gross Revenues earned by the Facility for the prior week (each, a “Business Week”). For purposes of this Section 3, a “Business Week” begins on Monday and ends on Sunday. The Gross Revenues Reports must set forth Franchisee’s Gross Revenues generated during the previous Business Week, Franchisee’s calculation of the Royalty, Fund Contribution (as defined in Section 12.5), and any other information Franchisor may require. Franchisor may change the form and content of the Gross Revenues Reports from time to time.

3.8 Manner of Payment. The Royalty and Fund Contributions will be made on a weekly basis, on Monday of each week following receipt of the Gross Revenues Reports in the manner Franchisor specifies. Franchisor may institute an electronic funds transfer program (the “EFT Program”) under which Franchisor automatically deducts the Royalty and Fund Contributions owed to Franchisor under this Agreement, or any other agreement between Franchisee and Franchisor, from Franchisee’s bank account. Franchisee must deposit all revenues from operation of Franchisee’s Facility into one bank account within three (3) days of receipt, including cash, checks, and credit card receipts. Before Franchisor approves or schedules Franchisee (or any of Franchisee’s personnel) to attend any portion of the initial training program (as set forth in Section 8.1 of this Agreement), Franchisee must provide Franchisor with Franchisee’s bank name, address and account number, a voided check from the bank account, and sign and give to Franchisor and Franchisee’s bank, all documents, including Exhibit F to this Agreement, necessary to effectuate the EFT Program and Franchisor’s ability to withdraw funds from such bank account via electronic funds transfer. Franchisee will immediately notify Franchisor of any change in Franchisee’s banking relationship, including changes in account numbers. Franchisor will inform Franchisee of the amount to be taken from Franchisee’s account at least one (1) day beforehand. Franchisor reserves the right to require Franchisee to pay any fees due under this agreement by such other means as Franchisor may specify from time to time. If any Gross Revenues Report has not been received within the time period required by this Agreement, then Franchisor may process an electronic funds transfer for the subject month based on the most recent Gross Revenues Report provided by Franchisee to Franchisor, provided, that if a Gross Revenues Report for the subject month is subsequently received and reflects (i) that the actual amount of the fee due was more than the amount of the electronic funds transfer, then Franchisor shall be entitled to withdraw additional funds through an electronic funds transfer from Franchisee’s designated bank account for the difference; or (ii) that the actual amount of the fee due was less than the amount of the electronic funds transfer, then Franchisor shall credit the excess amount to the payment of Franchisee’s future obligations.

3.9 Insufficient Funds. If the funds in Franchisee’s bank account are insufficient to cover

any amounts due under this Agreement on the date such funds are due, Franchisee must pay a late fee of two-hundred fifty dollars (\$250) per occurrence, per payment period overdue. In addition, any late payment or underpayment of the Royalty or Fund Contribution, and any other charges or fees Franchisee owes, will bear interest from the due date until paid at the lesser of eighteen per cent (18%) interest per year or the highest lawful interest rate which may be charged for commercial transactions in the state in which Franchisee's Facility is located. Should any electronic funds transfer not be honored by Franchisee's bank for any reason, Franchisee agrees that Franchisee will be responsible for that payment and any service charge.

3.10 Failure to Pay Fees in a Timely Manner. Any late payment or underpayment by Franchisee to Franchisor or its affiliates in connection with this Agreement will bear interest from the due date until paid at the lesser of eighteen per cent (18%) interest per year or the highest lawful interest rate which may be charged for commercial transactions in the state in which Franchisee's Facility is located and will be subject to a late fee of two-hundred fifty dollars (\$250) per occurrence, per payment period overdue. Nothing contained in this Section will prevent Franchisor from exercising, in Franchisor's sole judgment, any other rights or remedies available to Franchisor under this Agreement.

3.11 Taxes on Payments. In the event any taxing authority, wherever located, imposes any future tax, levy or assessment on any payment Franchisee makes to Franchisor, Franchisee must, in addition to all payments due to Franchisor, pay such tax, levy or assessment.

4 PROPRIETARY MARKS

4.1 Franchisee's Use of the Proprietary Marks and Other Proprietary Material.

4.1.1 Franchisee must use only the Proprietary Marks that Franchisor designates and must use them only in the manner Franchisor authorizes and permits.

4.1.2 Franchisee must use the Proprietary Marks only for the operation of the Facility at the Approved Location and for advertising the Facility.

4.1.3 Franchisee will use all Proprietary Marks without prefix or suffix and in conjunction with the symbols "TM," "SM," "S," or "R," as applicable. Franchisee may not use the Proprietary Marks in connection with the offer or sale of any services or products that Franchisor has not authorized for use in connection with the System. Franchisee may not use the Proprietary Marks as part of Franchisee's corporate or other legal name. Franchisee's corporate name and all fictitious names under which Franchisee proposes to do business must be approved by Franchisor in writing before use. Franchisee must use Franchisee's corporate or limited liability company name either alone or followed by the initials "D/B/A" and the business name "The Swing Bays." Franchisee must promptly register at the office of the county in which Franchisee's Facility is located, or such other public office as provided for by the laws of the state in which Franchisee's Facility is located, as doing business under such assumed business name.

4.1.4 Franchisee must identify itself as the owner of the Facility (in the manner Franchisor prescribes) in conjunction with any use of the Proprietary Marks including, without limitation, on invoices, order forms, receipts, customer forms and questionnaires, business stationery, and advertisements, as well as at such conspicuous locations as Franchisor may designate in writing at the Facility premises.

4.1.5 Franchisee's right to use the Proprietary Marks is limited to such uses as are

authorized under this Agreement, and any unauthorized use thereof will constitute an infringement of Franchisor's rights.

4.1.6 Franchisee will not use the Proprietary Marks to incur any obligation or indebtedness on Franchisor's behalf.

4.1.7 Franchisee will execute all documents Franchisor deems necessary to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability.

4.1.8 Franchisee must promptly notify Franchisor of any suspected unauthorized use of the Proprietary Marks and Proprietary Software (as defined in Section 7.8.5 below), if any, Franchisor may now or hereafter designate for use in connection with the System, any challenge to the validity of the Proprietary Marks, or any challenge to Franchisor's ownership of, Franchisor's right to use and to license others to use, or Franchisee's right to use, the Proprietary Marks, the Proprietary Software, and Operations Manual (collectively the "Proprietary Material"). Franchisee acknowledges that Franchisor has the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Material, including any settlement thereof. Franchisor has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Franchisor's rights to the Proprietary Material. Franchisor has the right, though not the obligation, to defend Franchisee against any third-party claim, suit, or demand arising out of Franchisee's use of the Proprietary Material. If Franchisor, in Franchisor's sole discretion, determines that Franchisee has used the Proprietary Material in accordance with this Agreement, Franchisor will bear the cost of such defense, including the cost of any judgment or settlement. If Franchisor, in Franchisor's sole discretion, determines that Franchisee has not used the Proprietary Material in accordance with this Agreement, Franchisee will bear the cost of such defense, including the cost of any judgment or settlement. In the event of any litigation relating to Franchisee's use of the Proprietary Material, Franchisee will execute any and all documents and do such acts as may, in Franchisor's opinion, be necessary to carry out such defense or prosecution including, without limitation, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Material in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for Franchisee's out-of-pocket costs in performing such acts.

4.1.9 Franchisee expressly understands and acknowledges that:

4.1.9.1 Franchisor or its affiliates or licensors own all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them, and Franchisor has the right to use, and license others to use, the Proprietary Marks;

4.1.9.2 The Proprietary Marks are valid and serve to identify the System and those who are authorized to operate under the System;

4.1.9.3 During the term of this Agreement and after its expiration or termination, Franchisee will not directly or indirectly contest the validity of, or Franchisor's ownership of, or right to use and to license others to use, the Proprietary Marks or any other Proprietary Material;

4.1.9.4 Franchisee's use of the Proprietary Material does not give Franchisee any ownership interest or other interest in or to the Proprietary Material;

4.1.9.5 Any and all goodwill arising from Franchisee's use of the Proprietary Material will inure solely and exclusively to Franchisor's benefit, and upon expiration or termination of this Agreement, no monetary amount will be assigned as attributable to any goodwill associated with

Franchisee's use of the System, the Proprietary Marks, or any other Proprietary Material;

4.1.9.6 Except as specified in Section 1 hereof, the license of the Proprietary Marks granted to Franchisee hereunder is nonexclusive and Franchisor retains the right, among others, (i) to use the Proprietary Marks itself in connection with selling products and services; (ii) to grant other licenses for the Proprietary Marks; and (iii) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses thereto without providing any rights therein to Franchisee; and

4.1.9.7 Franchisor has the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder. Franchisee must discontinue using all Proprietary Marks that Franchisor has notified Franchisee, in writing, have been modified or discontinued within sixty (60) days of receiving written notice and, at Franchisee's sole cost and expense, must promptly begin using such additional, modified or substituted Proprietary Marks.

5 CONFIDENTIAL INFORMATION

5.1 **Nondisclosure.** During the term of this Agreement, Franchisee will receive information which Franchisor considers its trade secret and confidential information ("Confidential Information"), including operating procedures, sources of supply, supplier contracts, advertising materials, copyrighted materials, equipment specifications, any information contained in the Operations Manual, trade secrets, the Proprietary Methods, and other methods, techniques and know-how concerning the operation of the Facility that may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's operation of the Facility. Franchisee will not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any Confidential Information. Franchisee may divulge Confidential Information only to those of Franchisee's employees as must have access to it in order to operate the Facility. Franchisee acknowledges and agrees that certain information, including (i) current customer and prospective customer names and addresses, (ii) information about credit extensions to customers, (iii) customer service purchasing histories, (iv) rates charged to customers (subsections (i)-(iv) collectively "Customer Lists"), and (v) sources of suppliers and purchasing arrangements with suppliers, also constitute the trade secrets and Confidential Information of Franchisor. Franchisee may divulge such Confidential Information only to such of Franchisee's employees as must have access to it in order to operate the Facility. Any and all information, knowledge, know-how, techniques, and other data that Franchisor designates as confidential will be deemed Confidential Information for purposes of this Agreement. Franchisee acknowledges and agrees that Franchisor has expended considerable time, effort, and money to develop the System, that the enumerated Confidential Information is not well known outside of the System, that the Confidential Information is of great value to the Franchisor, and that Franchisor is implementing this non-disclosure policy in an effort to protect its trade secrets and Confidential Information. Franchisee acknowledges that in the event of the actual or threatened breach of this Section 5.1, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm.

5.2 **Employees.** Franchisee must require all of Franchisee's employees to execute covenants promising to maintain the confidentiality of information they receive in connection with their employment by Franchisee at the Facility premises. Such covenants will be in a form satisfactory to Franchisor and substantially similar to the Confidentiality and Restrictive Covenant Agreement attached as Exhibit E to the Franchise Agreement. These covenants must, without limitation, specifically identify Franchisor as a third-party beneficiary of such covenants with independent rights to enforce those covenants.

5.3. **New Concepts.** If Franchisee, Franchisee's employees, or principals develop any new concept, process or improvement in the operation or promotion of the Facility, including, but not limited to, any modifications or additions to the Proprietary Methods or the The Swing Bays training methodologies, Franchisee must promptly notify Franchisor and provide Franchisor with all necessary related information, without receiving compensation in return. Any such concept, process or improvement will become Franchisor's sole property, and Franchisor will be the sole owner of all patents, patent applications, trademarks, copyrights and other intellectual property rights related thereto. Franchisee and Franchisee's principals and agents hereby assign to Franchisor any rights they may have or acquire therein, including the right to modify such concept, process or improvement, and otherwise waive and/or release all rights of restraint and moral rights therein and thereto. Franchisee and Franchisee's principals and agents agree to assist Franchisor in obtaining and enforcing the intellectual property rights to any such concept, process or improvement in any and all countries and further agree to execute and provide Franchisor with all necessary documentations for obtaining and enforcing such rights. Franchisee and Franchisee's principals and agents hereby irrevocably designate and appoint Franchisor as their agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property rights related to any such concept, process or improvement. In the event that the foregoing provisions of this Section 5.3 are found to be invalid or otherwise unenforceable, Franchisee and Franchisee's principals and agents hereby grant to Franchisor a worldwide, perpetual, non-exclusive, fully paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe Franchisee's rights therein.

6 FRANCHISOR'S OBLIGATIONS

6.1 **Operations Manual.** Franchisor will loan Franchisee one (1) copy of Franchisor's proprietary and confidential Operations Manual and any other manual Franchisor may now or hereafter designate for use in operating a Facility (collectively the "Operations Manual"), in hardcopy and/or electronic format. Franchisee will operate the Facility in strict compliance with the Operations Manual, as it may be reasonably changed from time to time. The Operations Manual must remain confidential and Franchisor's exclusive property. Franchisee will not disclose, duplicate or make any unauthorized use of any portion of the Operations Manual. The provisions of the Operations Manual constitute provisions of this Agreement as if fully set forth herein. Franchisee will ensure that Franchisee's copy of the Operations Manual is current and up to date, and keep a copy of the Operations Manual on the Facility premises. If there is a dispute relating to the contents of the Operations Manual, the master copy, which Franchisor maintains at Franchisor's corporate headquarters, will control. Franchisor reserves the right to disclose updates to the Operations Manual via electronic means, including over Franchisor's website or any intranet or extranet system established in connection with the System.

6.2 **Facility Layout and Equipment Selection.** Franchisor will provide Franchisee with specifications and requirements for the baking equipment required for the opening of Franchisee's Facility. Franchisor will provide Franchisee with plans and specifications for the layout and design of a prototypical Facility. Franchisee shall employ a local architect to use those plans in the construction of the Facility.

6.3 **Start-up and Ongoing Inventory and Supplies.** Franchisor will provide specifications for and designate sources of suppliers from which Franchisee agrees to purchase inventory, goods and supplies necessary for the start-up and ongoing operations of Franchisee's Facility.

6.4 **On-Site and Ongoing Assistance.** Franchisor will provide Franchisee with such on-site opening assistance and continuing consultation and advice as Franchisor deems necessary and

appropriate regarding the management and operation of the Facility. Franchisor will provide such continuing assistance, in Franchisor's discretion, by telephone, facsimile, intranet communication and on-site visits. If Franchisee requires and requests additional on-site assistance from Franchisor, or if Franchisor mandates additional training, subject to the availability of Franchisor's personnel, Franchisor will provide Franchisee with such assistance at Franchisor's then-current rate for providing such assistance, plus expenses, including Franchisor's travel and lodging expenses.

6.5 Additional Training. Franchisor may, in Franchisor's sole discretion, hold refresher and ongoing training courses, or training courses upon a significant change to the System, in order to provide additional assistance to Franchisees. Franchisor may require Franchisee and Franchisee's employees to attend such training at its then-current fee for providing such training. All expenses, including Franchisee and Franchisee's employees' transportation, meal, and lodging expenses to attend such training shall be Franchisee's sole responsibility.

6.6 Annual Conference. Franchisor may, in Franchisor's discretion, hold an annual conference at a location to be selected by Franchisor (the "Annual Conference"). Franchisor will determine the topics and agenda for such conference to serve the purpose among other things, of updating franchisees on new developments affecting franchisees, exchanging information between franchisees and Franchisor's personnel regarding Facility operations and programs, and recognizing franchisees for their achievements. Franchisor may require Franchisee to attend the Annual Conference, for a duration designated by Franchisor, and to pay Franchisor's then-current registration fee if it chooses to charge a registration fee in its sole discretion. All expenses, including Franchisee's and Franchisee's employees' transportation to and from the Annual Conference, lodging, meals, and salaries during the Annual Conference, are Franchisee's sole responsibility. Franchisor may use Fund Contributions for purposes related to the Annual Conference, including costs related to productions, programs, and materials.

6.7 Site Selection. Franchisor may identify markets for future development and potential sites for Franchisee's Facility; provided, however, Franchisee will remain responsible for selecting a location, subject to Franchisor's approval, and negotiating a lease, as more fully discussed in Section 7.1 below. Franchisor's assistance with the site selection process in no way constitutes a representation or guarantee of success in the proposed location.

6.8 Acknowledgment. Franchisee agrees and acknowledges as follows:

6.8.1 Franchisee will have sole authority and control over the day-to-day operations of the Facility and Franchisee's employees and/or independent contractors. Franchisee agrees to be solely responsible for all employment decisions and to comply with all state, federal, and local hiring laws and functions of the Facility, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees, paid or unpaid, full or part-time. At no time will Franchisee or Franchisee's employees be deemed to be employees of Franchisor or Franchisor's affiliates.

6.8.2 Neither this Agreement nor Franchisor's course of conduct is intended, nor may anything in this Agreement (nor Franchisor's course of conduct) be construed to state or imply that Franchisor is the employer of Franchisee's employees and/or independent contractor, nor vice versa.

7 FRANCHISEE'S OBLIGATIONS

7.1 Site Location and Approval. Franchisee must secure real estate, by purchase or lease, for the operation of the Facility within six (6) months of signing this Agreement, and Franchisee must

submit a proposed site to Franchisor within three (3) months of signing this Agreement. Franchisor has the right to review, evaluate and approve Franchisee's proposed lease for the Approved Location ("Lease") prior to execution. Franchisor may condition Franchisor's approval of any proposed Lease on, among other things, Franchisee and Franchisee's landlord's execution of a Collateral Assignment of Lease (attached as Exhibit C to this Agreement) which (i) grants Franchisor the right, but not the obligation, to assume the Lease upon (a) Franchisee's default on the Lease, or (b) termination, transfer or expiration of this Agreement; and (ii) authorizes and requires Franchisee's landlord to disclose to Franchisor, upon Franchisor's request, sales and other information Franchisee has furnished to the landlord. Franchisee must deliver an executed copy of the Lease and the Collateral Assignment of Lease to Franchisor within fifteen (15) days of execution of the Lease. Neither Franchisor's review of the Lease nor Franchisor's acceptance of the site Franchisee has selected constitutes a representation or guarantee that Franchisee will succeed at the selected Approved Location or an expression of Franchisor's opinion regarding the terms of the Lease. Franchisor encourages Franchisee to seek independent counsel from a lawyer or business adviser to assist Franchisee in selecting a location and negotiating a lease for the Facility premises.

7.1.1 Relocation. If, for any reason, the Lease term is shorter than the term of this Agreement and the Lease cannot be renewed or extended, or Franchisee cannot continue for any other reason to occupy the Approved Location, Franchisee must notify Franchisor and request the right to relocate Franchisee's Facility. Franchisee must relocate Franchisee's Facility to a mutually acceptable site within Franchisee's Protected Territory to complete the unexpired portion of the term of this Agreement. Franchisee must notify Franchisor of Franchisee's intention to relocate, procure a site acceptable to Franchisor within ninety (90) days prior to closing operations at Franchisee's current Approved Location, and open for business at the new Approved Location within thirty (30) days of closing business at Franchisee's existing Approved Location. Franchisee must reimburse Franchisor for the actual costs it incurs in connection with approving the relocation of Franchisee's Facility. If Franchisee relocates, Franchisee must reimburse Franchisor for the expenses it actually incurred in approving such relocation.

7.1.2 Facility Appearance and Construction. The Facility will conform to Franchisor's standards and specifications for the appearance, layout, and design of a Facility. Franchisee must implement all required signage, fixtures, and equipment required by Franchisor, including but not limited to golf simulators, projector screens, putting greens, golf club displays, a security system, televisions, a music system, and additional technology that Franchisor may require throughout the term of this Agreement. Franchisor may provide Franchisee with a prototype layout for Franchisee's architect to use in the construction and buildout of its Facility, and Franchisor must approve Franchisee's final proposed plans and drawings for the buildout of the Facility. Franchisee must ensure that plans meet with applicable ordinances, building codes, permits requirements, and any other applicable local, state, or federal law. All construction and floor plans, and amendments thereto, must be approved by Franchisor prior to implementation. Franchisor reserves the right to approve of all of Franchisee's vendors for buildout and construction of the Facility prior to commencement of their services. Each vendor must be properly licensed and insured to do business in the state where the Facility is located. Franchisor reserves the right to inspect the Facility upon twenty-four (24) hours' notice to Franchisee.

7.1.3 Opening Approval. Franchisor shall have the right to inspect the Facility prior to the opening of the Facility to determine whether all construction has been substantially completed, and that such construction conforms to Franchisor's standards and specifications, including, but not limited to, materials, quality of work, signage, décor, paint, and equipment. Franchisee shall obtain Franchisor's written approval prior to first opening the Facility, which approval shall not be unreasonably withheld. Franchisee shall provide at least thirty (30) days prior notice to Franchisor of the date on which Franchisee

proposes to first open the Facility for business. Unless Franchisor waives in writing the foregoing requirement, Franchisee shall not open the Facility without the on-site presence of a representative of Franchisor, provided that Franchisor will not unreasonably delay the opening of the Facility. In the event there is a change in the opening date of the Facility, which is not caused by Franchisor, Franchisee shall reimburse Franchisor for Franchisor's actual out-of-pocket costs and expenses incurred by Franchisor due to such delay, including travel costs and expenses for Franchisor's representatives.

7.2 Training. Franchisee (or Franchisee's principal, as applicable), as well as any requisite Operating Manager and/or other initial General Manager (as detailed more fully in Section 7.6.5) in connection with the Franchised Business, must attend and successfully complete Franchisor's initial training program as set forth in Section 8.1 (the "Initial Training Program").

7.3 Opening Requirements. Franchisee must open the Facility for business no later than twelve (12) months from the date Franchisee obtains the site for the Facility.

7.4 Purchasing Requirements.

7.4.1 Compliance with Standards. Franchisee acknowledges and agrees that Franchisee's obligations set forth in this Agreement and the Operations Manual are reasonable and necessary for the operation of the franchised Facility and to maintain uniformity throughout the System. Franchisee must adhere to the standards and specifications set forth in this Agreement and the Operations Manual and any revisions or amendments to same, including, without limitation, standards and specifications for golf training, golf equipment, and simulator technology in addition to merchandise, as well as the delivery of such items. Franchisee must use the training methods, equipment, signs, furnishings, supplies, fixtures, and inventory that comply with Franchisor's then-current standards and specifications, which Franchisor establishes from time to time. Franchisor has the right to change Franchisor's standards and specifications in Franchisor's discretion. Franchisee acknowledges that Franchisee may incur an increased cost to comply with such changes.

7.4.2 Designated and Approved Suppliers. Recognizing that preservation of the System depends upon product and service uniformity and the maintenance of Franchisor's trade dress, Franchisee agrees to purchase: (a) golf training equipment and supplies; (b) golf simulators and accompanying technology; (c) golf rental equipment; and (d) bar supplies, other inventory, signs, furnishings, supplies, fixtures, computer hardware and software, and other equipment from Franchisor or from approved or designated suppliers as Franchisor will specify, from time to time, in the Operations Manual and otherwise in writing. Franchisee hereby acknowledges that Franchisor, Franchisor's affiliate and/or a third party may be one of several, or the only, approved supplier of any item. Franchisee further acknowledges that Franchisor and/or Franchisor's affiliates have the right to realize a profit on any items that Franchisor, Franchisor's affiliates or Franchisor's approved suppliers supply to Franchisee. Franchisor reserves the right to designate itself as a supplier or the sole supplier of any of the products listed above or inventory sold at the Facility.

7.4.3 Supplier Approval. In the event Franchisee wishes to purchase any unapproved item, including inventory, and/or acquire approved items from an unapproved supplier, Franchisee must provide Franchisor the name, address and telephone number of the proposed supplier, a description of the item Franchisee wishes to purchase, and the purchase price of the item, if known. At Franchisor's request, Franchisee must provide Franchisor with a sample of the item Franchisee wishes to purchase for testing purposes. If Franchisor incurs any costs in connection with testing a particular product or evaluating an unapproved supplier in connection with testing a particular product or evaluating an unapproved supplier at Franchisee's request, Franchisee must reimburse Franchisor for Franchisor's reasonable testing costs,

regardless of whether Franchisor subsequently approves the item or supplier. Nothing in the foregoing will be construed to require Franchisor to approve any particular supplier. Franchisor may base Franchisor's approval of any such proposed item or supplier on considerations relating not only directly to the item or supplier itself, but also indirectly to the uniformity, efficiency, and quality of operation Franchisor deems necessary or desirable in Franchisor's System as a whole. Franchisor has the right to receive payments from suppliers on account of their dealings with Franchisee and other franchisees and to use all amounts Franchisor receives without restriction (unless instructed otherwise by the supplier) for any purposes Franchisor deems appropriate. Franchisor shall respond to Franchisee's request for a new supplier within thirty (30) days of receiving all of the necessary materials. Nothing herein will require Franchisor to approve an unreasonable number of suppliers for a given item, which approval might, in Franchisor's reasonable judgment, result in higher costs or prevent the effective or economical supervision of approved suppliers. Franchisor may revoke Franchisor's approval of particular products or suppliers when Franchisor determines, in Franchisor's sole discretion, that such products or suppliers no longer meet Franchisor's standards. Upon receipt of written notice of such revocation, Franchisee must cease purchasing products from such supplier and/or offering and selling such products. Franchisee must use products purchased from approved suppliers solely in connection with the operation of Franchisee's Facility and not for any competitive business purpose.

7.4.4 *System Suppliers.* Franchisor may establish business relationships, from time to time, with suppliers who may produce, among other things, beverage items, furnishings, supplies, fixtures, equipment and inventory according to Franchisor's proprietary standards and specifications or private label goods that Franchisor has authorized and prescribed for sale by System franchisees ("System Suppliers"). Franchisee recognizes that such products are essential to the operation of the Facility and to the System generally. Franchisee further recognizes that Franchisee's failure to pay System Suppliers may interfere with such suppliers' willingness to supply the System, which may result in other System franchisees' inability to obtain product or ability to obtain product only on less favorable credit terms. Accordingly, Franchisee agrees to pay System Suppliers as and when due.

7.5 **Authorized Products and Services.** Franchisee will offer for sale all products and services that Franchisor prescribes and only those products and services that Franchisor prescribes. Franchisee may not offer any other products for sale, rent, or lease without having received Franchisor's prior written authorization. Franchisee will, at all times, maintain sufficient levels of inventory as specified in the Operations Manual, to adequately satisfy consumer demand. Franchisee must offer and sell all private label products that Franchisor may now or in the future designate for sale by System franchisees.

7.6 **Operations.**

7.6.1 Franchisee must operate Franchisee's Facility for at least those hours, days, and months that Franchisor specifies in the Operations Manual.

7.6.2 Franchisee must maintain the Facility in a clean, safe and attractive manner, and in accordance with all applicable requirements of law, including all federal, state and local health laws or regulations, and the Operations Manual. Franchisee and Franchisee's employees must give prompt, courteous and efficient service to the public and otherwise operate the Facility so as to preserve, maintain and enhance the reputation and goodwill of the System.

7.6.3 Franchisee must employ a sufficient number of qualified, competent personnel, offer prompt, courteous and efficient service to the public, and otherwise operate the Facility in compliance with the Operations Manual to preserve, maintain and enhance the reputation and goodwill of

the System. All employees engaged in the operation of Franchisee's Facility during working hours must dress in conformance with Franchisor's standards, must present a neat and clean appearance in conformance with Franchisor's reasonable standards and must render competent, efficient service to the customers of the Facility.

7.6.4 Franchisee agrees to conduct the Facility in accordance with the Operations Manual. Franchisee must immediately train and instruct Franchisee's employees in accordance with the Operations Manual and will continue such training and instruction as long as each employee is employed. The Operations Manual will set forth the practices, procedures and methods to be used in Franchisee's Facility and Franchisor may require Franchisee to conform Franchisee's practices to national programs, which Franchisor has designed and promulgated as part of Franchisor's System.

7.6.5 Franchisee (or at least one of Franchisee's principals if Franchisee is a corporation, partnership or other entity) must personally supervise the day-to-day operations of the Facility. Franchisee (or at least one of Franchisee's principals if Franchisee is a corporation, partnership or other entity) must devote his or her personal full-time attention and best efforts to the management and operation of the Facility. If Franchisee is a corporation, partnership, or other entity, then Franchisee must engage an individual to serve as its general manager (the "General Manager") that : (i) demonstrates he/she has such prior experience; (ii) attends and completes the same Initial Program Training at the same time that Franchisor provides such pre-opening training to Franchisee (or its operating principal) in connection with the Franchised Business; (iii) will be responsible for overseeing operations of the Franchised Business and, if applicable, any other franchises awarded in connection with any multi-unit development agreement that governs the development of the Franchised Business, as well as serve as a primary contact with the right to (a) communicate directly with Franchisor, and (b) make operations and management-related decisions or determinations in connection with the Franchised Business; and (iv) is a Professional Golfers' Association ("PGA") certified golf professional or Titleist Performance Institute ("TPI") certified golf trainer. If Franchisee's General Manager is not a PGA certified golf professional or a TPI certified golf trainer, Franchisee's General Manager must complete additional training to ensure Franchisor's standards for golf instruction are met, as set forth more fully in Section 8.1 of this Agreement.

7.6.6 Franchisor must approve Franchisee's General Manager in writing prior to hiring, and Franchisee's General Manager must successfully complete Franchisor's initial training program before assuming any managerial responsibility. Franchisee's Facility must, at all times, be staffed with at least one (1) individual who has successfully completed Franchisor's initial training program as set forth in Section 8.1. Franchisee will keep Franchisor informed at all times of the identity of any employee acting as General Manager of a Facility. In the event that any General Manager resigns or is otherwise terminated from Franchisee's Facility, Franchisee will hire a replacement approved in writing by Franchisor who meets Franchisor's then-current standards for that role/position within thirty (30) days after termination or resignation of the prior personnel. Franchisee must train any new General Manager within thirty (30) days of hiring. Franchisor reserves the right, without the obligation, to train the new General Manager directly. Any General Manager(s) must devote full-time and best efforts to the day-to-day operation and management of the Facility and cannot engage in any other business activity without Franchisor's prior written consent.

7.6.7 Franchisee must, at all times, maintain such working capital as may be reasonably necessary to enable Franchisee to properly and fully carry out and perform all of Franchisee's duties, obligations, and responsibilities hereunder and to operate the Facility in a businesslike, proper and efficient manner.

7.6.8 Franchisee must at all times maintain sufficient levels of inventory to adequately

meet consumer demand.

7.7 Site Evaluation. Franchisee agrees that in order to maintain the high quality and uniform standards associated with the System and to protect its goodwill and reputation, Franchisee will permit Franchisor, during business hours, to inspect Franchisee's Facility, confer with Franchisee and Franchisee's employees and customers, check inventories and methods, and perform any other inspection that Franchisor deems necessary to protect the standards of quality and uniformity of the System and Franchisee's performance under this Agreement. Franchisee is obligated to make changes to Franchisee's operations based upon any inspections by Franchisor.

7.8 Computer Software and Hardware.

7.8.1 Computer System. Franchisor shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, hardware, and other technology (including golf simulator hardware) be used by Franchisee (the "Computer System").

7.8.2 Required Software. Franchisor shall have the right, but not the obligation, to develop or designate: (i) computer software programs Franchisee must use in connection with any component of the Computer System (the "Required Software"), which Franchisee shall install at Franchisee's expense; (ii) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall install at Franchisee's expense; (iii) the tangible media upon which Franchisee records data; and (iv) the database file structure of the Computer System. Franchisee shall be responsible for the payment of all fees associated with the Required Software, Computer System and POS System, including, but not limited to, any initial setup fee, license fee, and integration fee.

7.8.3 Compliance with Requirements. At Franchisor's request, Franchisee shall purchase or lease, and thereafter maintain, the Computer System and, if applicable, the Required Software. Franchisee agrees to pay all fees associated with the use of Required Software, which may be payable to Franchisor or Franchisor's approved or designated suppliers. Franchisee expressly agrees to strictly comply with Franchisor's standards and specifications for all items associated with Franchisee's Computer System and any Required Software, including any security software. Franchisee agrees, at its own expense, to keep its Computer System in good maintenance and repair and install such upgrades, additions, changes, modifications, substitutions, and/or replacements to Franchisee's Computer System or Required Software as Franchisor directs from time to time in writing. Franchisee agrees its compliance with this Section 7.8.3 shall be at Franchisee's sole cost and expense.

7.8.4 Franchisor's Access. Franchisor may require that Franchisee's Computer System be programmed to automatically transmit data and reports about the operation of the Facility to Franchisor. Franchisor shall also have the right to, at any time without notice, electronically connect with Franchisee's Computer System to monitor or retrieve data stored on the Computer System or for any other purpose Franchisor deems necessary. There are no contractual limitations on Franchisor's right to access the information and data on Franchisee's POS System and Computer System. Franchisee shall deliver to Franchisor all access codes, static internet protocol ("IP") addresses and other information to facilitate Franchisor's access to the data described in this Section 7.8 within thirty (30) days of opening the Facility.

7.8.5 Proprietary Software. Franchisor may now or in the future create or designate a proprietary software program, and Franchisor will retain a proprietary interest in all databases, lists, templates, programs and any other software components that have been created and/or customized by Franchisor using the Computer System and/or Required Software (the "Proprietary Software"). Proprietary Software may conduct, among other things, scheduling, accounting, inventory, and related

activities. Franchisee must obtain the computer hardware necessary to implement the Proprietary Software into the Facility and comply with all specifications and standards prescribed by Franchisor regarding the Proprietary Software as provided in the Operations Manual. This Proprietary Software will be Franchisor's proprietary product, and the information collected therefrom will be deemed Franchisor's confidential information. Franchisee agrees to sign Franchisor's then-current form of software license agreement for any Proprietary Software Franchisor may now or in the future create, pay any license fees associated with use of Proprietary Software, and upgrade the Proprietary Software as Franchisor designates.

7.8.6 *Computer Network.* Franchisee is required to participate in any System-wide computer network, intranet system, or extranet system that Franchisor implements and may be required by Franchisor to use such computer network, intranet system, or extranet system to, among other things: (i) submit Franchisee's reports due under this Agreement to Franchisor online; (ii) view and print portions of the Operations Manual, including any updates or modifications thereto; (iii) download approved local advertising materials; (iv) communicate with Franchisor and other System franchisees; and (v) to complete any initial or ongoing training. Franchisee agrees to use the facilities of any such computer network, intranet system or extranet system in strict compliance with the standards, protocols, and restrictions that Franchisor included in the Operations Manual, including those related to the encryption of confidential information and prohibitions against the transmission of libelous, derogatory or defamatory statements.

7.9 **Personal Conduct.** Franchisee agrees to refrain from committing any act or pursuing any course of conduct that tends to bring Franchisor's Proprietary Marks into disrepute.

7.10 **Best Efforts.** Franchisee must use its best efforts to promote and increase the demand for System menu items. All of Franchisee's advertising and promotion must be completely factual and conform to the highest standards of ethical advertising. Franchisee agrees to refrain from any business or advertising practice which may be injurious to the Facility or the goodwill associated with the Proprietary Marks and System.

7.11 **Telephone.** Franchisee must obtain a new telephone number and telephone listing at Franchisee's expense, to be listed under the "The Swing Bays" name and not under Franchisee's corporate, partnership, or individual name, and to be used exclusively in connection with Franchisee's operation of the Facility. Upon the expiration, transfer or termination of this Agreement for any reason, Franchisee must terminate Franchisee's use of such telephone number and listing and assign the same to Franchisor or Franchisor's designee. Franchisee must answer the telephone in the manner Franchisor specifies in the Operations Manual.

7.12 **Payment of Debts.** Franchisee is solely responsible for selecting, retaining and paying Franchisee's employees; the payment of all invoices for the purchase of goods and services used in connection with operating the Facility; and determining whether, and on what terms, to obtain any financing or credit that Franchisee deems advisable or necessary for the conduct of the Facility. Franchisee agrees to pay all current obligations and liabilities to suppliers, lessors, and creditors on a timely basis. Franchisee agrees to indemnify Franchisor in the event that Franchisor is held responsible for debts owed by Franchisee if Franchisor elects to pay any of Franchisee's obligations in order to preserve the relationship between System Suppliers and System franchisees. Franchisee agrees to make prompt payment of all federal, state and local taxes, including individual and corporate taxes, sales and use taxes, franchise taxes, gross receipts taxes, employee withholding taxes, FICA taxes, personal property and real estate taxes arising from Franchisee's operation of the Facility. Franchisee agrees to indemnify Franchisor in the event that Franchisor is held responsible for these taxes.

7.13 Compliance with Applicable Laws. Franchisee must comply with all applicable federal, state and local laws, ordinances and regulations regarding the operation of the Facility (including, without limitation, all government regulations relating to occupational hazards and health, serving alcohol products, consumer protection, trade regulation, workers' compensation, unemployment insurance, withholding and payment of Federal and State income taxes and social security taxes and sales, use and property taxes, and the applicable provisions of the Americans with Disabilities Act ("ADA") regarding the construction, design and operation of the Facility).

7.14 Health and Safety Standards. Franchisee shall meet and maintain the highest health and safety standards and ratings applicable to the operation of the Facility. Franchisee shall furnish to Franchisor within two (2) days of its receipt thereof, a copy of all health inspection reports and any violation or citation that indicates Franchisee's failure to maintain federal, state, or local health or safety standards in the operation of the Facility. Franchisee's failure to cure such violations within twenty-four (24) hours shall constitute grounds for immediate termination, upon notice, pursuant to Section 15.2.8 of this Agreement.

7.15 Trade Secrets and Confidential Information. Franchisee must maintain the confidentiality of all Confidential Information as set forth in Section 5 of this Agreement.

7.16 Image. Franchisee acknowledges that Franchisor has developed the System to offer and sell products that will distinguish the Facility from other golf facilities that offer similar products valued at different prices and with less attention paid to product quality and customer service. Franchisee agrees to offer products and services and to operate the Facility in such a manner that emulates and enhances the image Franchisor intends for the System. Franchisee further acknowledges and agrees that each aspect of the System is important not only to Franchisee but also to Franchisor and to other System franchisees in order to maintain the highest operating standards, achieve system-wide uniformity and increase the demand for the products sold and services rendered by System franchisees. Franchisee agrees to comply with the standards, specifications and requirements Franchisor set forth in order to uniformly convey the distinctive image of a System Facility. Franchisee will, in the operation of the Facility, use only displays, labels, forms and other paper and plastic products imprinted with the Proprietary Marks and colors as prescribed from time to time by Franchisor.

7.17 Pending Actions. Franchisee must notify Franchisor, in writing, within five (5) days of the commencement of any action, suit or proceeding and the issuance of any order, suit or proceeding of any court, agency or other government instrumentality, including the receipt of any notice or citation, which may adversely affect the operation or financial condition of Franchisee or the Facility.

7.18 Standard Maintenance and System Conformity. Franchisee agrees to repair, refinish, repaint, replace, and/or otherwise redo the Facility, the signs, the furnishings, fixtures, décor, equipment and any other tangible part or property of the Facility at Franchisee's sole expense at such times as Franchisor may reasonably direct. Franchisor has the right to direct Franchisee to remodel, re-equip, and otherwise refurbish the Approved Location in the manner necessary to bring it into conformance with other franchisees of the type Franchisor and Franchisor's franchisees are opening at the time of such direction. Franchisor agrees that it will not require Franchisee to undertake a specific remodeling or renovation project with regards to the Premises that involves documented costs exceeding fifteen thousand dollars (\$15,000) more than once every five (5) years under the initial term of this Agreement – with the understanding that this limitation will not apply to such remodeling or renovations that Franchisor may require as (a) pre-condition of any renewal/transfer of the franchise, and/or (b) part of transition to Franchisor's then-current Proprietary Marks, as otherwise set forth in this Agreement.

7.19 Employment Decisions. Franchisee agrees to be solely responsible for all employment decisions and to comply with all state, federal, and local hiring laws and functions of the Facility, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees, paid or unpaid, full or part-time. Franchisee's employees must be competent, conscientious, and properly trained.

8 TRAINING

8.1 Initial Training Program. Franchisee must attend, and complete to Franchisor's satisfaction, Franchisor's initial tuition-free training program. Franchisor reserves the right to require up to two (2) additional employees to attend Franchisor's initial training program along with Franchisee. If Franchisee is a partnership, corporation or limited liability company, at least one (1) of the trainees must be Franchisee's general partner, principal shareholder, or manager as appropriate. If Franchisee has a General Manager, as described in Section 7.6.5, then he or she must attend and complete the required training. All training will be held at Franchisor's affiliate-owned Facility, located in Parker Colorado, or a different site designated by Franchisor. All trainees whom Franchisee designates must attend the training course at the same time. All training related expenses, including Franchisee and Franchisee's employees' transportation to and from the training site, lodging, meals, and salaries during training, are Franchisee's sole responsibility. Franchisee and Franchisee's designees shall attend and complete Franchisor's initial training class to Franchisor's satisfaction at least thirty (30) days prior to the opening of Franchisee's Facility. Should Franchisee or Franchisee's employees fail to complete the initial training program to Franchisor's satisfaction, the respective person may repeat the course, or in the case of an employee, Franchisee may send a replacement (the "Replacement Personnel") to the next available initial training program. Franchisor may charge for such Replacement Personnel attending an initial training program. Failure by Franchisee, an employee or any Replacement Personnel to complete the initial training program to Franchisor's satisfaction within the time period prescribed in this Agreement will constitute a default of this Agreement and Franchisor may terminate the Agreement. Before Franchisor approves or schedules Franchisee (or any of Franchisee's personnel) to attend any portion of the initial training program, Franchisee must: (i) undertake all steps to establish the EFT Account in accordance with Section 3.8 of this Agreement, including ensuring that both Franchisor and its designee has all authorizations and approvals necessary to access this EFT Account; (ii) demonstrate that Franchisee has secured the Approved Location in accordance with Section 7.1 of this Agreement; and (iii) provide Franchisor with completed and signed copies of all exhibits to this Agreement, to the extent such exhibits have not been signed or need to be updated/completed.

8.1.1 General Manager Certification. If Franchisee's General Manager is not a PGA certified golf professional or a TPI certified golf trainer, Franchisee's General Manager must complete additional training to ensure Franchisor's standards for golf instruction are met and pay a GM Certification Fee of five thousand dollars (\$5,000). Such training will be held at Franchisor's affiliate-owned Facility, located in Parker Colorado, or a different site designated by Franchisor. In the event such training is required, Franchisee's General Manager must attend and complete Franchisor's initial training class to Franchisor's satisfaction prior to the opening of Franchisee's Facility.

8.2 Training of Additional Personnel. Franchisee's other employees may be trained by Franchisee, or at Franchisee's request, and subject to the availability of Franchisor's personnel, Franchisor will train Franchisee's additional personnel and require Franchisee to pay Franchisor's then-current fee for additional training. All training related expenses for Franchisee's additional teaching personnel, including transportation to and from the training site, lodging, meals, and salaries during training, are Franchisee's sole responsibility. Franchisor will provide Franchisee with training materials for Franchisee

to use in training Franchisee's personnel. Only Franchisor's provided training materials may be used by Franchisee in training Franchisee's personnel. Updated training materials will be provided to Franchisee by Franchisor upon written request. All training materials provided to Franchisee by Franchisor will, at all times, remain Franchisor's property, and Franchisee agrees not to challenge Franchisor's or Franchisor's affiliates' title or rights in or to the training materials. Franchisee may not make any disclosure, duplication or other unauthorized use of any portion of the training materials.

8.3 Additional or Refresher Training Programs. To assist Franchisee in the operation of Franchisee's Facility, Franchisor may offer additional training programs and/or refresher courses to Franchisee, Franchisee's General Manager and/or Franchisee's employees. Franchisor may require Franchisee's attendance at these programs and/or courses up to five (5) days per year. Franchisee is responsible for the expenses of Franchisee, Franchisee's General Manager, and Franchisee's employees, including transportation to and from the training site and lodging, meals, and salaries during such training.

9 INSURANCE

Franchisee agrees to purchase/procure and maintain such insurance covering the operation and location of the Facility as Franchisor may designate from time to time in the Operations Manual or otherwise in writing. Franchisee agrees to provide Franchisor with proof of coverage on demand. Franchisee agrees to obtain these insurance policies from insurance carriers that are rated "A-VIII" or better by Alfred M. Best & Company, Inc. and that are licensed and admitted in the state in which Franchisee operates its Facility. All insurance policies must: (i) name Franchisor (and Franchisor's members, officers, directors, and employees) as additional insureds; and (ii) contain a waiver by the insurance carrier of all subrogation rights against Franchisor. Furthermore, Franchisee shall be required to provide ten (10) days prior written notice of the termination, expiration, cancellation or modification of any insurance policy. Franchisor's acceptance of an insurance carrier does not constitute Franchisor's representation or guarantee that the insurance carrier will be capable of meeting claims during the term of the insurance policy. Franchisee agrees to carry such insurance as may be required by the Lease of the Approved Location or by any of Franchisee's lenders or equipment lessors. If Franchisee fails to comply with the minimum insurance requirements set forth herein, Franchisor has the right to obtain such insurance and keep same in force and effect and Franchisee shall pay Franchisor, on demand, the premium cost thereof and administrative costs of 18% in connection with Franchisor's obtaining the insurance. Franchisee must provide Franchisor with copies of any insurance claims or insurance cancellations within twenty-four (24) hours. Franchisee has a twenty-four (24) hour opportunity to cure any lapses in insurance coverage. No insurance policy must be subject to cancellation, termination, nonrenewal or material modification, except upon at least thirty (30) days prior written notice from the insurance carrier to Franchisor. Franchisee must submit a certification of insurance that demonstrates compliance with this Section. Franchisor has the right to increase or otherwise modify the minimum insurance requirements upon thirty (30) days prior written notice to Franchisee, and Franchisee shall comply with any such modification within the time specified in said notice.

10 FINANCIAL RECORDS AND REPORTS

Franchisee must maintain, for at least five (5) fiscal years from their preparation, complete financial records for the operation of the Facility in accordance with generally accepted accounting principles and must provide Franchisor, at Franchisor's request, with: (i) a weekly Gross Revenues Report signed by Franchisee and in the form Franchisor specifies that contains the sales information pertaining to the preceding Business Week including, without limitation, a summary of all monies received during the relevant period, as well as menu items purchased, average sales, Facility occupancy rates, and any other additional information which Franchisor deems necessary to properly evaluate Franchisee's

progress; (ii) a monthly income statement and profit and loss statement, in a format specified by Franchisor, including a standard chart of accounts, within fifteen (15) days after the end of each month; (iii) annual financial reports and operating statements in the form Franchisor specifies, prepared by a certified public accountant or state licensed public accountant, within thirty (30) days after the close of each of Franchisee's fiscal years; (iv) state and local sales tax returns or reports and federal, state and local income tax returns for each year in which Franchisee's Facility is operated, within thirty (30) days after their timely completion; and (v) such other reports as Franchisor may from time to time require, in the form and at the time Franchisor prescribes. Franchisee's fiscal year must be on a calendar year basis. Franchisee agrees to provide an unaudited quarterly profit and loss statement covering Franchisee's Facility. These reports are due on the fifteenth (15) day of each quarter. Franchisee must also provide an unaudited profit and loss statement covering the Facility for Franchisee's fiscal year end. To assist Franchisee in recording and keeping accurate and detailed financial records for reports and tax returns, Franchisor, at Franchisor's discretion, may specify the form in which the business records are to be maintained and provide a uniform set of business records for Franchisee to use. Franchisor will have full access to all of Franchisee's data, system, and related information by means of direct access, whether in person, or by telephone/modem installed and maintained at Franchisee's sole expense. Franchisee's fiscal year end will be December 31 of each year. Within ninety (90) days of the fiscal year end, Franchisee shall provide Franchisor with such financial metrics and other financial information reasonably requested by Franchisor.

11 BOOKS AND RECORDS

Franchisee must maintain accurate business records, reports, accounts, books and data relating to the operation of Franchisee's Facility. Franchisor and Franchisor's designees have the right to inspect and/or audit Franchisee's business records at any time during normal business hours, to determine whether Franchisee is current with suppliers and are otherwise operating in compliance with the terms of this Agreement and the Operations Manual. If any audit reveals that Franchisee has understated Franchisee's Royalty or marketing payments, or Franchisee's Local Store Marketing (as defined in Section 12.7), by more than two percent (2%), or if Franchisee has failed to submit timely reports and/or remittances for any two (2) reporting periods within any twelve (12)-month period, Franchisee must pay the reasonable cost of such audit and/or inspection, including the cost of outside auditors and attorneys (to the extent Franchisor incurs such costs), together with amounts due for Royalty and other fees as a result of such underreporting and/or failure to submit reports, along with all late fees and interest which may otherwise be due under this Agreement.

12 MARKETING AND ADVERTISING

Recognizing the value of advertising and promotion, and the importance of the standardization of advertising and promotion programs to the furtherance of the goodwill and public image of the System, the parties agree as follows:

12.1 Generally. With regard to advertising generally for the Facility, Franchisee must place or display at the Approved Location (interior and exterior) only such signs, emblems, lettering, logos and displays and advertising materials as Franchisor approves in writing from time to time. Franchisee must submit to Franchisor, at least twenty (20) days prior to publication or use, samples of all sales, promotional, and advertising materials Franchisee desires to use, including, but not limited to, print, radio and television advertising, signage, supplies and packaging that Franchisor has not previously approved. Such submission will not affect Franchisee's right to determine the prices at which Franchisee sells Franchisee's products. Within ten (10) days of Franchisor's receipt of any sample sales promotional material or advertising materials from Franchisee, Franchisor will notify Franchisee in writing of

Franchisor's approval or disapproval of the materials. If Franchisor's written approval thereof is not received within ten (10) days, the submitted material will be deemed to have been disapproved. Franchisee cannot use any advertising or promotional materials that have not previously been approved by Franchisor. All advertising must prominently display the Proprietary Marks and comply with any standards for use of the Proprietary Marks Franchisor establishes as set forth in the Operations Manual or otherwise in writing. Franchisor may require Franchisee to discontinue the use of any advertising or marketing material, within time frames prescribed by Franchisor, at Franchisee's sole cost and expense.

12.2 Advertising Restriction. Franchisee is not permitted to solicit customers and/or advertise outside Franchisee's Protected Territory except to the extent that Franchisee has received Franchisor's prior written authorization, which Franchisor may withhold at its sole discretion. Franchisor may condition Franchisor's authorization upon Franchisee's agreement to offer to other System franchisees, specifically those who operate Facilities in territories encompassed by the circulation base of the proposed advertising, the opportunity to participate in, and share the expense of, such solicitation and/or advertising. Notwithstanding the foregoing, Franchisee may accept customers from outside Franchisee's Protected Territory at Franchisee's Approved Location, provided Franchisee did not solicit such customers by advertising outside of Franchisee's Protected Territory without Franchisor's prior written consent. Franchisee may not advertise the Facility or any products or services offered by the Facility via the Internet or any other means of e-commerce, except as permitted in Section 12.3.

12.3 Internet Website. Franchisee must have and maintain adequate hardware and software in order to access the Internet at the bit speed Franchisor requires from time to time. Franchisee is prohibited, however, from establishing any website or other presence on the Internet, except as provided herein.

12.3.1 Franchisor may, but is not obligated to, establish an Internet website that provides information about the System and the products and services offered by the System. In the event Franchisor exercises its right to create such a website, Franchisor shall have sole discretion and control over the website (including timing, design, contents, and continuation).

12.3.2 Franchisor may, but is not obligated to, create interior pages on its website(s) that contain information about the Facility and other System franchised businesses. If Franchisor does create such pages, Franchisor may require Franchisee to prepare all or a portion of the page for the Facility, at Franchisee's expense, using a template that Franchisor provides. All such information will be subject to Franchisor's approval prior to posting.

12.3.3 Except as approved in advance in writing by Franchisor, Franchisee must not establish or maintain a separate website, splash page, profile or other presence on the Internet, or otherwise advertise on the Internet or any other public computer network in connection with the Facility, including any profile on any social media and/or networking site. If such approval is granted by Franchisor, Franchisee must: (i) establish and operate such website in accordance with System standards and any other policies Franchisor designates in the Operations Manual or otherwise in writing from time to time; and (ii) utilize any templates that Franchisor provides to Franchisee to create and/or modify such site(s).

12.3.4 Franchisor may use a portion of the Fund Contribution to pay or reimburse itself for the costs incurred in connection with the development, maintenance and update of its website.

12.3.5 Franchisee acknowledges that Franchisor and/or Franchisor's affiliates are the lawful, rightful and sole owner of the Internet domain name www.theswingbays.com as well as any other Internet domain names registered by Franchisor and/or Franchisor's affiliates, and unconditionally

disclaims any ownership interest in such Internet domain names and any Internet domain names similar thereto. Franchisee agrees not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by Franchisor or Franchisor's affiliates or any abbreviation, acronym, phonetic variation or visual variation of those words.

12.4 Grand Opening Advertising & Promotion.

During the period thirty (30) days prior to opening and thirty (30) days after the opening of the Facility, Franchisee must spend between twenty-five thousand dollars (\$25,000) and thirty thousand dollars (\$30,000) on grand opening advertising in its Protected Territory (the "Grand Opening Advertising Requirement"); provided, however, that if Franchisee or Franchisee's affiliate is already operating another Facility in the same market as the Facility governed by this Agreement, as determined by Franchisor, the minimum Grand Opening Advertising Requirement will be reduced to fifteen thousand dollars (\$15,000). Franchisor must approve Franchisee's grand opening marketing strategies, including the required use of Franchisor's approved supplier (if applicable). Franchisee may expend additional sums on advertising its grand opening at its sole discretion, subject to Sections 12.1 and 12.2 above.

12.5 Worldwide Creative Marketing Fund. Franchisor has established a Worldwide Creative Marketing Fund (the "Worldwide Creative Marketing Fund") for the common benefit of System franchisees. Franchisee shall participate in and contribute weekly to the Worldwide Creative Marketing Fund in an amount up to two percent (2%) of Franchisee's Gross Revenues (the "Fund Contribution") in the manner Franchisor prescribes. Franchisor reserves the right to increase the Fund Contribution to up to this cap upon thirty (30) days' written notice. Franchisee must pay the Fund Contribution in the same manner as the Royalty due under this Agreement. Franchisor has the right to require that an advertising/marketing cooperative and/or franchisee advisory council be formed, changed, dissolved or merged.

12.5.1 Franchisor will use Fund Contributions, in Franchisor's sole discretion, to develop, produce and distribute national, regional and/or local marketing and to create advertising materials and public relations programs which promote, in Franchisor's sole judgment, the services offered by System franchisees. Franchisor has the sole right to determine contributions and expenditures from the Worldwide Creative Marketing Fund, or any other advertising program, and sole authority to determine, without limitation, the selection of the advertising materials and programs; provided, however, that Franchisor will make a good faith effort to expend Fund Contributions in the general best interests of the System on a national or regional basis. Franchisor may use the Worldwide Creative Marketing Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertisements and other marketing, including the cost of preparing and producing television, radio, magazine, Internet and newspaper advertising campaigns, the cost of direct mail and outdoor billboard advertising; the cost of public relations activities and advertising agencies; the cost of developing and maintaining an Internet website; and personnel and other departmental costs for advertising that Franchisor internally administers or prepares. Franchisor may reimburse itself out of the Worldwide Creative Marketing Fund for Franchisor's reasonable administrative costs and expenses that Franchisor may incur in the administration or direction of the Worldwide Creative Marketing Fund and advertising programs for System franchisees. Nevertheless, Franchisee acknowledges that not all System franchisees will benefit directly or on a pro rata basis from such expenditures. While Franchisor does not anticipate any part of the Fund Contributions will be used for advertising that is principally a solicitation for franchisees, Franchisor reserves the right to use the Fund Contributions for public relations or recognition of the System brand and for the creation and maintenance of a website, a portion of which may be used to explain the franchise offering and solicit potential franchisees, and to include a notation in any advertisement indicating the availability of franchises. Sales materials, if developed, may be sold to franchisees at a reasonable cost.

12.5.2 Franchisor may periodically assist franchises to maintain high quality standards through customer surveys, customer interviews, and other similar initiatives (“Surveys”). The cost of such programs will be borne by the Worldwide Creative Marketing Fund. The cost of these programs may be charged directly to Franchisee if Franchisee’s results from a Survey fall below System-established minimum standards for such Surveys.

12.5.3 Franchisor has the right to reimburse itself from the Fund Contributions for such reasonable costs and overhead, if any, that Franchisor may incur in activities reasonably related to the direction and implementation of the Worldwide Creative Marketing Fund.

12.5.4 Franchisor will prepare, on an annual basis, and will have available for Franchisee within ninety (90) days of the end of the fiscal year, an unaudited statement of contributions and expenditures for the Worldwide Creative Marketing Fund. The statement will be presented to Franchisee upon Franchisee’s written request, provided Franchisee requests such statement between ninety (90) and one hundred eighty (180) days following the end of the applicable fiscal year. The Worldwide Creative Marketing Fund is not required to be independently audited.

12.6 Regional Advertising and Promotional Cooperative. Franchisor will have the right, in Franchisor’s discretion, to designate any geographical area for purposes of establishing a regional advertising and promotional cooperative (“Cooperative”), and to determine whether a Cooperative is applicable to the Facility. If a Cooperative is established applicable to the Facility, Franchisee must participate in the Cooperative. Cooperative contributions will be credited towards the Local Store Marketing discussed in Section 12.7 below. Cooperative contributions will not exceed the Local Marketing Requirement unless a majority of the Cooperative votes to increase that requirement. The following provisions will apply to each Cooperative:

12.6.1 Each Cooperative will be organized and governed in a form and manner, and will commence operation on a date, approved in advance by Franchisor;

12.6.2 Each Cooperative will be organized for the exclusive purpose of administering regional advertising programs and developing, subject to Franchisor’s approval, standardized advertising materials for use by the members in Local Store Marketing;

12.6.3 No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without Franchisor’s prior approval. All such plans and materials must be submitted to Franchisor in accordance with the procedure set forth in Section 12.1 hereof;

12.6.4 The Cooperative’s activities will be agreed upon by a majority vote of the member franchisees in the Cooperative. All Cooperative contributions will be credited against the Local Store Marketing. The Cooperative may, by the majority vote of its members, require a Cooperative contribution in excess of the Local Store Marketing; and

12.6.5 Each member franchisee must submit to the Cooperative its respective contribution as provided in this Agreement together with such other statements or reports as Franchisor may require or as may be required by the Cooperative with Franchisor’s approval.

12.6.6 Franchisor may grant to Franchisee, in its sole discretion, an exemption for any length of time from the requirement of membership in a Cooperative, upon written request from Franchisee stating reasons supporting such exemption. Franchisor’s decision concerning such request for exemption

will be final.

12.7 Local Store Marketing. In addition to the Fund Contributions described above in Section 12.5, Franchisee will be required to spend a minimum of three percent (3%) of Gross Revenues on local marketing (the “Local Store Marketing”). Franchisee must spend the Local Store Marketing as Franchisor prescribes in the Operations Manual or otherwise in writing, which may include, without limitation, requirements for placing a certain number and/or type(s) of media advertisements, or engaging certain public figures to assist the Franchisee in promoting its Franchised Facility. The Local Store Marketing must be expended within Franchisee’s Protected Territory. Franchisee acknowledges and agrees that Franchisee’s Local Store Marketing must be expended regardless of the amount(s) spent by other System franchisees on Local Store Marketing. Franchisee may spend any additional sums Franchisee wishes on Local Store Marketing. Franchisee must use only such advertising and promotional materials as have been previously approved by Franchisor. Upon request by Franchisor, Franchisee will submit to Franchisor proof of Franchisee’s expenditures on local marketing.

13 INDEPENDENT CONTRACTOR; INDEMNIFICATION

13.1 Independent Contractor Status. Franchisee is an independent contractor responsible for full control over the internal management and daily operation of Franchisee’s Facility, and neither party to this Agreement is the agent, principal, partner, employee, employer or joint venture partner of the other party. Franchisee may not act or represent itself, directly or by implication, as Franchisor’s agent, partner, employee or joint venture partner, and Franchisee may not incur any obligation on Franchisor’s behalf or in Franchisor’s name. All stationery, business cards and contractual agreements entered into by Franchisee must contain Franchisee’s corporate or fictitious name and a conspicuously displayed notice in the place Franchisor designates, stating: (i) Franchisee operates Franchisee’s Facility as an independently owned and operated Franchised Business, and (ii) Franchisee independently owns and operates the Facility as a System franchisee. Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Franchisor’s behalf, or to incur any debt or other obligation in Franchisor’s name; and Franchisor will in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor will Franchisor be liable by reason of any of Franchisee’s acts or omissions in the operation of the Facility or for any claim or judgment arising therefrom against Franchisee or Franchisor.

13.2 Indemnification. Franchisee and Franchisee’s principals agree to indemnify, defend and hold Franchisor, Franchisor’s affiliates and their respective shareholders, directors, officers, employees, agents, successors and assignees (“Indemnitees”) harmless against and to reimburse them for all claims, obligations, liabilities and damages (“Claims”), including any and all taxes, directly or indirectly arising out of, in whole or in part: (a) the operation of Franchisee’s Facility, including the use, condition, or construction, equipping, decorating, maintenance or operation of the Facility premises; (b) the use of the Proprietary Marks and other Proprietary Material; (c) the transfer of any interest in this Agreement or Franchisee’s Facility in any manner not in accordance with this Agreement; (d) the infringement, alleged infringement, or any other violation or alleged violation by Franchisee or any of Franchisee’s principals of any patent, mark or copyright or other proprietary right owned or controlled by third parties; or (e) libel, slander or any other form of defamation of Franchisor, the System or any franchisee or developer operating under the System, by Franchisee or by any of Franchisee’s principals. For purposes of this indemnification, “Claims” will mean and include all obligations, actual, consequential, punitive and other damages, and costs reasonably incurred in the defense of any action, including attorneys’, attorney assistants’ and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether or not such claims exceed the amount of insurance coverage available through Franchisee to Franchisor. Franchisor will

have the right to defend any such claim against it in such manner as Franchisor deems appropriate or desirable in Franchisor's sole discretion. Such an undertaking by Franchisor will, in no manner or form, diminish Franchisee's and each of Franchisee's principals' obligations to indemnify the Indemnities and to hold them harmless. This indemnity will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

14 SALE OR TRANSFER

14.1 **Transfer.** Franchisee's rights under this Agreement are personal, and Franchisee must not sell, transfer, assign or encumber Franchisee's interest in the Facility without Franchisor's prior written consent. Any sale, transfer, assignment or encumbrance made without Franchisor's prior written consent will be voidable at Franchisor's option and will subject this Agreement to termination as specified herein.

14.2 Death or Disability.

14.2.1 *Representative's Right to Continue as Franchisee.* In the event of Franchisee's death, disability or incapacitation (or the death, disability or incapacitation of Franchisee's partners or personal guarantors), Franchisee's legal representative, or Franchisee's partner's or guarantor's respective legal representative, as applicable, will have the right to continue the operation of the Facility as franchisee under this Agreement if: (i) within 45 days from the date of death, disability or incapacity (the "45-Day Period"), such person has obtained Franchisor's prior written approval and has executed Franchisor's then-current franchise agreement for the unexpired term of the franchise, or has furnished a personal guaranty of any partnership, corporate or limited liability company to satisfy Franchisee's obligations to Franchisor and Franchisor's affiliates; and (ii) such person successfully completes Franchisor's training program (which Franchisor will provide at Franchisor's then-current tuition rate). Such assignment by operation of law will not be deemed in violation of this Agreement, provided such heirs or legatees accept the conditions imposed by the Franchise Agreement and are acceptable to Franchisor.

14.2.2 *Facility Operation During and After 45-Day Period.* Franchisor is under no obligation to operate the Facility, or incur any obligation on behalf of any incapacitated franchisee, during or after the 45-Day Period. If necessary, Franchisee (or Franchisee's legal representative, as applicable) will appoint a previously approved acting interim manager to operate the Facility during the 45-Day Period. In the event of Franchisee's death, disability, absence or otherwise, Franchisor has the right, but not the obligation, to operate Franchisee's Facility on Franchisee's behalf and at Franchisee's expense for such period of time (and under such terms and conditions) as Franchisor determines, including paying out the assets and/or revenues of the Facility to cover any or all past, current and/or future obligations of the Facility (including any amounts owed to Franchisor and/or any affiliate) in such priorities as Franchisor determines from time-to-time in Franchisor's sole and absolute discretion. Franchisor may pay itself a management fee of twenty percent (20%) of Gross Revenues to reimburse Franchisor for Franchisor's management services and other costs, including, without limitation travel and lodging expenses ("Management Fee"). Franchisor may obtain approval of a court or arbitrator for any such arrangements, the attorneys' fees and other costs incurred in connection with obtaining such approval to be charged against the assets and/or revenues of Franchisee's Facility. Franchisee (and/or Franchisee's estate) will indemnify Franchisor against any costs and/or liabilities incurred by it in connection with, or related in any way to, the operation (or otherwise) of Franchisee's Facility. This Management Fee is in addition to the amounts due under this Agreement for Royalty and other payments during the time which Franchisor takes over the management of the Facility.

14.3 **Ownership Changes.** A sale, transfer or assignment requiring Franchisor's prior written consent will be deemed to occur: (i) if Franchisee is a corporation, upon any assignment, sale,

pledge or transfer of any fractional portion of Franchisee's voting stock or any increase in the number of outstanding shares of Franchisee's voting stock that results in a change of ownership, (ii) if Franchisee is a partnership, upon the assignment, sale, pledge or transfer of any fractional partnership ownership interest; or (iii) if Franchisee is a limited liability company, upon the assignment, sale, pledge or transfer or any interest in the limited liability company. Any new partner, shareholder, member or manager owning more than ten percent (10%) of the outstanding shares of the corporation, will be required to personally guarantee Franchisee's obligations under this Agreement. A transfer pursuant to (i) and (iii) above will not be subject to Franchisor's right of first refusal as set forth in Section 14.3.1.

14.3.1 *Right of First Refusal.* If Franchisee proposes to transfer either this Agreement or all, or substantially all, of the assets used in connection with the Facility or any interest in Franchisee's lease to any third party (other than a corporation or limited liability company as set forth in Section 14.4 hereof), Franchisee must first offer to sell such interest to Franchisor on the same terms and conditions as offered by such third party. Franchisee will obtain from the third party and provide Franchisor a statement in writing, signed by the third party and Franchisee, of the terms of the offer ("Letter of Intent"). If Franchisor elects not to accept the offer within a thirty (30) day period, Franchisee will have a maximum period of sixty (60) days to complete the transfer described in the Letter of Intent subject to the conditions for approval set forth in Section 14.3.2 hereof. Franchisee will effectuate no other sale or transfer as contemplated under the Letter of Intent without first complying with this Section 14.3.1. Any material change in the terms of the offer will be deemed a new proposal subject to Franchisor's right of first refusal. So long as Franchisee has obtained Franchisor's prior written consent, which will not be unreasonably withheld, a transfer to an existing partner or shareholder, or a transfer as a result of the death, disability or incapacitation of a shareholder or partner, in accordance with the provisions set forth below, is not subject to Franchisor's first right of refusal.

14.3.2 *Conditions for Approval.* Franchisor may condition Franchisor's approval of any proposed sale or transfer of the Facility or of Franchisee's interest in this Agreement upon satisfaction of the following occurrences:

14.3.2.1 All of Franchisee's accrued monetary obligations to Franchisor, Franchisor's affiliates, and Franchisor's designated/approved suppliers and vendors, are satisfied;

14.3.2.2 Franchisee must cure all existing defaults under this Agreement, or any other agreement between Franchisee and Franchisor, Franchisor's affiliates, Franchisor's designated/approved suppliers and vendors, within the period permitted for cure and have substantially complied with such agreements during their respective terms;

14.3.2.3 Franchisee and Franchisee's principals (if Franchisee is a partnership, corporation or limited liability company), and the transferee (if it has had any previous relationship with Franchisor or Franchisor's affiliates), must execute a general release under seal, in a form satisfactory to Franchisor, of any and all claims against Franchisor and Franchisor's affiliates and officers, directors, shareholders and employees, in their corporate and individual capacities; provided, however, the release will not be inconsistent with any applicable state statute regulating franchising;

14.3.2.4 Franchisee or transferee will provide Franchisor a copy of the executed purchase agreement relating to the proposed transfer with all supporting documents and schedules, including transferee's assumption of an agreement to faithfully perform all of Franchisee's obligations under this Agreement;

14.3.2.5 The transferee must demonstrate to Franchisor's satisfaction that he

or she meets Franchisor's educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to conduct the business to be transferred; and has adequate financial resources and capital to meet the performance obligations under this Agreement; however, transferee cannot be in the same business as Franchisor either as licensor, franchisor, independent operator or licensee of any other golf business or chain that is similar in nature or in competition with Franchisor, except that the transferee may be an existing franchisee of ours;

14.3.2.6 The transferee must execute Franchisor's then-current Franchise Agreement for the unexpired term of this Agreement;

14.3.2.7 Franchisee or transferee must pay Franchisor a transfer fee of fifteen thousand dollars (\$15,000);

14.3.2.8 The transferee must satisfactorily complete Franchisor's training Program at the transferee's expense within the time frame Franchisor sets forth;

14.3.2.9 Franchisee (and Franchisee's principals if Franchisee is a partnership, corporation or limited liability company), and the members of their respective families must comply with the post-termination provisions of this Agreement;

14.3.2.10 The transferee must obtain, within the time limits set by Franchisor, and maintain thereafter, all permits and licenses required for the operation of the Facility;

14.3.2.11 To the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer;

14.3.2.12 The transfer must be made in compliance with any laws that apply to the transfer, including state and federal laws governing the offer and sale of franchises;

14.3.2.13 The purchase price and terms of the proposed transfer are not so burdensome to the prospective transferee as to impair or materially threaten its future operation of the Facility and performance under its franchise agreement;

14.3.2.14 Franchisee must request that Franchisor provide the prospective transferee with Franchisor's current form of franchise disclosure document, and Franchisor will not be liable for any representations not included in the franchise disclosure document;

14.3.2.15 Franchisor's approval of the transfer will not constitute a waiver of any claims Franchisor may have against the transferring party;

14.3.2.16 Franchisor will have the right to disclose to any prospective transferee such revenue reports and other financial information concerning Franchisee and Franchisee's Facility as Franchisee has supplied Franchisor hereunder; and

14.3.2.17 In any event, Franchisor may withhold or condition Franchisor's consent to any transfer as Franchisor deems appropriate based on the circumstances of the transfer or otherwise.

14.4 Transfer to a Corporation or Limited Liability Company. If Franchisee is an individual and desires to assign its rights under this Agreement to a corporation or limited liability

company, and if all of the following conditions are met, Franchisor will consent to the transfer without assessing the transfer fee set forth in Section 14.3.2.7, and such assignment will not be subject to Franchisor's right of first refusal in Section 14.3.1:

14.4.1 The corporation or limited liability company is newly organized and its activities are confined to operating the Facility;

14.4.2 Franchisee is, and at all times remains, the owner of at least 51% of the outstanding shares of the corporation or a controlling interest in the limited liability company;

14.4.3 The corporation or limited liability company agrees in writing to assume all of Franchisee's obligations hereunder; and

14.4.4 All stockholders of the corporation, or members and managers of the limited liability company, as applicable, personally guarantee prompt payment and performance by the corporation or limited liability company of all its obligations to Franchisor and Franchisor's affiliates, under this Agreement and any other agreement between Franchisee and Franchisor and/or Franchisor's affiliates and execute a non-compete agreement as set forth in Section 17.4 hereof.

14.5 **Franchisor's Right to Transfer.** Franchisor has the right to sell, transfer, assign and/or encumber all or any part of Franchisor's assets and Franchisor's interest in, and rights and obligations under, this Agreement in Franchisor's sole discretion.

14.6 **Franchisor's Option to Purchase.** Franchisee hereby grants to Franchisor an option (the "Option") to purchase the assets used in connection with the operation of Franchisee's Facility, including, but not limited to, all furniture, fixtures, and equipment, this Agreement, and the Lease for the Approved Location (collectively, the "Assets").

14.6.1 Option Period. Franchisor may exercise the Option at any point after the opening of the Facility. The Option shall remain open during the term of this Franchise Agreement and all renewal terms granted hereto.

14.6.2 Purchase Price: In the event Franchisor chooses to exercise the Option, the purchase price (the "Purchase Price") will be as follows:

(a) in the event Franchisor exercises the Option prior to the one (1) year anniversary of the opening date of the Facility, the Purchase Price will be equal to two hundred percent (200%) of Franchisee's hard costs as of the date Franchisor provides notice that it is exercising the Option. For purpose of this Section, "hard costs" refers to the purchase price of all physical or tangible assets related to the operation of the Franchised Business, including but not limited to machines, equipment, real estate, supplies, inventory, marketing materials, deposits, rent or mortgage payments, and other costs related to outfitting a Facility; or

(b) in the event Franchisor exercises the Option following the one (1) year anniversary of the opening date of the Facility, the Purchase Price will be equal to six times (6x) the Facility's earnings less interest, taxes, depreciation, and amortization ("EBITDA") during the twelve (12) full calendar months preceding the date Franchisor provides notice that it is exercising the Option. For purposes of this Section, "earnings" include net income after deducting all Facility operating expenses including but not limited to Royalties, Fund Contributions, and all other advertising expenses.

14.6.3 Exercise of Option and Closing. Franchisor will notify Franchisee in writing pursuant to the notice provision set forth in Section 21 below of Franchisor's intent to exercise the Option. Thereafter, Franchisor will have a one-hundred twenty (120) day period within which to conduct its due diligence upon the Assets. In the event that Franchisor elects to purchase the Assets after the satisfactory conclusion of Franchisor's due diligence, Franchisor will have an additional sixty (60) days from the completion of its due diligence investigation within which to tender the Purchase Price and close on the transaction ("Closing"). At Closing, Franchisee agrees to deliver possession and title to the Assets to Franchisor, free and clear of all liens and encumbrances. Franchisor may elect to rescind its election to exercise the Option at any time prior to Closing. Franchisor's failure to exercise the Option on one or more occasions will not preclude Franchisor from exercising the Option at a later date.

14.6.4 Right of Offset. Franchisor will not be obligated to assume any liabilities in connection with Franchisor's purchase of the Assets. Franchisor shall be entitled to offset the Purchase Price by (i) any amounts owed by Franchisee to Franchisor; and (ii) any liabilities (contingent or otherwise) which Franchisor agrees, at its absolute discretion, to undertake in connection with exercising the Option.

14.6.5 Representations and Warranties. Franchisor will be entitled to all customary warranties and representations in connection with Franchisor's purchase of the Assets, including, without limitation, representations and warranties as to ownership and condition of and title to the Assets; liens and encumbrances on the Assets; validity of contracts and agreements; and liabilities affecting the Assets, contingent or otherwise.

14.6.6 Post-Term Obligations. In the event Franchisor elects to repurchase the Facility pursuant to this Section 14.6, this Agreement will be deemed terminated, and Franchisee agrees to comply with the confidentiality provisions set forth in Section 5 of this Agreement, as well as Franchisee's post-term obligations set forth in Section 16 of this Agreement and the post-term covenants against competition set forth in Section 17 of this Agreement.

14.6.7 Reasonableness. The parties acknowledge and agree that the Option and the Purchase Price set forth herein are fair and reasonable.

14.6.8 Liquor License and Lease. In consideration of the Purchase Price, Franchisee will also, at Franchisor's option, assign or transfer to Franchisor any interest that Franchisee has in the Lease for the Franchisee Location and any liquor license (or related license to sell wine and beer) or permit associated with the operation of the Facility. Franchisee agrees to execute all documents reasonably necessary to effectuate such assignments or transfers.

15 BREACH AND TERMINATION

15.1 **Automatic Termination.** This Agreement will automatically terminate without notice or an opportunity to cure upon the occurrence of any of the following:

15.1.1 *Voluntary Bankruptcy.* If Franchisee makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files or acquiesces in the filing of a petition seeking reorganization or arrangement under any federal or state bankruptcy or insolvency law, or consents to or acquiesces in the appointment of a trustee or receiver for Franchisee or the Facility.

15.1.2 *Involuntary Bankruptcy.* If proceedings are commenced to have

Franchisee adjudicated bankrupt or to seek Franchisee's reorganization under any state or federal bankruptcy or insolvency law, and such proceedings are not dismissed within sixty (60) days, or a trustee or receiver is appointed for Franchisee or the Facility without Franchisee's consent, and the appointment is not vacated within sixty (60) days.

15.1.3 *Unauthorized Transfer.* Franchisee purports to sell, transfer or otherwise dispose of Franchisee or any interest in the Facility in violation of Section 14 hereof.

15.2 **With Notice and Without Opportunity to Cure.** Franchisor has the right to terminate this Agreement upon notice without providing Franchisee an opportunity to cure for any of the following breaches or defaults:

15.2.1 *Criminal Acts.* If Franchisee or Franchisee's principals are convicted of or plead guilty or no contest to a felony or take part in any criminal misconduct relevant to the operation of Franchisee's Facility.

15.2.2 *Fraud.* If Franchisee or Franchisee's principals commit any fraud or misrepresentation in the operation of Franchisee's Facility.

15.2.3 *Misrepresentation.* If Franchisee or Franchisee's principals make any misrepresentation or omission in connection with Franchisee's franchise application, including but not limited to any financial misrepresentation.

15.2.4 *Failure to Complete Training.* If Franchisee fails to complete initial training as provided in Section 8.1.

15.2.5 *Repeated Breaches.* If Franchisor sends Franchisee two (2) or more written notices to cure pursuant to Sections 15.3 or 15.4 hereof in any twelve (12)-month period.

15.2.6 *Breach of Other Agreements.* If Franchisee or Franchisee's principals materially breach any other agreement with Franchisor or any of Franchisor's affiliates, or threaten any material breach of any such agreement, or any Lease for the Approved Location, and fails to cure such breach within any permitted period for cure.

15.2.7 *Misuse of the Proprietary Marks or Confidential Information.* If Franchisee or Franchisee's principals materially violate any provision hereof pertaining to Proprietary Marks or Confidential Information or misuse the Proprietary Marks or Confidential Information.

15.2.8 *Violation of Health Code.* If Franchisee violates any health, safety or sanitation law, ordinance or regulation or operates the Facility in a manner that presents a health or safety hazard to customers, or the general public and such violation is not cured within twenty-four (24) hours.

15.2.9 *Violation of In-term Restrictive Covenant.* If Franchisee violates the in- term restrictive covenant contained in Section 17.1.

15.2.10 *Liens.* If a levy of writ of attachment or execution or any other lien is placed against Franchisee or any of Franchisee's principals or any of their assets which is not released or bonded against within 30 days.

15.2.11 *Insolvency.* If Franchisee or any of Franchisee's principals become insolvent.

15.2.12 *Abandonment.* If Franchisee voluntarily or otherwise abandons the Facility. The term “abandon” includes any conduct which indicates a desire or intent to discontinue the franchisee business in accordance with the terms of this Agreement and will apply in any event Franchisee fails to operate the Facility as a System Facility for a period of two (2) or more consecutive days without Franchisor’s prior written approval.

15.2.13 *Unauthorized Products or Services.* If Franchisee offers any unauthorized and unapproved products or services at or from the Facility.

15.2.14 *Unapproved Purchases.* Franchisee orders or purchases supplies, signs, furnishings, fixtures, equipment or inventory from an unapproved supplier or which Franchisor has not approved.

15.2.15 *Proprietary Software.* Franchisee misuses or makes unauthorized use of any Proprietary Software that Franchisor may develop for use in connection with the System.

15.2.16 *Insurance.* Franchisee fails to maintain insurance or to repay Franchisor for insurance paid for by it, or otherwise fails to adhere to the requirements of Section 9.

15.2.17 *Government Regulations.* Franchisee fails, within fifteen (15) days after notification of non-compliance by federal, state or local government authorities, to comply with any law or regulation applicable to the Facility.

15.2.18 *Government Actions.* Any government action is taken against Franchisee that results in any obligation upon Franchisor which in Franchisor’s sole judgment is uneconomical, not in the best interests of Franchisor, or would result in Franchisor having an unintended relationship or obligation.

15.2.19 *Anti-Terrorist Activities.* Franchisee fails to comply with the provisions of Section 22.7.

15.2.20 *Personal Use of Facility Property.* If Franchisee takes for Franchisee’s own personal use any assets or property of the Facility, including employee taxes, FICA, insurance or benefits.

15.2.21 *Insufficient Funds.* If there are insufficient funds in Franchisee’s bank account to cover a check or EFT payment to Franchisor three (3) or more times within any twelve (12) month period.

15.2.22 *Under-reporting of Gross Revenues.* If any audit reveals that Franchisee has understated Franchisee’s Royalty or marketing payments, or Franchisee’s Local Store Marketing expenditures, by more than two percent (2%) or if Franchisee has failed to submit timely reports and/or remittances for any two (2) reporting periods within any 12-month period, as described in Section 11.

15.2.23 *Default Under Lease.* Franchisee defaults in obligations under any Lease agreement for the Approved Location.

15.3 **Upon 15 Days’ Notice to Cure.** Franchisor has the right to terminate this Agreement if any of the following defaults remains uncured after expiration of the fifteen (15)-day cure period:

15.3.1 *Nonpayment.* If Franchisee fails to pay as and when due any sums owed to

Franchisor, any of Franchisor's affiliates, or any of Franchisor's System Suppliers or vendors.

15.3.2 *Endorsement of Checks.* Franchisee fails to immediately endorse and deliver to Franchisor any payments due to Franchisor from any third party that is erroneously made to Franchisee.

15.3.3 *Failure to Maintain Sufficient Inventory Level.* If Franchisee fails to maintain sufficient levels of inventory to adequately meet consumer demand.

15.3.4 *Failure to Obtain a Site and/or Open.* If Franchisee fails to (a) obtain a site for the Facility, and/or (b) commence operations of Franchisee's Facility within the time prescribed in Sections 7.1 and 7.3 of this Agreement, respectively.

15.3.5 *Interruption of Service.* If Franchisee fails to maintain the prescribed months, days or hours of operation at the Facility.

15.3.6 *Failure to Personally Supervise Facility Operations or Employ Adequate Personnel.* If Franchisee fails, in Franchisor's sole discretion, to personally supervise day-to-day operation of the Facility or fails to employ a sufficient number of qualified, competent personnel as Franchisor requires from time to time, including any (a) General Manager in connection with the Franchised Business (if appropriate).

15.3.7 *Quality Control.* If Franchisee fails to maintain the strict quality controls reasonably required by this Agreement and/or the Operations Manual.

15.3.8 *Other Conduct Reflecting Adversely on System.* Franchisee conducts itself in a manner that, although not criminal, reflects adversely on the System, the Proprietary Marks, or the products offered through the System.

15.3.9 *Licenses and Permits.* Franchisee fails to procure or maintain any licenses, certifications, or permits necessary for the operation of Franchisee's Facility.

15.4 **Upon 30 Days' Notice to Cure.** Franchisor has the right to terminate this Agreement if Franchisee fails to perform or comply with any one or more of the terms or conditions of this Agreement or any ancillary agreements between Franchisee and Franchisor or Franchisor's affiliates and fails to cure such default after notice and expiration of the thirty (30)-day cure period.

15.5 **Step In Rights.** In addition to Franchisor's right to terminate this Agreement, and not in lieu of such right, or any other rights, Franchisor may have against Franchisee, upon a failure to cure any default within the applicable time period (if any), Franchisor has the right, but not the obligation, to enter upon the Facility premises and exercise complete authority with respect to the operation of the Facility until such time as Franchisor determines, in Franchisor's sole discretion that the default has been cured, and Franchisee is otherwise in compliance with this Agreement. In the event Franchisor exercises the rights described in this Section, Franchisee must pay Franchisor a reasonable management fee of up to eight percent (8%) of Gross Revenues and reimburse Franchisor for all reasonable costs and overhead, if any, incurred in connection with its operation of Franchisee's Facility including, without limitations, costs of personnel for supervising and staffing the Facility and their travel and lodging accommodations. This fee is in addition to the payment of the Royalty and all other fees due under this Agreement during the time Franchisor exercises its rights under this Agreement. If Franchisor undertakes to operate the Facility pursuant to this Section, Franchisee agrees to indemnify and hold Franchisor (and Franchisor's representative(s) and employees) harmless from and against any fines, claims, suits or proceedings that

may arise out of Franchisor's operation of the Facility.

15.6 **Nonwaiver.** Franchisor's delay in exercising or failing to exercise any right or remedy under this Agreement or Franchisor's acceptance of any late or partial payment due hereunder will not constitute a waiver of any of Franchisor's rights or remedies against Franchisee.

16 RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION

16.1 **Franchisee's Obligations.** Upon termination of this Agreement, regardless of the cause, and upon expiration and nonrenewal or transfer of this Agreement, Franchisee must, at Franchisee's cost and expense:

16.1.1 Immediately cease all operations under this Agreement;

16.1.2 Immediately pay Franchisor all unpaid fees and pay Franchisor, Franchisor's affiliates, Franchisor's major suppliers and vendors, all other monies owed;

16.1.3 Immediately discontinue the use of the Proprietary Marks;

16.1.4 Immediately return the Operations Manual and all other Proprietary Materials and Confidential Information Franchisor loaned to Franchisee and immediately and permanently cease use of such information and materials;

16.1.5 Immediately cease using all telephone numbers and listings used in connection with the operation of the Facility, and direct the telephone company to transfer all such numbers and listings to Franchisor or Franchisor's designee pursuant to the Conditional Assignment of Franchisee's Telephone Numbers and Listings attached hereto as Exhibit D or, if Franchisor directs, to disconnect the numbers within fifteen (15) days of termination or expiration of this Agreement;

16.1.6 Immediately vacate the Facility, and if Franchisor exercised Franchisor's rights pursuant to the Collateral Assignment of Lease attached as Exhibit C, arrange for transfer of the Lease to Franchisor within fifteen (15) days of termination or expiration of this Agreement;

16.1.7 Immediately surrender all stationery, printed matter, signs, advertising and marketing materials and other items containing the Proprietary Marks as Franchisor directs and all items that are a part of the trade dress of the System, no later than five (5) days after the termination or expiration of this Agreement;

16.1.8 Immediately cease to hold itself out as Franchisor's franchisee;

16.1.9 Take such action as will be necessary to amend or cancel any assumed name, business name or equivalent registration which contains any trade name or other Proprietary Mark Franchisor licensed to Franchisee and furnish Franchisor evidence satisfactory to Franchisor of compliance with this obligation within fifteen (15) days after the termination, expiration or transfer of this Agreement;

16.1.10 Permit Franchisor to make a final inspection of Franchisee's financial records, books, and other accounting records within one (1) month of the effective date of termination, expiration, or transfer;

16.1.11 Comply with the post-termination covenants set forth in Section 17 hereof, all of which will survive the transfer, termination, or expiration of this Agreement;

16.1.12 Cease to use in advertising or in any other manner, any methods, procedures or techniques associated with Franchisor or the System;

16.1.13 Immediately cease from engaging in any contacts with customers or former customers of the Facility; and

16.1.14 Execute from time to time any necessary papers, documents, and assurances to effectuate the intent of this Section 16.

16.2 Option to Purchase Personal Property. Upon the termination or expiration of this Agreement, Franchisor, or Franchisor's designee will also have the option, but not the obligation, to purchase any personal property used in connection with operation of Franchisee's Facility by providing Franchisee written notice of Franchisor's election within sixty (60) days after such termination or expiration and by paying Franchisee the book value for such personal property within sixty (60) days of such notice. For purposes of this paragraph, "book value" means the amount Franchisee actually paid for the personal property less depreciation (calculated by using the straight-line depreciation method on a ten (10)-year depreciation schedule irrespective of the depreciation method or schedule Franchisee uses for accounting purposes). Notwithstanding the foregoing, to the extent that Franchisor exercises Franchisor's right to purchase any personal property subject to a lease or finance agreement, the purchase price of such personal property will equal the amount of Franchisee's remaining obligations under the lease or finance agreement, as applicable. Franchisor will be entitled to offset the purchase price by the amount of money owed by Franchisee to Franchisor for any payments necessary to acquire clear title to property or for any other debt. If Franchisor exercises Franchisor's option to purchase, pending the closing of such purchase, Franchisor has the right to appoint a manager to maintain operation of the Facility, or Franchisor may require that Franchisee close the Facility during such period without removing any assets. Franchisee is required to maintain in force all insurance policies required under this Agreement until the date of such closing. Franchisor has the unrestricted right to assign this option to purchase the Facility. Franchisor will be entitled to all customary warranties and representations in connection with Franchisor's purchase of Franchisee's property, including, without limitation, representations and warranties as to ownership and condition of and title to the property; liens and encumbrances on the property; validity of contracts and agreements; and liabilities affecting the property, contingent or otherwise.

16.3 Exclusions. Franchisor may exclude from the personal property purchased under Section 16.2 cash or its equivalent and any equipment, signs, inventory, materials and supplies that are not reasonably necessary (in function or quality) to the Facility's operation or that Franchisor has not approved as meeting standards for the Facility.

16.4 Damages, Costs, and Expenses. In the event of termination for any default by Franchisee, Franchisee will promptly pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default, which obligation will create and remain, until paid in full, a lien in favor of Franchisor against any and all of Franchisee's personal property, furnishings, equipment, signs, fixtures and inventory related to the operation of the Facility.

17 COVENANTS

Franchisee acknowledges that as a participant in Franchisor's System, Franchisee will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures

and techniques which Franchisor has developed. Therefore, in order to protect Franchisor and all Franchisor's franchisees, Franchisee agrees as follows:

17.1 During the Term of This Agreement. During the term of this Agreement, neither Franchisee, Franchisee's officers, directors, principals, or General Managers, nor any member of the immediate family of Franchisee or Franchisee's officers, directors, principals, or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

17.1.1 Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to or have any interest in any other business providing indoor golf simulators, golf instruction services, or golf fitness services (a "Competing Business") or any business that licenses the right to operate a Competing Business; provided, however, that this Section does not apply to Franchisee's operation of a Facility under Franchisor's System;

17.1.2 Employ or seek to employ any person who is at that time employed by Franchisor, Franchisor's affiliates or any other System franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat; or

17.1.3 Divert or attempt to divert any business or customer of the Facility to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks or the System.

17.2 After the Term of This Agreement.

17.2.1 For a period of two (2) years after the expiration and nonrenewal, transfer or termination of this Agreement, regardless of the cause, neither Franchisee, Franchisee's officers, directors, principals, or General Managers, nor any member of the immediate family of Franchisee or Franchisee's officers, directors, principals, or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation enter into any business competing in whole or in part with Franchisor granting franchises or licenses for Competing Businesses at the time this Agreement is terminated or otherwise expires and is not renewed.

17.2.2 For a period of two (2) years after the expiration, transfer, or termination of this Agreement, regardless of the cause, neither Franchisee, Franchisee's principals, nor any member of the immediate family of Franchisee or Franchisee's principals may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

17.2.2.1 Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to or have any interest in any Competing Business (i) at the Facility premises; (ii) within the Protected Territory; or (iii) within a fifteen (15) mile radius of the perimeter of (a) the Protected Territory being granted hereunder, (b) any other Protected Territory licensed by Franchisor as of the date of expiration or termination of this Agreement, or (c) any other Facility; or

17.2.2.2 Solicit business from customers of Franchisee's former Facility or contact any of Franchisor's suppliers or vendors for any competitive business purpose;

17.2.2.3 Solicit any of Franchisor's employees, or the employees of Franchisor's affiliates or any other System franchisee to discontinue employment.

17.3 Intent and Enforcement. It is the parties' intent that the provisions of this Section 17 be judicially enforced to the fullest extent permissible under applicable law. Accordingly, the parties agree that any reduction in scope or modification of any part of the noncompetition provisions contained herein will not render any other part unenforceable. In the event of the actual or threatened breach of this Section 17 by Franchisee, any of Franchisee's principals, or any member of the immediate family of Franchisee or Franchisee's principals, Franchisor will be entitled to an injunction restraining such person from any such actual or threatened breach. Franchisee acknowledges that the covenants contained herein are necessary to protect the goodwill of the Facility, other System franchisees, and the System. Franchisee further acknowledges that covenants contained in this Section 17 are necessary to protect Franchisor's procedures and know-how transmitted during the term of this Agreement. Franchisee agrees that in the event of the actual or threatened breach of this Section 17, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm. Franchisee acknowledges and agrees, on Franchisee's own behalf and on behalf of the persons who are liable under this Section 17, that each has previously worked or been gainfully employed in other careers and that the provisions of this Section 17 in no way prevent any such person from earning a living. Franchisee further acknowledges and agrees that the time limitation of this Section 17 will be tolled during any default under this Section 17.

17.4 Employees. Franchisee will ensure that Franchisee's principals, employees and members of their immediate families who have access to Franchisor's Confidential Information, including all of Franchisee's managers and other key employees, execute a Confidentiality and Restrictive Covenant Agreement, in the form attached as Exhibit E to the Franchise Agreement, or as Franchisor, in Franchisor's sole discretion, otherwise prescribes. Franchisee must furnish Franchisor a copy of each executed agreement.

17.5 No Defense. Franchisee hereby agrees the existence of any claim Franchisee may have against Franchisor, whether or not arising from this Agreement, will not constitute a defense to Franchisor's enforcement of the covenants contained in this Section 17. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) that Franchisor incurs in connection with the enforcement of this Section 17.

18 DISPUTE RESOLUTION

18.1 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado (without reference to its conflict of laws principals).

18.2 Internal Dispute Resolution. Franchisee must first bring any claim or dispute between Franchisee and Franchisor to Franchisor's President, after providing notice as set forth in Section 18.6 below. Franchisee must exhaust this internal dispute resolution procedure before Franchisee may bring Franchisee's dispute before a third party. This agreement to first attempt resolution of disputes internally will survive termination or expiration of this Agreement.

18.3 Mediation. At Franchisor's option, all claims or disputes between Franchisor and Franchisee or its affiliates arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisor and Franchisee or its affiliates, or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 18.2 above, must be submitted first to non-binding mediation, in Parker, Colorado under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Franchisee must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor

will have a period of 30 days following receipt of such notice within which to notify Franchisee as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Franchisee may not commence any action against Franchisor or its affiliates in respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. Each party will bear its own cost of mediation, and Franchisor and Franchisee will share mediation costs equally. This agreement to mediate will survive any termination or expiration of this Agreement.

18.3.1 The parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section 18.3 if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating):

18.3.1.1 Any federally protected intellectual property rights in the Proprietary Marks, the System, or in any Confidential Information;

18.3.1.2 Any claims pertaining to or arising out of any warranty issue; or

18.3.1.3 Any of the restrictive covenants contained in this Agreement.

18.4 **Selection of Venue.** Nothing contained in this Agreement will prevent Franchisor from applying to and obtaining from any court of competent jurisdiction a writ of attachment, temporary injunction, preliminary injunction and/or other emergency relief available to safeguard and protect Franchisor's interests. The parties expressly agree to the jurisdiction and venue of any court of general jurisdiction in Douglas County, Colorado and the jurisdiction and venue of the United States District Court presiding over Parker, Colorado. Franchisee acknowledges that the parties have entered into this Agreement in Parker, Colorado and that Franchisee is to receive valuable and continuing services emanating from Franchisor's headquarters in Parker, Colorado, including but not limited to training, assistance, support and the development of the System. In recognition of such services and their origin, Franchisee hereby irrevocably consents to the personal jurisdiction of the state and federal courts of Colorado set forth above. In the event that Franchisor moves its headquarters from Parker, Colorado, all dispute resolution provisions in this Agreement shall be amended to substitute the city and/or state, as applicable in which Franchisor's then-current headquarters are located.

18.5 **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of the provisions of this Agreement, including the mediation provision set forth in this Section 18, each having authority to specifically enforce the right to mediate/arbitrate claims asserted against such person(s) by Franchisee.

18.6 **Prior Notice of Claims.** As a condition precedent to commencing an action for damages or for violation or breach of this Agreement, Franchisee must notify Franchisor within thirty (30) days after the occurrence of the violation or breach, and failure to timely give such notice will preclude any claim for damages.

18.7 **No Right to Offset.** Franchisee is prohibited from withholding all or any part of any payment to Franchisor or any of its affiliates on the grounds of Franchisor's alleged nonperformance or as an offset against any amount Franchisor or any of Franchisor's affiliates allegedly may owe Franchisee under this Agreement or any related agreements.

18.8 Injunctive Relief. Nothing in this Agreement will prevent Franchisor from seeking to obtain injunctive relief, without posting a bond, against threatened conduct that will cause Franchisor loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary and permanent injunctions. If injunctive relief is granted, Franchisee's only remedy will be the court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, Franchisee expressly waives all claims for damages Franchisee incurred as a result of the wrongful issuance.

18.9 Limitation of Action. Franchisee further agrees that no cause of action arising out of or under this Agreement may be maintained by Franchisee against Franchisor unless brought before the expiration of one (1) year after the act, transaction or occurrence upon which such action is based or the expiration of one (1) year after the Franchisee becomes aware of facts or circumstances reasonably indicating that Franchisee may have a claim against Franchisor hereunder, whichever occurs sooner, and that any action not brought within this period will be barred as a claim, counterclaim, defense, or set-off.

18.9.1 Franchisee hereby waives the right to obtain any remedy based on alleged fraud, misrepresentation, or deceit by Franchisor, including, without limitation, rescission of this Agreement, in any mediation, judicial, or other adjudicatory proceeding arising hereunder, except upon a ground expressly provided in this Agreement, or pursuant to any right expressly granted by any applicable statute expressly regulating the sale of franchises, or any regulation or rules promulgated thereunder.

18.10 Waiver of Punitive Damages. Franchisee hereby waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) against Franchisor arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, that Franchisee's recovery is limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions will continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

18.11 THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER WILL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR FRANCHISEE'S PURCHASE FROM FRANCHISOR OF THE FRANCHISE AND/OR ANY GOODS OR SERVICES. THE PARTIES AGREE THAT ALL PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SALE OF THE FRANCHISED BUSINESS, WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN FRANCHISEE, FRANCHISEE'S GUARANTORS AND FRANCHISOR OR ITS AFFILIATES/OFFICERS/EMPLOYEES MAY NOT BE CONSOLIDATED WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER THIRD PARTY.

19 REPRESENTATIONS

19.1 No Authority. NO SALESPERSON, REPRESENTATIVE OR OTHER PERSON HAS THE AUTHORITY TO BIND OR OBLIGATE FRANCHISOR EXCEPT FRANCHISOR'S AUTHORIZED OFFICER BY A WRITTEN DOCUMENT. FRANCHISEE ACKNOWLEDGES THAT NO REPRESENTATIONS, PROMISES, INDUCEMENTS, GUARANTEES OR WARRANTIES OF

ANY KIND WERE MADE BY FRANCHISOR OR ON FRANCHISOR'S BEHALF THAT HAVE LED FRANCHISEE TO ENTER INTO THIS AGREEMENT. FRANCHISEE UNDERSTANDS THAT WHETHER FRANCHISEE SUCCEEDS AS A FRANCHISEE IS DEPENDENT UPON FRANCHISEE'S EFFORTS, BUSINESS JUDGMENTS, THE PERFORMANCE OF FRANCHISEE'S EMPLOYEES, MARKET CONDITIONS AND VARIABLE FACTORS BEYOND FRANCHISOR'S CONTROL OR INFLUENCE. FRANCHISEE FURTHER UNDERSTANDS THAT SOME FRANCHISEES ARE MORE OR LESS SUCCESSFUL THAN OTHER FRANCHISEES AND THAT FRANCHISOR HAS MADE NO REPRESENTATION THAT FRANCHISEE WILL DO AS WELL AS ANY OTHER FRANCHISEE.

19.2 Receipt. THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THIS AGREEMENT, WITH ALL BLANKS COMPLETED AND WITH ANY AMENDMENTS AND EXHIBITS, AT LEAST SEVEN (7) CALENDAR DAYS PRIOR TO EXECUTION OF THIS AGREEMENT. IN ADDITION, THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF FRANCHISOR'S FRANCHISE DISCLOSURE DOCUMENT AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO THE EXECUTION OF THIS AGREEMENT OR FRANCHISEE'S PAYMENT OF ANY MONIES TO FRANCHISOR, REFUNDABLE OR OTHERWISE.

19.3 Opportunity for Review by Franchisee's Advisors. FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR HAS RECOMMENDED, AND THAT FRANCHISEE HAS HAD THE OPPORTUNITY TO OBTAIN, REVIEW THIS AGREEMENT AND FRANCHISOR'S FRANCHISE DISCLOSURE DOCUMENT BY FRANCHISEE'S LAWYER, ACCOUNTANT OR OTHER BUSINESS ADVISOR PRIOR TO EXECUTION HEREOF.

19.4 Execution of Agreement. EACH OF THE UNDERSIGNED PARTIES WARRANTS THAT IT HAS THE FULL AUTHORITY TO SIGN AND EXECUTE THIS AGREEMENT. IF FRANCHISEE IS A PARTNERSHIP OR CORPORATION, THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF SUCH PARTNERSHIP OR CORPORATION WARRANTS TO FRANCHISOR, BOTH INDIVIDUALLY AND IN HIS CAPACITY AS PARTNER OR OFFICER, THAT ALL OF THE PARTNERS OF THE PARTNERSHIP OR ALL OF THE SHAREHOLDERS OF THE CORPORATION, AS APPLICABLE, HAVE READ AND APPROVED THIS AGREEMENT, INCLUDING ANY RESTRICTIONS WHICH THIS AGREEMENT PLACES UPON RIGHTS TO TRANSFER THEIR INTEREST IN THE PARTNERSHIP OR CORPORATION.

20 GUARANTY

If Franchisee is a corporation/partnership/limited liability company, or subsequent to execution hereof, Franchisee assigns this Agreement to a corporation/partnership/limited liability company, all shareholders/partners/members/managers of Franchisee and their spouses hereby personally and unconditionally guarantee without notice, demand, or presentment, the payment of all of Franchisee's monetary obligations under this Agreement, and any other agreement between Franchisee and Franchisor and/or Franchisor's affiliates, as if each were an original party to this or any other agreement in his or her individual capacity. All such personal guarantors further agree to be bound by the restrictions of Franchisee's activities upon transfer, termination, or expiration and nonrenewal of this Agreement as if each were an original party to this Agreement in his or her individual capacity. All such personal guarantors and their spouses must execute a continuing personal guarantee in the form attached hereto as Exhibit B.

21 NOTICES

All notices and requests to be given under this Agreement are to be in writing, and delivered by

either hand delivery or overnight mail by a recognized carrier offering a delivery receipt, to the following addresses (which may be changed by written notice):

Franchisee Name/Address: _____

Franchisor Name/Address: Dustin Miller
 The Swing Bays Franchise, LLC
 11183 South Parker Road, Unit A
 Parker, CO 80134

With a copy to: Lane Fisher, Esq.
 Fisher Zucker, LLC
 21 S. 21st Street
 Philadelphia, PA 19103

22 MISCELLANEOUS

22.1 **Entire Agreement.** This Agreement contains the entire Agreement of the parties. There are no representations either oral or written, except those contained in this Agreement. This written Agreement includes all representations between the parties. This agreement may not be modified except by a written document signed by both parties. Nothing in the Agreement is intended to disclaim the representations Franchisor made in the franchise disclosure document furnished to you.

22.2 **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 Franchisee, their obligations and liabilities will be joint and several. Headings are for reference purposes and do not control interpretation. Reference to Franchisee’s “immediate family” means Franchisee’s spouse, parents, children and siblings and Franchisee’s spouse’s parents, children and siblings. Reference to Franchisee’s “principals” means Franchisee’s partners, officers, directors, shareholders, members and managers, as applicable. References to “Franchisor” and “Franchisee” include the party’s successors, assigns or transferees. The parties have had a reasonable opportunity to review this Agreement. In the event of an ambiguity or if a question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by all of the parties, and no presumptions or burdens of proof will arise in favor of any party by virtue of the authorship of any of the provisions of this Agreement.

22.3 **Severability.** If any provision of this Agreement is deemed invalid or inoperative for any reason, that provision will be deemed modified to the extent necessary to make it valid and operative or, if it cannot be so modified, it will then be severed, and the remainder of that provision will continue in full force and effect as if this Agreement had been signed with the invalid portion so modified or eliminated; provided, however, that if any part of this Agreement relating to payments to Franchisor or any of its affiliates or protection of the Proprietary Marks or the Confidential Information, including the Operations Manual and Franchisor’s other trade secrets, is declared invalid or unenforceable, then Franchisor at Franchisor’s option may terminate this Agreement immediately upon written notice to Franchisee.

22.4 State Law Applies. If any provision of this Agreement, including but not limited to its provisions for transfer, renewal, termination, notice of termination, or cure rights, is inconsistent with any valid law or regulation of the state in which the Facility is located, then the valid law or regulation of that state applicable to the franchise will supersede any provision of this Agreement that is less favorable to Franchisee.

22.5 Additional Documentation. Franchisee must from time to time, subsequent to the date first set forth above, at Franchisor's request and without further consideration, execute and deliver such other documentation or agreement and take such other action as Franchisor reasonably may require in order to effectuate the transactions contemplated herein. In the event that Franchisee fails to comply with the provisions of this Section 22.5, Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact to execute any and all documents on Franchisee's behalf, reasonably necessary to effectuate the transactions contemplated herein.

22.6 Force Majeure. Neither Franchisee nor Franchisor or Franchisor's affiliates will be liable for loss or damage or deemed to be in breach of this Agreement or any related agreement if its failure to perform its obligations is not the fault nor within the reasonable control of the person due to perform but results from, without limitation, fire, flood, natural disasters, acts of God, governmental acts or orders, or civil disorders. Any delay resulting from any such cause will extend the time of performance for the period of such delay or for such other reasonable period of time as the parties agree in writing or will excuse performance, in whole or in part, as Franchisor deems reasonable.

22.7 Anti-Terrorist Activities. Franchisee certifies that neither Franchisee, nor Franchisee's owners, principals, employees or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (the "Annex"). Franchisee agrees not to hire or have any dealings with a person listed in the Annex. Franchisee certifies that Franchisee has no knowledge or information that, if generally known, would result in Franchisee, Franchisee's owners, principals, employees, or anyone associated with Franchisee being listed in the Annex. Franchisee agrees to comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with the Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee certifies, represents, and warrants that none of Franchisee's property or interests are subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and Franchisee's owners or principals are not otherwise in violation of any of the Anti-Terrorism Laws. Franchisee is solely responsible for ascertaining what actions must be taken by Franchisee to comply with all such Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that Franchisee's indemnification responsibilities as provided in Section 13.2 of this Agreement pertain to Franchisee's obligations under this Section 22.7. Any misrepresentation by Franchisee under this Section or any violation of the Anti-Terrorism Laws by Franchisee, Franchisee's owners, principals or employees will constitute grounds for immediate termination, upon notice, of this Agreement and any other agreement Franchisee has entered into with Franchisor or one of Franchisor's affiliates in accordance with the terms of Section 15.2.19 of this Agreement. As used herein, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies lists and any other requirements of any Governmental Authority (including without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

22.8 **Attorneys' Fees.** If Franchisee is in breach or default of any monetary or non-monetary material obligation under this Agreement or any related agreement between Franchisee and Franchisor and/or Franchisor's affiliates, and Franchisor engages an attorney to enforce Franchisor's rights (whether or not formal judicial proceedings are initiated), Franchisee must pay all reasonable attorneys' fees, court costs and litigation expenses Franchisor incurs. If Franchisee institutes any legal action to interpret or enforce the terms of this Agreement, and Franchisee's claim in such action is denied or the action is dismissed, Franchisor is entitled to recover Franchisor's reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending against same, and to have such an amount awarded as part of the judgment in the proceeding.

23 ACKNOWLEDGMENTS

23.1 **Independent Investigation.** Franchisee acknowledges that Franchisee has conducted an independent investigation of the Facility contemplated by this Agreement and recognizes that it involves business risks that make the success of the venture largely dependent upon Franchisee's business abilities and efforts. Franchisee acknowledges that Franchisee has been given the opportunity to clarify any provision of this Agreement that Franchisee may not have initially understood and that Franchisor has advised Franchisee to have this Agreement reviewed by an attorney.

23.2 **No Guarantee of Earnings.** Franchisee understands that Franchisor and any of Franchisor's representatives and/or agents with whom Franchisee has met have not made and are not making any guarantees as to the extent of Franchisee's success in Franchisee's Facility, and have not and are not in any way representing or promising any specific amounts of earnings or profits in association with Franchisee's Facility.

23.3 **Receipt of Franchise Disclosure Document.** Franchisee acknowledges that this Agreement and Franchisor's franchise disclosure document have been in Franchisee's possession for at least fourteen (14) calendar days before Franchisee signed this Agreement or paid any monies to Franchisor or an affiliate.

23.4 **No Personal Liability.** Franchisee agrees that fulfillment of any and all of Franchisor's obligations written in this Agreement or based on any oral communications that may be ruled to be binding in a court of law will be Franchisor's sole responsibility and none of Franchisor's agents, representatives, nor any individuals associated with Franchisor's franchise company will be personally liable to Franchisee for any reason. This is an important part of this Agreement. Franchisee agrees that nothing that Franchisee believes Franchisee has been told by Franchisor or Franchisor's representatives will be binding unless it is written in this Agreement. Do not sign this Agreement if there is any question concerning its contents or any representations made.

[signatures appear on the following page]

**IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND
HEREBY, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED
EFFECTIVE THE DATE FIRST SET FORTH ABOVE.**

FRANCHISEE

(Individual, Partnership or Corporation Name)

By: _____

Print Name: _____

Title: _____

FRANCHISOR

THE SWING BAYS FRANCHISE, LLC

By: _____

Print Name: _____

Title: _____

EXHIBIT A
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

APPROVED LOCATION AND DESIGNATED TERRITORY

1. APPROVED LOCATION

Pursuant to Section 1.3 of the Franchise Agreement, the Facility shall be located at the following Approved Location:

2. DESIGNATED TERRITORY:

Pursuant to Section 1.2 of the Franchise Agreement, the Designated Territory shall be a radius of ____ mile(s) from the Approved Location.

IF THE APPROVED LOCATION IS NOT KNOWN AT THE TIME THE FRANCHISE AGREEMENT IS EXECUTED, THE PARTIES HEREBY AGREE TO SIGN A REVISED ATTACHMENT A WHEN THE LOCATION HAS BEEN SELECTED AND APPROVED BY FRANCHISOR.

ACCEPTED:

FRANCHISEE

(Individual, Partnership or Corporation Name)

By: _____

Print Name: _____

Title: _____

FRANCHISOR

THE SWING BAYS FRANCHISE, LLC

By: _____

Print Name: _____

Title: _____

EXHIBIT B
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

PERSONAL GUARANTY AND GUARANTY OF SPOUSES

NOTE: IF FRANCHISEE IS A CORPORATION, EACH OF FRANCHISEE'S SHAREHOLDERS AND THEIR SPOUSES MUST EXECUTE THE FOLLOWING UNDERTAKING. IF FRANCHISEE IS A PARTNERSHIP, EACH OF FRANCHISEE'S GENERAL PARTNERS AND THEIR SPOUSES MUST EXECUTE THE FOLLOWING UNDERTAKING. IF FRANCHISEE IS A LIMITED LIABILITY COMPANY, EACH OF FRANCHISEE'S MEMBERS AND MANAGERS AND THEIR SPOUSES MUST EXECUTE THE FOLLOWING UNDERTAKING.

ARTICLE I
PERSONAL GUARANTY

The undersigned persons (individually and collectively "you") hereby represent The Swing Bays Franchise, LLC ("Franchisor") that you are all of the shareholders of, or all of the general partners of, or all of the members and managers of, or the spouse of any such shareholder, general partner, or member or manager of _____ ("Franchisee"), as the case may be.

In consideration of the grant by Franchisor to the Franchisee as herein provided, each of you hereby agree, in consideration of benefits received and to be received by each of you, jointly and severally, and for yourselves, your heirs, legal representatives and assigns, to be firmly bound by all of the terms, provisions and conditions of the foregoing Franchise Agreement, and any other agreement between Franchisee and Franchisor and/or its affiliates, and do hereby unconditionally guarantee the full and timely performance by Franchisee of each and every obligation of Franchisee under the aforesaid Franchise Agreement or other agreement between Franchisor and Franchisee, including, without limitation: (i) any indebtedness of Franchisee arising under or by virtue of the aforesaid Franchise Agreement; (ii) the prohibition of any change in the percentage of Franchisee owned, directly or indirectly, by any person indemnification; (iii) those obligations related to confidentiality, non-disclosure and indemnification; (iv) the in-term and post-term covenants against competition, as well as all other restrictive covenants set forth in the Franchise Agreement; and (v) the dispute resolution provisions set forth in the Franchise Agreement.

ARTICLE II
GENERAL TERMS

1. **Acknowledgment.** You acknowledge that this Guaranty is not a franchise agreement and does not confer upon you any rights to use the Franchisor's proprietary marks or its system.
2. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third-party beneficiaries of this Guaranty and the mediation and other dispute resolution provisions set forth in the Franchise Agreement and incorporated herein, each having

authority to specifically enforce the right to mediate and litigate claims asserted against such person(s) by you.

3. JURY TRIAL AND CLASS ACTION WAIVER. THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER SHALL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS GUARANTY OR THE FRANCHISE AGREEMENT. FURTHERMORE, THE PARTIES AGREE THAT ALL PROCEEDINGS ARISING OUT OF OR RELATED TO THIS GUARANTY OR THE FRANCHISE AGREEMENT WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN FRANCHISEE, FRANCHISEE'S GUARANTORS AND FRANCHISOR OR ITS AFFILIATES/OFFICERS/EMPLOYEES MAY NOT BE CONSOLIDATED WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER THIRD PARTY.

4. No Waiver. Franchisor's failure to insist upon strict compliance with any provision of this Guaranty shall not be a waiver of Franchisor's right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by Franchisor respecting any breach or default shall not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Guaranty shall be cumulative. Franchisor's election to exercise any remedy available by law or contract shall not be deemed a waiver or preclude exercise of any other remedy.

5. No Personal Liability. You agree that fulfillment of any and all of Franchisor's obligations written in the Franchise Agreement or this Guaranty, or based on any oral communications which may be ruled to be binding in a court of law, shall be Franchisor's sole responsibility and none of Franchisor's owners, officers, agents, representatives, nor any individuals associated with Franchisor shall be personally liable to you for any reason. This is an important part of this Guaranty. You agree that nothing that you believe you have been told by us or our representatives shall be binding unless it is written in the Franchise Agreement or this Guaranty.

6. Severability. The parties agree that if any provisions of this Guaranty may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision shall have the meaning, which renders it valid and enforceable. The language of all provisions of this Guaranty shall be construed according to fair meaning and not strictly construed against either party. The provisions of this Guaranty are severable, and this Guaranty shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable. If any material provision of this Guaranty shall be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Guaranty.

7. Construction of Language. Any term defined in the Franchise Agreement which is not defined in this Guaranty will be ascribed the meaning given to it in the Franchise Agreement. The language of this Guaranty will be construed according to its fair meaning, and not strictly for or against either party. All words in this Guaranty 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 must be joint and several. Headings are for reference purposes and do not control interpretation.

8. **Successors.** References to “Franchisor” or “the undersigned,” or “you” include the respective parties’ heirs, successors, assigns or transferees.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Guaranty on the date stated on the first page hereof.

PERSONAL GUARANTORS

[Insert Name of Guarantor]

[Insert Name of Spouse]

[Insert Name of Guarantor]

[Insert Name of Spouse]

EXHIBIT C
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

COLLATERAL ASSIGNMENT OF LEASE

FOR VALUE RECEIVED, the undersigned (“Assignor”) hereby assigns and transfers to The Swing Bays Franchise, LLC, a Colorado a limited liability company, with its principal place of business address at 11183 South Parker Road, Unit A, Parker, CO 80134 (“Assignee”), all of Assignor’s right, title and interest as tenant in, to and under that certain lease (the “Lease”) respecting the premises commonly known as _____. This Assignment is for collateral purposes only and except as specified herein, Assignee has no liability or obligation of any kind whatsoever arising from or in connection with this Assignment or the Lease unless Assignee takes possession of the premises demised by the Lease pursuant to the terms hereof and assumes the obligations of Assignor thereunder.

Assignor represents and warrants to Assignee that it has full power and authority to so assign the Lease and its interest therein and that Assignor has not previously assigned or transferred, and is not obligated to assign or transfer, any of its interest in the Lease or the premises demised thereby.

Upon a default by Assignor under the Lease or under the franchise agreement for a Facility between Assignee and Assignor (the “Franchise Agreement”), or in the event of a default by Assignor under any document or instrument securing the Franchise Agreement, or upon expiration or termination of the Franchise Agreement or this Assignment, Assignee has the right and is hereby empowered to take possession of the premises demised by the Lease, expel Assignor therefrom, and, in such event, Assignor will have no further right, title or interest in the Lease. Assignor hereby authorizes the Lessor to disclose to Assignee, upon its request, sales and other information furnished to the Lessor by Assignor.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Throughout the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it must elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days prior to the last day that the option must be exercised, unless Assignee otherwise agrees in writing.

If Assignee does not otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as aforesaid, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and instead of Assignor for the purpose of effecting such extension or renewal.

ASSIGNOR

(Individual, Partnership or Corporation Name)

By: _____

Print Name: _____

Title: _____

CONSENT AND AGREEMENT OF LESSOR

The undersigned Lessor under the aforescribed Lease hereby:

- (a) Agrees to notify Assignee in writing of and upon the failure of Assignor to cure any default by Assignor under the Lease;
- (b) Agrees that Assignee has the right, but must not be obligated, to cure any default by Assignor under the Lease within 30 days (or such longer period of time as reasonably necessary to cure the default, so long as Assignee commences the cure within 30 days and thereafter diligently pursues the cure to completion) after delivery by Lessor of notice thereof in accordance with paragraph (a) above;
- (c) Consents to the foregoing Collateral Assignment of Lease and agrees that if Assignee takes possession of the premises demised by the Lease and confirms to Lessor the assumption of the Lease by Assignee as tenant thereunder, Lessor must recognize Assignee as tenant under the Lease, provided that Assignee cures within the time period set forth above the defaults, if any, of Assignor under the Lease;
- (d) Agrees that Assignee may further assign the Lease to a person, firm or corporation who must agree to assume the tenant's obligations under the Lease and who is reasonably acceptable to Lessor, and upon such assignment Assignee will have no further liability or obligation under the Lease as assignee, tenant or otherwise.

LESSOR:

By: _____

Print Name: _____

Date: _____

EXHIBIT D
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

CONDITIONAL ASSIGNMENT
OF FRANCHISEE'S TELEPHONE NUMBERS AND LISTINGS

1. _____ ("Assignor"), in exchange for valuable consideration provided by The Swing Bays Franchise, LLC ("Assignee"), receipt of which is hereby acknowledged, hereby conditionally assigns to Assignee all telephone numbers, facsimile numbers, domain names, as well as any listings associated therewith, utilized by Assignor in the operation of its The Swing Bays Franchised Business at Assignor's above-referenced address (the "Assigned Property"). The Assigned Property includes the following:

Telephone Number(s): _____
Domain Name(s) or other Internet Listings (as permitted by Franchisor under the Franchise Agreement): _____

2. The conditional agreement will become effective automatically upon termination or expiration of Assignor's franchise. Upon the occurrence of that condition, Assignor must do all things required by the telephone company and/or domain name registrar to assure the effectiveness of the assignment of Assigned Property as if the Assignee had been originally issued such Assigned Property and the usage thereof.

3. Assignor agrees to pay the telephone company and/or domain name registrar, on or before the effective date of assignment, all amounts owed for the use of the Assigned Property up to the date this Assignment becomes effective. Assignor further agrees to indemnify Assignee for any sums Assignee must pay the telephone company to effectuate this Assignment, and agrees to fully cooperate with the telephone company and/or domain name registrar, as well as the Assignee, in effectuating this assignment.

ASSIGNOR:

By: _____ Date: _____

ASSIGNEE:

THE SWING BAYS FRANCHISE, LLC

By: _____ Date: _____

EXHIBIT E
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT
*(for any General Manager of Franchisee, as well as any officer/director of the
Franchisee that does not execute Personal Guaranty)*

In consideration of my being a _____ of _____
("Franchisee"), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby acknowledge and agree that: Franchisee has acquired the right from The Swing Bays Franchise, LLC (the "Company") to establish and operate a The Swing Bays Franchised Business Facility (the "Facility" or "Franchised Business") and the right to use in the operation of the Facility the Company's trade names, trademarks and service marks (the "Proprietary Marks") and the Company's unique and distinctive format and system relating to the establishment and operation of Facilities (the "System"), as they may be changed, improved and further developed from time to time in the Company's sole discretion, only at the following authorized and approved location: _____ (the "Facility Premises").

1. The Company possesses certain proprietary and confidential information relating to the operation of the System, which includes certain trade secrets, Proprietary Methods and golf training techniques, copyrighted materials, methods and other techniques and know-how (the "Confidential Information").

2. Any and all information, knowledge, know-how, and techniques that the Company specifically designates as confidential will be deemed to be Confidential Information for purposes of this Agreement.

3. As an employee of Franchisee, the Company and Franchisee will disclose the Confidential Information to me in furnishing to me the training program and subsequent ongoing training, The Swing Bays operations manual (the "Manual") and other general assistance during the term of this Agreement.

4. I will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Franchised Business during the term hereof, and the use or duplication of the Confidential Information for any use outside the System would constitute an unfair method of competition.

5. The Confidential Information is proprietary, involves trade secrets of the Company, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I will hold in strict confidence all Confidential Information and all other information designated by the Company as confidential. Unless the Company otherwise agrees in writing, I will disclose and/or use the Confidential Information only in connection with my duties as an employee of the Franchisee, and will continue not to disclose any such information even after I cease to be in that position unless I can demonstrate that such information has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

6. Except as otherwise approved in writing by the Company, I will not, while in my position with Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons,

partnership, corporation or limited liability company, own, maintain, engage in, be employed by, or have any interest in any other business that operates or licenses any other Facilities, except for a The Swing Bays Facility operating under the System and Proprietary Marks.

7. I agree that each of the foregoing covenants will 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 an unappealed final decision to which the Company is a party, I 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 Agreement.

8. I understand and acknowledge that the Company will have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

9. The Company is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause the Company and the Franchisee irreparable harm; therefore, I acknowledge and agree that Franchisee and/or the Company may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay Franchisee and the Company all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisee and the Company, any claim I have against Franchisee or the Company is a separate matter and does not entitle me to violate, or justify any violation of this Agreement.

10. This Agreement will be construed under the laws of the State of Colorado (without reference to its conflict of laws principals). The only way this Agreement can be changed is in writing signed by both the Franchisee and me.

Signature: _____

Name: _____

ACKNOWLEDGED BY FRANCHISEE

By: _____

Name: _____

Title: _____

EXHIBIT F
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

ELECTRONIC FUNDS WITHDRAWAL AUTHORIZATION

Bank Name : _____

ABA# : _____

Acct. No. : _____

Acct. Name : _____

Effective as of the date of the signature below, _____ (“Franchisee”) hereby authorizes The Swing Bays Franchise, LLC (“Franchisor”) or its designee to withdraw funds from the above-referenced bank account, electronically or otherwise, to make the following payments to Franchisor under the Franchise Agreement for the franchise located at _____: (1) all Royalty payments, (2) all Fund Contributions, and (3) all other fees or other amounts owed to Franchisor or its affiliates. Such withdrawals will occur on a weekly basis, or on such other schedule as Franchisor will specify in writing. Franchisor is also authorized to deposit funds into the above-referenced account, electronically or otherwise. This authorization will remain in full force and effect until terminated in writing by Franchisor. Franchisee will provide Franchisor, in conjunction with this authorization, a voided check from the above- referenced account.

AGREED:

FRANCHISEE

By: _____

Print Name: _____

Title: _____

EXHIBIT G
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

RELEASES

EXHIBIT G-1

SITE ACCEPTANCE AND RELEASE

Date: _____

[Franchisee]

[Address Line 1]

[Address Line 2]

Re: Site Selection under Franchise Agreement between The Swing Bays Franchise, LLC (“Franchisor”, “us”) and _____ (“Franchisee”, “you”) dated _____ (“Franchise Agreement”)

Dear _____,

You hereby acknowledge that Franchisor and/or its designees have provided you with written site selection criteria. You agree to assume all cost, liability, expense and responsibility for locating, obtaining and developing a site for the franchised business to be opened under the Franchise Agreement (the “Franchised Business”), and for constructing and equipping the Franchised Business. You acknowledge that the location, selection, procurement and development of a site for the Franchised Business is your responsibility; and that our acceptance of your request and any location assistance you request does not constitute a representation, promise, warranty or guarantee, express or implied, by us that the Franchised Business operated at that site will be profitable or otherwise successful. You further acknowledge and agree that your choice of a specific site for the operation of the Franchised Business is based on your own independent investigation of the suitability of the site. You understand the costs to purchase, equip and make the site operational may exceed the estimate provided for in our Franchise Disclosure Document.

By executing this Release, you, individually, and on behalf of your heirs, legal representatives, successors and assigns, hereby forever release and discharge us and our officers, directors, employees, agents and servants, including our subsidiary and affiliated companies, their respective officers, directors, employees, as well as Fransmart, LLC and its representatives, agents and employees, from any and all claims relating to or arising under any agreements between the parties executed prior to the date of this Release, including, but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, related to the selection of the site identified on the following page and/or claims arising under the franchise, securities, or antitrust laws of the United States, or of any state thereof.

FRANCHISEE:

By: _____

Print Name: _____

Date: _____

ACCEPTANCE PAGE

PROPOSED THE SWING BAYS LOCATION:
[INSERT ADDRESS]

ACCEPTED BY FRANCHISOR:

By: _____

Print Name: _____

Date: _____

EXHIBIT G-2

INITIAL TRAINING ACKNOWLEDGMENT AND RELEASE

Date: _____

[Franchisee]
[Address Line 1]
[Address Line 2]

Re: Initial Training under Franchise Agreement between The Swing Bays Franchise, LLC (“Franchisor”, “us”) and _____ (“Franchisee”, “you”) dated _____ (“Franchise Agreement”)

Dear _____,

You hereby acknowledge that Franchisor and its designees, have provided to you and your staff the initial training, required pursuant to the Franchise Agreement for The Swing Bays facility to be located at _____ (the “Franchised Business”).

Franchisee further represents and warrants that Franchisor has satisfactorily completed all of its pre-opening obligations pursuant to Article 6 of the Franchise Agreement, including providing its initial training program. Franchisee acknowledges and affirms that Franchisee has been trained to the point that Franchisee is fully satisfied that Franchisee and Franchisee’s team are fully capable of opening and operating the Franchised Business.

By executing this Release, you, individually, and on behalf of your heirs, legal representatives, successors and assigns, hereby forever release and discharge us and our officers, directors, employees, agents and servants, including our subsidiary and affiliated companies, their respective officers, directors, employees, as well as Fransmart, LLC and its representatives, agents and employees, from any and all claims relating to or arising under any agreements between the parties executed prior to the date of this Release, including, but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, related to the initial training program provided under the Franchise Agreement and/or claims arising under the franchise, securities, or antitrust laws of the United States, or of any state thereof.

FRANCHISEE:

By: _____

Print Name: _____

Date: _____

EXHIBIT G-3

REQUEST FOR FINANCIAL INFORMATION AND RELEASE

Date: _____

[Franchisee]
[Address Line 1]
[Address Line 2]

Re: Initial Training under Franchise Agreement between The Swing Bays Franchise, LLC (“Franchisor”, “us”) and _____ (“Franchisee”, “you”) dated _____ (“Franchise Agreement”)

Dear _____,

You hereby acknowledge that you have requested that Franchisor and/or its designees provide you with certain financial information that you have requested regarding the performance of The Swing Bays locations, and before Franchisor and/or its designees agree to release any such financial information to Franchisee, Franchisee represents and warrants the following:

1. Franchisee acknowledges and understands the Federal Trade Commission prohibits franchisors from supplying prospecting franchisees any financial information whatsoever unless that information is already disclosed in the Franchise Disclosure Document (“FDD”) and Franchisee acknowledges that no individual, including but not limited to any agent or representative of Franchisor and/or Fransmart, LLC has ever provided any financial information whatsoever prior to Franchisee becoming a franchisee of Franchisor, other than financial information disclosed in Franchisor’s FDD.
2. Franchisee acknowledges that any financial information Franchisor and/or its designees may share with Franchisee pursuant to this request is not and will not be considered a representation or warranty of performance for Franchisee’s location. Franchisee agrees that it shall not seek any legal action whatsoever based upon any financial information Franchisee receives from Franchisor and/or its designees pursuant to this request.

By executing this Release, you, individually, and on behalf of your heirs, legal representatives, successors and assigns, hereby forever release and discharge us and our officers, directors, employees, agents and servants, including our subsidiary and affiliated companies, their respective officers, directors, employees, as well as Fransmart, LLC and its representatives, agents and employees, from any and all claims relating to or arising under any agreements between the parties executed prior to the date of this Release, including, but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, related to the financial information provided by Franchisor and/or its designees and/or claims arising under the franchise, securities, or antitrust laws of the United States, or of any state thereof.

FRANCHISEE:

By: _____

Print Name: _____

Date: _____

EXHIBIT H
to
THE SWING BAYS FRANCHISE, LLC
FRANCHISE AGREEMENT

FRANCHISEE QUESTIONNAIRE

DO NOT SIGN THIS QUESTIONNAIRE IF YOU RESIDE IN, OR INTEND TO OPERATE THE FRANCHISED BUSINESS IN, ANY OF THE FOLLOWING STATES: CA, HI, IL, IN, MD, MI, MN, NY, ND, RI, SD, VA, WA, WI (EACH A REGULATED STATE).

As you know, The Swing Bays Franchise, LLC (the “Franchisor”) and you are preparing to enter into a franchise agreement (the “Franchise Agreement”) for the establishment and operation of a franchised business (the “Franchised Business”). The purpose of this Questionnaire is to determine whether any statements or promises were made to you by employees or authorized representatives of the Franchisor, or by employees or salespersons that have not been authorized, or that were not disclosed in the Disclosure Document or that may be untrue, inaccurate or misleading. The Franchisor, through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights, fully understands and comprehends that the purchase of a franchise is a business decision, complete with its associated risks, and (b) that you are not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by Franchisor.

In the event that you are intending to purchase an existing Franchised Business from an existing franchisee, you may have received information from the transferring franchisee, who is not an employee or representative of Franchisor. The questions below do not apply to any communications that you had with the transferring franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. I received and personally reviewed the Franchise Agreement, each addendum, and/or related agreement provided to me.

Initials

2. I had sufficient time to review all of the information contained in the Franchise Agreement, each addendum, and/or related agreement provided, and I understand all of the information contained in the Franchise Agreement.

Initials

3. I signed a receipt for the Disclosure Document indicating the date I received it.

Initials

Date Received _____ (mm/dd/yyyy)

4. I had sufficient time to review all of the information contained in the Franchise Agreement, each addendum, and/or related agreement provided, and I understand all of the information contained in the Franchise Agreement.

Initials

5. I had the opportunity to discuss the benefits and risks of establishing and operating a Franchised Business with an attorney, accountant, or other professional advisor. If you wish to have more time to do so, please do not initial below.

Initials

6. I understand that the success or failure of my Franchised Business will depend in large part upon my decisions, skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, location, lease terms, my management capabilities and other economic and business factors.

Initials

7. No employee or other person speaking on behalf of the Franchisor made any statement or promise concerning the actual or potential revenues, profits, opening costs or operating costs of any particular business operated by the Franchisor or its franchisees (or of any group of such businesses), that is contrary to or different from the information contained in the Disclosure Document.

Initials

8. No employee of or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money I may earn in operating the Franchised Business that is contrary to or different from the information contained in the Disclosure Document.

Initials

9. No employee or other person speaking on behalf of the Franchisor made any statement or promise concerning the total amount of revenue the Franchised Business will generate, that is contrary to or different from the information contained in the Disclosure Document.

Initials

10. No employee or other person speaking on behalf of the Franchisor made any statement or promise regarding the costs I may incur in opening and/or operating the Franchised Business that is contrary to or different from the information contained in the Disclosure Document.

Initials

11. No employee or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that I should or might expect to achieve from operating a Franchised Business.

Initials

12. No employee or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to me that is contrary to, or different from, the information contained in the Disclosure Document or Franchise Agreement.

Initials

13. I have not entered into any binding agreement with the Franchisor concerning the purchase of this franchise prior to today.

Initials

14. I have not paid any money to the Franchisor concerning the purchase of this franchise prior to today.

Initials

15. Have you spoken to any other franchisee(s) of this system before deciding to purchase this franchise? If so, who?

16. I agree to sign an Initial Training Acknowledgment and Release following my completion of Franchisor's initial training program affirming that the training I receive from the Franchisor, and/or its designees, meets the requirements outlined in the Franchise Agreement.

Initials

Do not sign the Initial Training Acknowledgment and Release unless and until you feel the Franchisor has fulfilled its obligations.

17. I agree to sign a Request for Financial Information and Release in the event that I request to receive additional financial information from the Franchisor after I have entered into the Franchise Agreement prior to any such disclosure and I agree to fully release and hold harmless the Franchisor and its agents and representatives and agree that I will not seek any legal action whatsoever based upon any financial information I receive from Franchisor pursuant to this request.

Initials

18. I fully acknowledge that I have made the decision to enter into this Franchise Agreement and have not relied on the Franchisor, its employees or representatives. I have relied solely on my team of professionals in making my decision to purchase this franchise and accept all risks and responsibilities involved in opening and operating a Franchised Business.

Initials

If you did not initial any of the foregoing statements indicating that you are unable to acknowledge the information contained therein, please provide a full explanation directly below in the space provided. If you are able to acknowledge all of the foregoing statements, please enter "not applicable" below.

I signed the Franchise Agreement and addendum (if any) on _____(mm/dd/yyyy) and acknowledge that the Franchise Agreement is not effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them. By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. In addition, by signing this Questionnaire, you also acknowledge that:

A. You recognize and understand that business risks, which exist in connection with the purchase of any business, make the success or failure of the franchise subject to many variables, including among other things, your skills and abilities, the hours worked by you, competition, interest rates, the economy, inflation, franchise location, operation costs, lease terms and costs and market conditions. You hereby acknowledge your awareness of and willingness to undertake these business risks.

B. You agree and state that the decision to enter into this business risk is in no manner predicated upon any oral representation, assurances, warranties, guarantees or promises made by Franchisor or any of its officers, employees, agents and brokers as to the likelihood of success of the franchise. Except as contained in the Disclosure Document, you acknowledge that you have not received any information from the Franchisor or any of its officers, employees or agents concerning actual, projected or forecasted franchise sales, profits or earnings. You understand that this is a new business venture, and Franchisor makes no assurances as to your success. You acknowledge and agree that the Franchisor has not provided you with any information not already set forth in the Franchise Disclosure Document, and you acknowledge that you have not received any information not already set forth in the Franchise Disclosure Document. If you believe that you have received any information concerning actual, average, projected or forecasted franchise sales, profits or earnings other than those contained in the Disclosure Document, please describe those in the space provided below or write "None" below.

C. You further acknowledge that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the "Anti-Terrorism Measures"). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly involved in terrorism. For that reason, you hereby certify that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, is:

- (i) a person or entity listed in the Annex to the Executive Order;
- (ii) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (iii) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (iv) owned or controlled by terrorists or sponsors of terrorism.

You further covenant that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Acknowledged on _____.

Sign here if you are taking the franchise as an
INDIVIDUAL.

Signature

Name

Sign here if you are taking the franchise as a
CORPORATION, LIMITED LIABILITY
COMPANY OR PARTNERSHIP

Print Name of Legal Entity

By: _____
Name: _____
Title _____

**EXHIBIT E
TO THE
FRANCHISE DISCLOSURE DOCUMENT
DEVELOPMENT AGREEMENT**

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) entered into on _____ (the “Effective Date”), between: (i) The Swing Bays Franchise, LLC, a Colorado limited liability company with a principal business address at 11183 South Parker Road, Unit A, Parker, CO 80134 (“Franchisor”); and (ii) _____ (“Developer”).

Background

A. Franchisor and/or its principals or affiliate have developed a system for operating a training facility offering professional indoor golf lessons, full-swing and short game practice areas, technologies for indoor golf simulation and entertainment, TPI training programs, club fitting, equipment repair, and fitness instruction, as well as social event hosting, membership options, and merchandise (each, a “Facility”).

B. Developer desires to enter into an agreement with Franchisor to obtain the right to operate multiple Facilities using the system developed by Franchisor, as it may be modified from time to time (the “System”).

C. Franchisor and its franchisees use various trade names, trademarks and service marks including, without limitation, certain trade dress in connection with the System (the “Proprietary Marks”). The rights to all such Proprietary Marks as are now, or shall hereafter be, designated as part of the System shall be owned exclusively by Franchisor or its affiliate and be used for the benefit of Franchisor, its affiliate and Franchisor’s franchisees to identify to the public the source of the products and services marketed thereunder.

D. Franchisor grants qualified third parties the right to develop a certain number of Facilities within a defined geographical area (the “Development Area”) in accordance with the terms of this Agreement that must be strictly adhered to, with each Facility within the Development Area being opened and operating utilizing the Proprietary Marks and System pursuant to the terms and conditions set forth in Franchisor’s then-current form of franchise agreement (each, a “Franchise Agreement”).

E. Developer recognizes the benefits from receiving the right to operate a Facility and desires to become a multi-unit developer and operator, subject to the terms of this Agreement.

F. Developer has applied for the right to open and operate a certain number of Facilities within the Development Area as set forth in this Agreement, and Franchisor has approved such application in reliance on Developer’s representations made therein.

G. Developer hereby acknowledges that adherence to the terms of this Agreement, including Franchisor’s operations manual and other System standards and specifications, are essential to the operation of all Facilities and Franchisor’s System as a whole.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Agreement

1. Development Area.

1.1 Subject to the terms and conditions set forth herein, Franchisor grants Developer the right, and Developer undertakes the obligation, to develop and establish _____ (__) Facilities within a certain development area, as outlined in the data sheet attached hereto as Exhibit “A” (the “Data Sheet”), provided

Developer opens and commences operations of such Facilities in accordance with the development schedule provided in the Data Sheet (“Development Schedule”).

1.2 Within sixty (60) days following the execution of this Agreement, Developer shall select _____ (___) trade areas in which it will locate its Facilities and will designate such trade areas to Franchisor, in writing (collectively, the “Chosen Trade Areas”). The Chosen Trade Areas shall be located within the following site selection area: _____.

1.3 Subject to Franchisor’s written approval, Developer shall then select a site in each Chosen Trade Area and a radius will be drawn around such approved location which will then become the “Protected Territory” under that respective Franchise Agreement. The collective “Chosen Trade Areas” and “Protected Territories” will be the “Development Area” under this Agreement; provided that once a site has been approved by Franchisor, the Protected Territory around such site shall replace the applicable Chosen Trade Area and such Chosen Trade Area shall no longer have any further territorial protection.

1.4 Except as otherwise outlined above, during the term of this Agreement and except as provided herein, Franchisor will not open or operate, or license any third party the right to open or operate, any Facility within the Development Area.

2. **Development Fee.** In consideration of the rights granted under this Agreement, Developer agrees to pay to Franchisor a development fee in the amount specified in the Data Sheet attached to this Agreement, the terms of which are hereby incorporated (the “Development Fee”). The Development Fee is calculated as forty thousand dollars (\$40,000) multiplied by the total number of Facilities to be developed pursuant to this Agreement.

3. **Payment Terms.** The Development Fee is due and owing according to the following general guidelines:

(a) If the Development Agreement obligates Developer to open a total of between five (5) and nine (9) Facilities, Developer must pay Franchisor the following amount at the time Developer signs this Agreement: (i) one hundred twenty thousand dollars (\$120,000) to cover the entire portion of the Development Fee applicable to the first three (3) Facilities; and (ii) twenty thousand dollars (\$20,000) for the remaining Facilities that Developer is required to open under this Agreement, to cover one-half of the Development Fee applicable to such Facilities. Developer must pay Franchisor the remaining twenty thousand dollars (\$20,000) due for the additional Facilities on the earlier of: (i) the date a lease or purchase agreement for a particular Facility is executed by Developer; or (ii) ninety (90) days prior to the scheduled opening date for said Facility.

(b) If the Development Agreement obligates Developer to open a total of ten (10) or more Facilities, Developer must pay Franchisor the following amount at the time Developer signs this Agreement: (i) two hundred thousand dollars (\$200,000) to cover the entire portion of the Development Fee applicable to the first five (5) Facilities; and (ii) twenty thousand dollars (\$20,000) for the remaining Facilities that Developer is required to open under this Agreement, to cover one-half of the Development Fee applicable to such Facilities. Developer must pay Franchisor the remaining twenty thousand dollars (\$20,000) due for the additional Facilities on the earlier of: (i) the date a lease or purchase agreement for a particular Facility is executed by Developer; or (ii) ninety (90) days prior to the scheduled opening date for said Facility.

Each payment of the Development Fee is deemed fully earned and non-refundable upon payment.

4. **Initial Franchise Agreement.** Contemporaneous with the execution of this Agreement, Developer or Developer’s affiliate must enter into Franchisor’s current form of Franchise Agreement for the

first Facility that Developer is required to open within the Development Area, and Developer's principals/owners must each execute the form of personal guaranty attached to the foregoing Franchise Agreement, as well as any additional Franchise Agreements described in Section 5 of this Agreement.

5. **Additional Franchise Agreements.** Developer agrees and acknowledges that it must: (i) enter into Franchisor's then-current form of Franchise Agreement for each additional Facility that Developer is required to open under this Agreement; and (ii) enter into such Franchise Agreements at such times as are required for Developer to timely meet, and strictly adhere to, its development obligations set forth in Section 6 of this Agreement. Developer also agrees that Franchisor is only required to provide its initial training program at no fee with respect to the first Facility developed under this Agreement. Franchisor may either require Developer to complete such initial training for additional Facilities developed under this Agreement, or Developer may request such training, but Franchisor reserves the right to charge its then-current training fee.

6. **Development Obligations.** Developer must ensure that it: (i) opens and commences operations of each Facility pursuant to the deadlines in the mandatory development schedule (the "Development Schedule") set forth in the Data Sheet until Developer has opened the number of Facilities it is required to open pursuant to the Development Schedule; and (ii) has the minimum cumulative number of Facilities open and operating at the expiration of each period in the Development Schedule. The parties agree and acknowledge that time is of the essence with respect to the foregoing development obligations, and that Developer's failure to comply with this Section is grounds for termination of this Agreement (and any future development rights granted hereunder) following notice and a thirty-day cure period, as set forth herein in Section 7.2.

7. **Term and Termination.**

7.1 This Agreement will commence as of the date it is fully-executed and, unless earlier terminated by Franchisor, will expire on the last day of the calendar month that the final Facility is required to be opened and operating under the Development Schedule. Upon expiration or termination of this Agreement for any reason, Developer will not have any rights within the Development Area other than the territorial rights granted in connection with any Facilities that Developer has opened and commenced operating as of the date this Agreement is terminated or expires (pursuant to the respective Franchise Agreement(s) that Developer entered into for such Franchised Business(es)).

7.2 Franchisor will have the right, at its option, to terminate this Agreement and all rights granted to Developer hereunder, without affording Developer any opportunity to cure such default, effective upon written notice to Developer, upon the occurrence of any of the following events: (i) if Developer ceases to actively engage in development activities in the Development Area or otherwise abandons its development business for three (3) consecutive months, or any shorter period that indicates an intent by Developer to discontinue development of the Facilities within the Development Area; (ii) if Developer becomes insolvent or is adjudicated bankrupt, or if any action is taken by Developer, or by others against the Developer, under any insolvency, bankruptcy or reorganization act, or if Developer makes an assignment for the benefit of creditors or a receiver is appointed by the Developer; (iii) if Developer fails to meet its development obligations set forth in Section 6 of this Agreement or in the Development Schedule, and fails to cure such default within thirty (30) days of receiving notice thereof; or (iv) if any Franchise Agreement that is entered into in order to fulfill Developer's development obligations under this Agreement is terminated or subject to termination by Franchisor, pursuant to the terms of that Franchise Agreement.

8. **Reservation of Rights.** Except as provided in Section 1 of this Agreement, the parties agree and acknowledge that the rights granted in this Agreement are non-exclusive and that Franchisor and its affiliates reserve all other rights not expressly granted to Developer herein.

9. **Sale or Assignment.** Developer's rights under this Agreement are personal and Developer may not sell, transfer, or assign any right granted herein without Franchisor's prior written consent, which may be withheld in its sole discretion and which Franchisor may condition upon the payment of a transfer fee equal to fifty percent (50%) of Franchisor's then-current initial franchise fee. Notwithstanding, if Developer is an individual or a partnership, Developer has the right to assign its rights under this Agreement to a corporation or limited liability company that is wholly owned by Developer according to the same terms and conditions as provided in Developer's initial Franchise Agreement. Franchisor has the right to assign this Agreement in whole or in part in its sole discretion.

10. **Acknowledgment.** Developer acknowledges that this Agreement is not a Franchise Agreement and does not confer upon Developer any rights to use the Franchisor's Proprietary Marks or System.

11. **Notices.** All notices, requests and reports to be given under this Agreement are to be in writing, and delivered by either hand, overnight mail via recognized courier such as UPS or FedEx, or certified mail, return receipt requested, prepaid, to the addresses set forth above (which may be changed by written notice).

12. **Choice of Law.** This Agreement will be governed by the laws of the State of Colorado (without reference to its conflict of laws principals).

13. **Internal Dispute Resolution.** Developer must first bring any claim or dispute between Developer and Franchisor to Franchisor's President and/or Chief Executive Officer, after providing Franchisor with notice of and a reasonable opportunity to cure any alleged breach hereunder. Developer must exhaust this internal dispute resolution procedure before bringing a dispute before a third party. This agreement to first attempt resolution of disputes internally will survive termination or expiration of this Agreement.

14. **Mediation.** At Franchisor's option, all claims or disputes between Franchisor and Developer or its affiliates arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisor and Developer or its affiliates, or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 13 above, must be submitted first to non-binding mediation, in or near Parker, Colorado, under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Developer must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty days following receipt of such notice within which to notify Developer as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Developer may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. This agreement to mediate will survive any termination or expiration of this Agreement. The parties agree that there will be no class action mediation.

15. **Injunctive Relief.** Nothing contained in this Agreement herein will prevent Franchisor from applying to or obtaining from any court having jurisdiction, without bond, a writ of attachment, temporary injunction, preliminary injunction and/or other emergency relief available to safeguard and protect Franchisor's interests prior to the filing of any mediation proceeding or pending the trial or handing down of a decision or award pursuant to any mediation proceeding conducted hereunder.

16. **Jurisdiction and Venue.** With respect to any proceeding not subject to mediation, the parties expressly agree to the jurisdiction and venue of any state court of general jurisdiction in Douglas County, Colorado and the jurisdiction and venue of the United States District Court presiding over Parker, Colorado. Developer acknowledges that this Agreement has been entered into in the State of Colorado, and that Developer is to receive valuable and continuing services emanating from Franchisor's headquarters in Parker, Colorado. In recognition of such services and their origin, Developer hereby irrevocably consents to the personal jurisdiction of the state and federal courts of Colorado set forth above. In the event that Franchisor moves its headquarters from Parker, Colorado, all dispute resolution provisions in this Agreement shall be amended to substitute the city and/or state, as applicable in which Franchisor's then-current headquarters are located.

17. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of this Agreement and the dispute resolution procedures contained herein, each having authority to specifically enforce the right to mediate claims asserted against such person(s) by Developer.

18. **JURY TRIAL WAIVER.** WITH RESPECT TO ANY PROCEEDING NOT SUBJECT TO MEDIATION, THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER WILL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR DEVELOPER'S PURCHASE FROM FRANCHISOR OF THE DEVELOPMENT RIGHTS DESCRIBED HEREIN.

19. **Waiver of Punitive Damages.** Developer waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) which Developer may have against Franchisor arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agree that in the event of a dispute, Developer's recovery will be limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions will continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

20. **Attorneys' Fees.** If either party institutes any judicial or mediation proceeding to enforce any monetary or nonmonetary obligation or interpret the terms of this Agreement and Franchisor prevails in the action or proceeding, Developer will be liable to Franchisor for all costs, including reasonable attorneys' fees, incurred in connection with such proceeding.

21. **Nonwaiver.** Franchisor's failure to insist upon strict compliance with any provision of this Agreement will not be a waiver of Franchisor's right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by Franchisor respecting any breach or default will not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Agreement will be cumulative. Franchisor's election to exercise any remedy available by law or contract will not be deemed a waiver or preclude exercise of any other remedy.

22. **Severability.** The parties agree that if any provisions of this Agreement may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision will have the meaning, which renders it valid and enforceable. The provisions of this Agreement are severable, and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially

valid and enforceable provisions will be enforced to the extent that they are valid and enforceable. If any material provision of this Agreement will be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Agreement.

23. **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 Developer, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation.

24. **Successors.** References to “Franchisor” or “Developer” include the respective parties’ successors, assigns or transferees, subject to the limitations of Section 9 of this Agreement.

25. **Additional Documentation.** Developer must from time to time, subsequent to the date first set forth above, at Franchisor’s request and without further consideration, execute and deliver such other documentation or agreements and take such other action as Franchisor may reasonably require in order to effectuate the transactions contemplated in this Agreement. In the event that Developer fails to comply with the provisions of this Section, Developer hereby appoints Franchisor as Developer’s attorney-in-fact to execute any and all documents on Developer’s behalf, as reasonably necessary to effectuate the transactions contemplated herein.

26. **No Right to Offset.** Developer may not withhold all or any part of any payment to Franchisor or any of its affiliates on the grounds of the alleged nonperformance of Franchisor or any of its affiliates or as an offset against any amount Franchisor or any of its affiliates may owe or allegedly owe Developer under this Agreement or any related agreements.

27. **State Law Applies.** If any provision of this Agreement, including but not limited to its provisions for transfer, renewal, termination, notice of termination, or cure rights, is inconsistent with any valid law or regulation of the state in which Developer’s initial Facility is located, then the valid law or regulation of such state will supersede any provision of this Agreement that is less favorable to Developer.

28. **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning Developer’s development rights within the Development Area; no promises, inducements or representations (other than those in the Franchise Disclosure Document) not contained in this Agreement have been made, nor will any be of any force or effect, or binding on the parties. Modifications of this Agreement must be in writing and signed by both parties. Franchisor reserves the right to change Franchisor’s policies, procedures, standards, specifications or manuals at Franchisor’s discretion. In the event of a conflict between this Agreement and any Franchise Agreement(s), the terms, conditions and intent of this Agreement will control. Nothing in this Agreement, or any related agreement, is intended to disclaim any of the representations Franchisor made to Developer in the Franchise Disclosure Document that Franchisor provided to Developer.

IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED EFFECTIVE THE DATE FIRST SET FORTH ABOVE.

DEVELOPER

FRANCHISOR

(Individual, Partnership or Corporation Name)

THE SWING BAYS FRANCHISE, LLC

By: _____

By: _____
Dustin Miller, CEO

EXHIBIT A to DEVELOPMENT AGREEMENT

DATA SHEET

1. **Development Area.** The Development Area, as referred to in the Development Agreement, is described below and will initially consist of the following Chosen Trade Areas:

TBD

2. **Development Fee.** The Development Fee under the Development Agreement is \$_____.

3. **Development Schedule.** The Development Schedule referred to in the Development Agreement is as follows:

| Store Number | Store Open and Operating by ("Development Deadline") | \$ _____ Development Fee paid on _____ ("Effective Date") | Amount to be paid by the Multi-Unit Operator to the Franchisor | Amount Due Date |
|--------------|---|---|--|--|
| One (1) | | \$40,000 | | |
| Two (2) | | \$40,000 | | |
| Three (3) | | \$40,000 | | |
| Four (4) | | \$20,000 | \$20,000 | Earlier of 90 days prior to opening or date of lease signing |
| Five (5) | | \$20,000 | \$20,000 | |

APPROVED AND AGREED TO BY:

DEVELOPER

(Individual, Partnership or Corporation Name)

FRANCHISOR

THE SWING BAYS FRANCHISE, LLC

By: _____

By: _____
Dustin Miller, CEO

EXHIBIT F
TO
FRANCHISE DISCLOSURE DOCUMENT
SAMPLE TERMINATION AND RELEASE AGREEMENT

SAMPLE TERMINATION AND RELEASE AGREEMENT (UPON TRANSFER)

This Termination of Franchise Agreement and Release (the “Agreement”) is made this _____ day of _____, 20____, by and between The Swing Bays Franchise, LLC, a Colorado limited liability company (“Franchisor”) and _____, a _____ with an address at _____ (“Transferor”).

BACKGROUND

- A. On _____, Transferor entered into a franchise agreement (the “Franchise Agreement”) with Franchisor for the right to operate a Franchised Business at _____.
- B. Transferor has satisfied all conditions of transfer as specified in the Franchise Agreement and now desires to sell the business to _____, who has been approved by Franchisor as an authorized transferee.
- C. In order to complete Transferor’s sale of the business, Transferor now desires to terminate the Franchise Agreement and all rights and obligations between the parties relating to the Franchise Agreement, and Franchisor desires to accept such termination, pursuant to the terms of this Agreement.

AGREEMENT

In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the parties agree as follows:

1. Subject to the terms and conditions contained in this Agreement, the Franchise Agreement and all rights and obligations between Franchisor and Transferor arising from or related to the Franchise Agreement are terminated, effective as of the date of this Agreement.
2. Notwithstanding anything in this Agreement to the contrary, the parties agree that Transferor will remain bound by all of the post-term covenants and obligations contained in the Franchise Agreement including, without limitation, those relating to Confidential Information and Non-competition.
3. Transferor represents and warrants that all of Transferor’s monetary obligations to Franchisor and its subsidiaries and affiliates have been satisfied in full as of the date of this Agreement.
4. Transferor, for itself and all persons and entities claiming by, through or under it, releases, acquits and forever discharges Franchisor and its present and former officers, employees, shareholders, directors, agents, servants, representatives, affiliates, successors and assigns (the “Franchisor Releasees”) from all obligations, claims, debts, demands, covenants, contracts, promises, agreements, liabilities, costs, attorneys’ fees, actions or causes of action whatsoever, whether known or unknown, which it, by itself, on behalf of, or in conjunction with any other person, persons, partnership or corporation, have, had or claim to have against the Franchisor Releasees arising out of or related to the offer, sale and operation of the business, and the parties’ rights or obligations under the Franchise Agreement.
5. Excluding the indemnification obligations set forth in the Franchise Agreement, and Transferor’s obligations as set forth in paragraph 2 of this Agreement, Franchisor, for itself and all persons and entities claiming by, through or under it, releases, acquits and forever discharges Transferor and Transferor’s employees, agents, servants, representatives, affiliates, successors and assigns (the “Transferor Releasees”) from all obligations, claims, debts, demands, covenants, contracts, promises, agreements, liabilities, costs, attorneys’ fees, actions or causes of action whatsoever, whether known or unknown, which it, by itself, on behalf of, or in conjunction with any other

person, persons, partnership or corporation, have, had or claim to have against the Transferor Releasees arising out of or related to the offer, sale and operation of the business, and the parties' rights or obligations under the Franchise Agreement.

6. This Agreement constitutes the entire integrated agreement of the parties with respect to the subject matter contained in this Agreement, and may not be subject to any modification without the written consent of the parties.

7. This Agreement will be construed under the laws of Colorado, which laws will control in the event of any conflict of law.

8. This Agreement will be for the benefit of and binding upon the parties and their respective representatives, successors and assigns.

9. Each party acknowledges that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted by each party, after having a reasonable opportunity to retain and confer with counsel. This Agreement is entered into after a full investigation by the parties, and the parties are not relying upon any statements or representations not embodied in this Agreement.

10. In the event that Franchisor retains the services of legal counsel to enforce the terms of this Agreement, it will be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in enforcing the terms of this Agreement.

11. Transferor agrees that Transferor has and had a relationship with Franchisor at its offices in Parker, Colorado and that, with the exception of Franchisor's right to seek injunctive relief in any appropriate jurisdiction, any action by or against Franchisor arising out of or relating to this Agreement will be commenced and concluded in Parker, Colorado pursuant to the dispute resolution provisions of the Franchise Agreement.

12. This Agreement may be executed in multiple counterparts by the various parties and the failure to have the signatures of all parties on a single Agreement will not affect the validity or enforceability of any part of this Agreement against any party who executes any counterpart of the Agreement. Executed facsimile copies of this Agreement will be deemed to be effective as original signatures.

I HAVE READ THE ABOVE AGREEMENT AND UNDERSTAND ITS TERMS. I WOULD NOT SIGN THIS AGREEMENT IF I DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.

THE SWING BAYS FRANCHISE, LLC

By: _____

TRANSFEROR

By: _____

**EXHIBIT G
TO THE
FRANCHISE DISCLOSURE DOCUMENT

STATE-SPECIFIC ADDENDA**

CALIFORNIA ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT

To the extent the California Franchise Investment Law, Cal. Corp. Code §§ 31000-31516 or the California Franchise Relations Act, Cal. Bus. & Prof. Code §§20000-20043 applies, the terms of this Addendum apply.

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AND COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT WWW.DFPI.CA.GOV.

Item 3, Additional Disclosure:

Neither we nor any person described in Item 2 of the Disclosure Document 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.

Item 17, Additional Disclosures:

The franchise agreement requires the franchisee to execute a general release of claims upon renewal or transfer of the franchise agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order there under is void. Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 – 20043).

The franchise agreement and development agreement require application of the laws of Colorado. This provision may not be enforceable under California law.

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer or non-renewal of a franchise. If the franchise agreement or development agreement contain a provision that is inconsistent with the law, the law will control.

The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. §101 et seq.)

The franchise agreement requires non-binding mediation and litigation. The mediation and litigation will occur in Colorado. Prospective franchisees are encouraged to consult with private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5 and Code of Civil Procedure Section 1281) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

The franchise agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

The franchisor will not enforce in California the prohibition on franchisee employing or soliciting for employment any current or former employee of franchisor or its affiliates (also known as a no-poach/non-solicitation provision) in Sections 17.1.2 and 17.2.2.3 of the Franchise Agreement.

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.

CALIFORNIA ADDENDUM TO THE FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

ALL FRANCHISE AGREEMENTS AND DEVELOPMENT AGREEMENTS EXECUTED IN AND OPERATIVE WITHIN THE STATE OF CALIFORNIA ARE HEREBY AMENDED AS FOLLOWS:

To the extent the California Franchise Investment Law, Cal. Corp. Code §§ 31000-31516 or the California Franchise Relations Act, Cal. Bus. & Prof. Code §§20000-20043 applies, the terms of this Addendum apply.

1. Notwithstanding anything to the contrary contained in the Franchise Agreement or Development Agreement, to the extent that the Franchise Agreement or Development Agreement contain provisions that are inconsistent with the following, such provisions are hereby amended:

The franchise agreement requires the franchisee to execute a general release of claims upon renewal or transfer of the franchise agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order there under is void. Section 31512 voids a waiver of franchisee's rights under the Franchise Investment Law (California Corporations Code Section 20010 voids a waiver of franchisee's rights under the Franchise Relations Act (Business and Professions Code Sections 20000 – 20043).

The Franchise Agreement and Development Agreement require application of the laws of Colorado. This provision may not be enforceable under California law.

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer, or non-renewal of a franchise. The Federal Bankruptcy Code also provides rights to franchisee concerning termination of the Franchise Agreement upon certain bankruptcy-related events. If the Franchise Agreement is inconsistent with the law, the law will control.

The Franchise Agreement requires non-binding mediation and litigation. The mediation and litigation will occur in Colorado. Prospective franchisees are encouraged to consult with private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5 and Code of Civil Procedure Section 1281) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

2. Any capitalized terms that are not defined in this Addendum shall have the meaning given them in the Franchise Agreement.

3. Except as expressly modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect.

4. 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.

5. The following language is hereby removed from Section 7.1: Neither Franchisor's review of the Lease nor Franchisor's acceptance of the site Franchisee has selected constitutes a representation or guarantee that Franchisee will succeed at the selected Approved Location or an expression of Franchisor's opinion regarding the terms of the Lease".

6. Sections 17.1.2, 17.2.2.3, 19.1, 19.2, 19.3, 23.1, 23.2, 23.3, and 23.4 are hereby removed from the Franchise Agreement.

7. Exhibit A to the Franchise Agreement (Site Selection Addendum) is hereby amended to remove Section 8.8.

8. Section 28 of the Development Agreement is hereby amended by removing the following language: no promises, inducements or representations (other than those in the Franchise Disclosure Document) not contained in this Agreement have been made, nor will any be of any force or effect, or binding on the parties.

9. 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.

This Addendum is being entered into in connection with the Franchise Agreement and Development Agreement. In the event of any conflict between this Addendum and the Franchise Agreement/Development Agreement, the terms and conditions of this Addendum shall apply.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date Franchisor signs below.

FRANCHISOR

By: _____

Name: _____

Date Signed: _____

FRANCHISEE

By: _____

Name: _____

Date Signed: _____

**ADDENDUM TO THE SWING BAYS FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
DISCLOSURES REQUIRED BY MARYLAND**

NOTICE TO PROSPECTIVE FRANCHISEES IN THE STATE OF MARYLAND

1. Item 17 of the disclosure document shall be amended as follows:

The general release required as a condition of the sale of an existing franchise by a franchisee shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law. Despite the provisions of Item 17, the franchise may sue in the State of Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

The Franchise Agreement and Development Agreement provide for termination upon your insolvency. This provision might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 100 et seq.), but we will enforce it to the extent enforceable.

All disputes are subject to non-binding mediation and litigation in Douglas County, except that, subject to your non-binding mediation and litigation obligations, you may bring an action in Maryland.

Colorado law applies, except for federal law, and claims arising under the Maryland Franchise Registration and Disclosure Law.

Any claims arising under the Maryland Franchise and Disclosure Law must be brought within three 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.

MARYLAND ADDENDUM TO THE FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT

ALL FRANCHISE AND DEVELOPMENT AGREEMENTS EXECUTED IN AND OPERATIVE WITHIN THE STATE OF MARYLAND ARE HEREBY AMENDED AS FOLLOWS:

1. Notwithstanding anything to the contrary contained in the Franchise Agreement, the general release required as a condition of renewal, transfer, or resale of an existing franchise by a franchisee shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

2. Despite the provisions of Article 18, Franchisee may sue in the State of Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

3. All representations requiring prospective franchisees to assent to a release, estoppel, or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

4. Termination upon Franchisee's insolvency might not be enforceable under federal bankruptcy law (11 U.S.C. Sections 101 et seq.), but Franchisor intends to enforce the provision to the extent enforceable.

5. Despite the provisions of Article 18, Maryland law will apply to claims arising under the Maryland Franchise Registration and Disclosure Law.

6. Any claims arising under the Maryland Franchise and Disclosure Law must be brought within three years after the grant of the franchise.

7. Exhibit G of the Franchise Agreement is hereby amended to provide that all representations requiring prospective franchisees to assent to a release, estoppel, or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

8. 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.

FRANCHISOR

By: _____

Name: _____

Date Signed: _____

FRANCHISEE

By: _____

Name: _____

Date Signed: _____

THE SWING BAYS FRANCHISE, LLC
NEW YORK ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT NOTICE TO
PROSPECTIVE FRANCHISEES IN THE STATE OF 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 SOURCES OF 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 THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005. 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 added at the end of 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 at the end of Item 4:

Neither The Swing Bays Franchise, LLC, nor its affiliates, officers, or directors during the 10 year period immediately preceding the date of the offering prospectus have (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within one (1) year after the officer or general partner of the franchisor held this position in the company or partnership.

4. The following are revisions to Item 5 of the disclosure document:

The Initial Franchise Fee is to be used for the purpose of sales development, training, and marketing costs as set forth in Item 7.

5. The following is added to the end of the “Summary” section 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 Section 687.4 and 687.5 be satisfied.

6. 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.

7. The following is added to the end of the “Summary” section of Item 17(j), titled “Assignment of contract by franchisor”

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.

8. The following is added to the end of the “Summary” section 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.

9. 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.

**THE SWING BAYS FRANCHISE, LLC
NEW YORK ADDENDUM TO THE FRANCHISE AGREEMENT
AND AREA DEVELOPMENT AGREEMENT**

ALL FRANCHISE AGREEMENTS AND DEVELOPMENT AGREEMENTS EXECUTED IN AND OPERATIVE WITHIN THE STATE OF NEW YORK ARE HEREBY AMENDED AS FOLLOWS:

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

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.

The undersigned hereby acknowledge and agree that this addendum is hereby made part of and incorporated into the foregoing Franchise Agreement.

FRANCHISOR

By: _____

Name: _____

Date Signed: _____

FRANCHISEE

By: _____

Name: _____

Date Signed: _____

VIRGINIA ADDENDUM TO THE FRANCHISE DISCLOSURE DOCUMENT

In recognition of the requirements of the Virginia Retail Franchising Act § 13.1-564, the Disclosure Document for The Swing Bays Franchise, LLC in connection with the offer and sale of franchises for use in the Commonwealth of Virginia shall be amended to include the following:

Item 17 h. of the Disclosure Document, Section 15 of the Franchise Agreement, and Section 7 of the Development Agreement shall be amended by the addition of the following paragraph at the conclusion of the Item and Section:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise agreement 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.

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.

**EXHIBIT H
TO THE
FRANCHISE DISCLOSURE DOCUMENT**

LIST OF CURRENT FRANCHISEES (ACTIVE AND SIGNED) AS OF JUNE 30, 2024:

None.

**LIST OF FORMER FRANCHISEES THAT EXITED OUR FRANCHISE SYSTEM IN OUR PAST
FISCAL YEAR:**

None.

**EXHIBIT I
TO THE
FRANCHISE DISCLOSURE DOCUMENT
STATE EFFECTIVE DATES**

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 |
|--------------|----------------|
| California | Not Registered |
| Hawaii | Not Registered |
| Illinois | Not Registered |
| Indiana | Not Registered |
| Maryland | Not Registered |
| Michigan | Not Registered |
| Minnesota | Not Registered |
| New York | Not Registered |
| North Dakota | Not Registered |
| Rhode Island | Not Registered |
| South Dakota | Not Registered |
| Virginia | Not Registered |
| Washington | Not Registered |
| Wisconsin | Not Registered |

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.

**EXHIBIT J
TO THE
FRANCHISE DISCLOSURE DOCUMENT**

RECEIPT PAGES

RECEIPTS (YOUR 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 The Swing Bays Franchise, LLC offers you a franchise it must provide this disclosure document to you within 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreements or payment of any consideration that relates the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement, or the payment of any consideration, whichever occurs first.

If The Swing Bays Franchise, 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 Commission, Washington, D.C. 20580 and the state administrator identified in Exhibit A of this Franchise Disclosure Document.

A list of franchisor's agents registered to receive service of process is listed as Exhibit A to this Franchise Disclosure Document. I have received a Franchise Disclosure Document with an Issuance Date of August 12, 2024. This Franchise Disclosure Document included the following Exhibits:

- Exhibit A – List of State Administrators and List of Agents for Service of Process
- Exhibit B – Table of Contents of Operations Manual
- Exhibit C – Financial Statements
- Exhibit D – Franchise Agreement
- Exhibit E – Development Agreement
- Exhibit F – Sample Termination and Release Agreement
- Exhibit G – State Specific Addenda
- Exhibit H – List of Franchisees/List of Franchisees Who Have Left the System
- Exhibit I – State Effective Dates
- Exhibit J – Receipts

The names, principal business addresses and telephone numbers of the primary franchise sellers offering the franchise are:

| | |
|--|--|
| Dustin Miller 11183 South Parker Road, Unit A, Parker, CO 80134 (319) 431-1631 | Brenna Miller 11183 South Parker Road, Unit A, Parker, CO 80134 (319) 431-1631 |
|--|--|

DATE: _____

Print Name: _____

Print Address: _____

City, State, Zip Code: _____

(Signature of recipient)

KEEP FOR YOUR RECORDS

RECEIPTS (OUR 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 The Swing Bays Franchise, LLC offers you a franchise it must provide this disclosure document to you within 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreements or payment of any consideration that relates the franchise relationship.

If The Swing Bays Franchise, 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 Commission, Washington, D.C. 20580 and the state administrator identified in Exhibit A of this Franchise Disclosure Document.

A list of franchisor's agents registered to receive service of process is listed as Exhibit A to this Franchise Disclosure Document. I have received a Franchise Disclosure Document with an Issuance Date of August 12, 2024. This Franchise Disclosure Document included the following Exhibits:

- Exhibit A – List of State Administrators and List of Agents for Service of Process
- Exhibit B – Table of Contents of Operations Manual
- Exhibit C – Financial Statements
- Exhibit D – Franchise Agreement
- Exhibit E – Development Agreement
- Exhibit F – Sample Termination and Release Agreement
- Exhibit G – State Specific Addenda
- Exhibit H – List of Franchisees/List of Franchisees Who Have Left the System
- Exhibit I – State Effective Dates
- Exhibit J – Receipts

The names, principal business addresses and telephone numbers of the primary franchise sellers offering the franchise are:

| | |
|--|--|
| Dustin Miller 11183 South Parker Road, Unit A, Parker, CO 80134 (319) 431-1631 | Brenna Miller 11183 South Parker Road, Unit A, Parker, CO 80134 (319) 431-1631 |
|--|--|

DATE: _____

Print Name: _____

Print Address: _____

City, State, Zip Code: _____

(Signature of recipient)

Return the signed receipt electronically or by signing, dating and mailing it to The Swing Bay Franchise LLC, 11183 South Parker Road, Unit A, Parker, CO 80134.