

JUL 03 2019

RECEIVED  
Los Angeles

FRANCHISE DISCLOSURE DOCUMENT



THE WORLD'S MOST DISTINGUISHED BUILDER OF SWIMMING POOLS AND EVERYTHING  
OUTDOORS™

California Pools Franchise Inc.  
a Wyoming corporation  
100 Commons Road, Suite 7  
Dripping Springs, Texas 78620  
Telephone: (800) 282-7665  
[www.californiapools.com](http://www.californiapools.com)  
[franchise@californiapools.com](mailto:franchise@californiapools.com)

As a franchisee, you will operate a swimming pool and spa construction and remodeling business under the name California Pools®. The California Pools brand was founded in 1952. With more than seven decades of experience, including the construction of more than 70,000 pools, the California Pools brand has earned a reputation as one of the largest and most-respected pool and spa builders. California Pools has won local, national and international design and construction awards and is featured on HGTV/DIY Network's Pool Kings television program.

The total investment necessary to begin operations of a California Pools franchise ranges from \$8,000 to \$90,000. This includes \$0, \$10,000 or \$20,000 that must be paid to the franchisor or affiliate, depending on whether the franchisee is converting from our affiliate's license or agency agreement, from another brand or is new to the swimming pool and spa construction and remodeling business.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive 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 Steve Terry at 100 Commons Road, Suite 7, Dripping Springs, Texas 78620, [franchise@californiapools.com](mailto:franchise@californiapools.com) and (800) 282-7665.

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

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

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

Issuance Date: ~~May 31, 2018~~, as amended of this Franchise Disclosure Document: July 31, 20182019

CALIFORNIA POOLS' 2019 FDD  
WEST282283231.5

## STATE COVER PAGE

### **California Pools Franchise IncCALIFORNIA POOLS FRANCHISE INC.**

Your state may have a franchise law that requires a franchisor to register or file with the state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed, if there is one in your state, for information about the franchisor, or about franchising in your state.

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR CP BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Please consider the following RISK FACTORS before you buy this franchise:

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY ARBITRATION IN AUSTIN, TEXAS. OUT-OF-STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN TEXAS THAN IN YOUR OWN STATE.
2. THE FRANCHISE AGREEMENT STATES THAT TEXAS LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

Effective Date: See the next page for state effective dates

## STATE EFFECTIVE DATES

The following states require that ~~this disclosure document~~ 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 Franchise Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

|                   |                                                    |
|-------------------|----------------------------------------------------|
| <u>California</u> | _____                                              |
| California:       | <del>October 31, 2018</del>                        |
| Hawaii:           | <del>September 7, 2018</del>                       |
| Michigan:         | <del>June 11, 2018</del>                           |
| New York:         | _____                                              |
| Virginia:         | <del>September 7, 2018</del>                       |
| Wisconsin:        | <del>June 21, 2018, as amended July 20, 2018</del> |

In all other states without franchise registration laws, the effective date of this Franchise Disclosure Document is the ~~Issuance Date~~ issuance date of July 1, 2019.

**ADDENDUM TO THE CALIFORNIA POOLS FRANCHISE INC.  
FRANCHISE DISCLOSURE DOCUMENT  
FOR THE STATE OF MICHIGAN**

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

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

- (a) A prohibition on the right of a franchisee to join an association of franchisees.
- (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a Franchise Agreement, from settling any and all claims.
- (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the Franchise Agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- (d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) The term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- (e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- (f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- (g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(i) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

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

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

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

Any questions regarding this Notice shall be directed to the Department of Attorney General, Consumer Protection Division, P.O. Box 30213, Lansing, Michigan 48909 and (517) 373-1140.

**Note:** Despite paragraph (f) above, we intend, and we and you agree, to enforce fully the arbitration provision of our Franchise Agreement. We believe that paragraph (f) is unconstitutional and cannot preclude us from enforcing these arbitration provisions.

## TABLE OF CONTENTS

| <u>ITEM</u>                                                                                       | <u>PAGE</u> |
|---------------------------------------------------------------------------------------------------|-------------|
| <u>ITEM 1 THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES</u> .....                  | 1           |
| <u>ITEM 2 BUSINESS EXPERIENCE</u> .....                                                           | 2           |
| <u>ITEM 3 LITIGATION</u> .....                                                                    | 3           |
| <u>ITEM 4 BANKRUPTCY</u> .....                                                                    | 34          |
| <u>ITEM 5 INITIAL FEES</u> .....                                                                  | 4           |
| <u>ITEM 6 OTHER FEES</u> .....                                                                    | 4           |
| <u>ITEM 7 ESTIMATED INITIAL INVESTMENT</u> .....                                                  | 7           |
| <u>ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES</u> .....                              | 89          |
| <u>ITEM 9 FRANCHISEE'S OBLIGATIONS</u> .....                                                      | 1011        |
| <u>ITEM 10 FINANCING</u> .....                                                                    | 1213        |
| <u>ITEM 11 FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING</u> .....          | 1213        |
| <u>ITEM 12 TERRITORY</u> .....                                                                    | 17          |
| <u>ITEM 13 TRADEMARKS</u> .....                                                                   | 18          |
| <u>ITEM 14 PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION</u> .....                              | 19          |
| <u>ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISED BUSINESS</u> ..... | 20          |
| <u>ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL</u> .....                                 | 21          |
| <u>ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION</u> .....                        | 21          |
| <u>ITEM 18 PUBLIC FIGURES</u> .....                                                               | 25          |
| <u>ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS</u> .....                                        | 26          |
| <u>ITEM 20 OUTLETS AND FRANCHISEE INFORMATION</u> .....                                           | 26          |
| <u>ITEM 21 FINANCIAL STATEMENTS</u> .....                                                         | 30          |
| <u>ITEM 22 CONTRACTS</u> .....                                                                    | 30          |

Exhibits

- A. Compliance Questionnaire
- B. Franchise Agreement
- C. Financial Statements
- D. Operations Manual Table of Contents
- E. State Franchise Administrators and Agents for Service of Process
- F. State Addenda
- G. List of Franchisees

## ITEM 1

### THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES

#### The Franchisor

To simplify the language in this disclosure document, "California Pools", "we" or "us" means the franchisor, California Pools Franchise Inc. "You" means the person who buys the franchise. If the franchisee is a corporation, partnership, limited liability company or other entity, "you" may also refer to its owners.

California Pools is a Wyoming corporation that was incorporated on March 12, 2018. Our principal business address is 100 Commons Road, Suite 7, Dripping Springs, Texas 78620.

We do not have any parent companies or predecessors. Other than our affiliates disclosed below, we do not have any affiliates that are required to be disclosed in this Item. If you are a corporation, limited liability company or other entity, we may require some or all of your owners to sign the Guaranty and Assumption of Franchisee's Obligations attached to the Franchise Agreement (Exhibit D), which means that all provisions of the Franchise Agreement also will apply to those owners.

#### Our Affiliates

Our affiliate California Pools, Inc. ("CPI") is located at 901 Calle Amanecer, San Clemente, California 92673. CPI began operating the original California Pools business in Southern California in 1952. CPI has custom-built more than 70,000 pools since its inception, including the pool for the 1984 Olympic Games in Los Angeles, California. In the early 1980s, CPI began licensing and hiring agents to use the California Pools name and system in new locations. As of the Issuance Date of this disclosure document, CPI has licensees located in Arizona, Florida, Nevada, Texas, Utah, and Wisconsin, and it has agents located in California. CPI's licensees and agents operate the same business that we are offering in this disclosure document. We ~~intend to convert~~are in the process of converting CPI's licensees and agents to our franchise system. Other than as disclosed in this paragraph, CPI has not offered licenses, agency agreements or franchises in any line of business.

Our affiliate Wildcat Management South, Inc. (doing business in California as Wildcat Base) ("Wildcat") is located at 901 Calle Amanecer, San Clemente, California 92673. It began operating in 2018. Wildcat provides us with back-end office support and certain of its employees offer pool design services to our franchisees that you, at your discretion, may take advantage of. Wildcat has never offered franchises in any line of business.

Our affiliate Poologics, Incorporated is located at 12062 Hwy 290 West, Austin, Texas 78737. Poologics began operating in 2011. It provides franchisees with an Internet portal for accounting, business operations and customer relationship management functions. All franchisees are required to pay for and use Poologics in the operation of the franchised business. Poologics has never offered franchises in any line of business.



## **The System and Its Development**

We began offering CP Business franchises ~~as of the Issuance Date of this disclosure document in 2018~~. We franchise the right to operate a California Pools swimming pool and spa construction and remodeling business (a "CP Business"). Each Franchise Agreement gives you the right to operate a single CP Business at the location set forth in Exhibit A of the Franchise Agreement.

California Pools offers franchisees expert design solutions and innovative, proprietary construction techniques, access to the Poologics portal and use of our trademarks, service marks and brand image and goodwill (the "System"). The System is furnished to enable franchisees to provide their customers with the highest quality custom-built pools and spas available in the marketplace. We pride ourselves in superior customer service and satisfaction.

Other than franchising California Pools, we do not currently engage in other business activities. Although we have never offered franchises in any other line of business and have never operated a business of the type franchisees will operate, we do have plans to offer a separate franchise to operate a California Pools swimming pool and spa servicing business. Franchisees of the construction and remodeling business and the servicing business will use the same name and may be located in the same area but the services they offer to customers will not overlap or compete.

You may operate the CP Business from an office, home, or a vehicle and it can be operated by as few as one person.

## **Competition**

The general market for the services offered by the CP Business is well developed and competitive and it can be seasonal in places that experience more extreme weather patterns. Your competitors include other pool contractors, general contractors, design builders, architects and other contracting and design professionals, consultants and engineers.

~~You may operate the Business from an office, home, or a vehicle and it can be operated by as few as one person.~~

## **Industry-Specific Regulations**

In addition to federal and state laws and regulations that apply to businesses generally, you may be subject to federal and state laws and regulations relating to contracting and construction, real estate, land use and zoning and professional consulting services. Some states will require you to maintain an active contractor's license to operate the CP Business. You should consult with your own advisors and the government agencies in your state and location for information on how these laws apply to you. You will be responsible to comply with all applicable laws and regulations at your own expense.

Our agents for service of process are disclosed on Exhibit E of this disclosure document.

## **ITEM 2**

### **BUSINESS EXPERIENCE**

Ryder Steimle, Chief Executive Officer. Ryder has served as our Chief Executive Officer since

our inception in 2018. Since 2004, Ryder has been the Chief Executive Officer of California Pools, Inc. Ryder is located in San Clemente, California.

Steve Terry, President: Steve has served as our President since our inception in 2018. Since 2012, Steve has been President of California Pools, Inc. Steve is located in Dripping Springs, Texas.

### ITEM 3

#### LITIGATION

James Traut v. California Pools, Inc., et al., Superior Court of California, Orange County, Case No. 30-2018-00988959. On April 27, 2018, plaintiff James Traut ("Traut") filed a complaint against CPI and Gregario Diaz Jaimes dba Blue Vista Pools, that alleged breach of contract and fraud arising out of a pool remodel project at his residence. CPI filed a cross-complaint naming Seed Landcare, Inc., Blue Vista Pools, American Contractors Indemnity Company and Hudson Insurance. Traut later amended his complaint to name Blue Vista Pools and American Contractors, Indemnity Company. On January 25, 2019, in part to avoid further legal expenses, the parties, without admitting any liability, settled the case and executed a settlement agreement. Under the terms of the settlement, CPI (along with cross defendants Seed Landcare, Inc. and Hudson Insurance, who contributed \$2,500 each) made a \$57,000 settlement payment to Traut and the parties agreed to mutual releases and a dismissal of all claims. On April 23, 2019, the case was dismissed.

*Corey Flowe & Erica Flowe v. California Pools, Inc., et al., Superior Court of the State of California, County of Sacramento, Case No. 34-2017-00218236 (2017).* On August 29, 2017, Corey and Erica Flowe filed this lawsuit against CPI (our affiliate), Kimberlee Robinson and George Robinson (also known as George Pelbath), and certain un-named individuals alleging claims for compensation paid to an unlicensed contractor, fraud, and negligent misrepresentation relating to Kimberlee and George Robinson's partial construction of a pool at a property in Sacramento county, California. Kimberly and George Robinson are former-licensees or agents of our affiliate CPI. The plaintiffs seek \$29,310 in damages for compensation paid to an unlicensed contractor, \$10,000 in damages under California Code of Civil Procedure Section 1029.8, attorneys' fees and costs under California Code of Civil Procedure Section 1029.8 and an unspecified amount in punitive damages, exemplary damages, and other appropriate relief. CPI filed its Answer on January 19, 2018. This matter is currently pending and the defendants deny any liability in this matter and intend to defend the lawsuit vigorously.

*Mohammad Ishaq v. California Pools & Spas, Inc. and California Pools, Inc., Superior Court of the State of California, County of Orange, Case No. 30-2012-00717289-CU-CD-CJC (2014).* On April 16, 2014, Mr. Ishaq, a customer of California Pools & Spas, Inc. ("CPSI"), filed this lawsuit against CPSI, CPI (our affiliate), and certain un-named individuals. CPSI, previously owned by our current Chief Executive Officer, Ryder Steimle, underwent a dissolution in 2015 and is no longer in operation. Mr. Ishaq asserted claims for breach of warranty and negligence due to CPSI's and CPI's alleged failure to design, engineer, and construct certain support structures relating to the construction of an in-ground swimming pool, spa and recreational patio area. Mr. Ishaq sought an unspecified amount in general damages, special damages, prejudgment and postjudgment interest, attorneys' fees and costs, and other appropriate relief. The parties settled the case on October 21, 2016. Under the settlement agreement, Mr. Ishaq agreed to dismiss the lawsuit and release all claims against all CPI-related parties. In return, CPI paid Mr. Ishaq \$53,000. This case now is over.

Other than these two matters, no litigation is required to be disclosed in this Item.

#### ITEM 4

##### BANKRUPTCY

No bankruptcy information is required to be disclosed in this Item.

#### ITEM 5

##### INITIAL FEES

Franchisees who are new to the pool contracting business are required to pay us an initial franchise fee of \$20,000 when the ~~franchise agreement~~ Franchise Agreement is signed. Franchisees who are converting an existing pool contracting business to our System pay us an initial franchise fee of \$10,000 when the ~~franchise agreement~~ Franchise Agreement signed. There are no initial franchise fees for licensees and agents of CPI that are converting to our System. Other than as described in this Item, the initial franchise fee is uniform and in all circumstances it is nonrefundable.

#### ITEM 6

##### OTHER FEES

| Name of Fee                        | Amount                                                                                  | Due Date                | Remarks    |
|------------------------------------|-----------------------------------------------------------------------------------------|-------------------------|------------|
| Continuing Royalty                 | The greater of \$1,000 or 4% of <del>gross revenues</del> <u>Gross Revenues</u>         | Monthly                 | See Note 1 |
| System Marketing Fund Contribution | \$350                                                                                   | Monthly                 | See Note 2 |
| Local Marketing Expenditure        | 1% of <del>gross revenues</del> <u>Gross Revenues</u> , not to exceed \$25,000 annually | Annually                | See Note 3 |
| Poologics User Fee                 | \$199                                                                                   | Monthly                 | See Note 4 |
| Self-Insurance Reserve             | 1% of <del>gross revenues</del> <u>Gross Revenues</u>                                   | Monthly                 | See Note 5 |
| Additional On-Site Assistance      | \$250 per day plus travel, lodging and meals                                            | Upon receipt of invoice | See Note 6 |

| Name of Fee                          | Amount                                                                                            | Due Date                             | Remarks                                                                                                                    |
|--------------------------------------|---------------------------------------------------------------------------------------------------|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| Professional and Technology Services | \$250 - \$1,000                                                                                   | Monthly and as incurred              | See Note 7                                                                                                                 |
| Annual Convention                    | Travel, lodging and meals                                                                         | Annually                             | See Note 8                                                                                                                 |
| Annual Training (Optional)           | Travel, lodging and meals                                                                         | Annually                             | See Note 9                                                                                                                 |
| CP Points Program – Annual Vacation  | CP Points and any shortfall, as necessary, for travel, lodging and meals                          | Annually                             | See Note 10                                                                                                                |
| Late Fee                             | The greater of \$250 per month or 10% per annum (or the maximum amount permitted by law, if less) | When payment or report is overdue    | See Note 11                                                                                                                |
| Costs and Attorneys' Fees            | Will vary under circumstances                                                                     | As incurred                          | Payable if we are successful in any legal proceeding involving the enforcement of any provision of the Franchise Agreement |
| Indemnification                      | Payment of our losses and costs                                                                   | Upon occurrence of liability         | See Note 12                                                                                                                |
| Renewal Fee                          | 50% of the then-current initial franchise fee                                                     | Upon renewal of the term             | See Note 13                                                                                                                |
| Relocation Fee                       | \$2,500                                                                                           | Upon receipt of invoice              | Upon approval of a request to relocate your CP Business                                                                    |
| Transfer Fee                         | \$5,000 plus 50% of the then-current initial franchise fee                                        | Upon request for consent to transfer | See Note 14                                                                                                                |

| Name of Fee        | Amount                        | Due Date                | Remarks                                                                                                                                   |
|--------------------|-------------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Liquidated Damages | Will vary under circumstances | Upon receipt of invoice | Due only if you fail to operate your <u>CP Business</u> in compliance with the Franchise Agreement and the Franchise Agreement terminates |
| Audit Expenses     | Cost of audit                 | As incurred             | Due only if you understate <del>gross revenues</del> <u>Gross Revenues</u> figures by 3% or more.                                         |

All fees are imposed by and are payable to California Pools, unless otherwise noted. We may vary the frequency and method of payment. We may require you to pay fees via electronic withdrawal from your bank account. Except as otherwise provided, all fees are uniformly imposed and non-refundable, unless otherwise agreed upon between the parties.

**Notes:**

1. The Continuing Royalty is due monthly by Electronic Funds Transfer. We also require franchisees to provide us with a company credit card as security for payment of the Continuing Royalty. The Continuing Royalty is calculated as a percentage of the ~~gross revenues~~ Gross Revenues earned during the preceding month, or a flat fee, whichever is greater. Payments begin the first month after you open the CP Business. Payments are due on or before the 10th day of the month. The term "~~gross revenues~~" means all revenues you receive from the operation of the Business (including any payments received under insurance policies). Gross Revenues" means the entire gross receipts of every kind and nature from all products sold by the CP Business or services performed by you and excluding only amounts paid to any governmental tax authority. If you are converting to our System from a license or agency agreement with CPI, your Continuing Royalty will be the same as the royalty stated in the license or agency agreement, as applicable.
2. Contributions to the System Marketing Fund are due at the same time and in the same manner as the Continuing Royalty. We use the System Marketing Fund to promote the System. There is no guarantee that expenditures from the fund will benefit all franchisees equally. If you are converting to our System from a license or agency agreement with CPI, your contributions will be the same as the contributions stated in the license or agency agreement, as applicable.
3. You must spend this amount of ~~gross revenues~~ Gross Revenues each year on local marketing efforts in the territory. Amounts spent for this purpose may be spent at any time during each year of the term of the ~~franchise agreement~~ Franchise Agreement. We reserve the right to

audit these expenditures upon request.

4. Franchisees must pay this fee monthly for use of the Poologics Internet portal, which provides accounting, business operations and customer relationship management functions. This monthly fee is waived for licensees and agents of CPI who are converting to our System.
5. Franchisees must set-aside and reserve 1% of ~~gross revenues~~ Gross Revenues monthly until reaching a maximum balance of \$100,000 to self-insure against claims or losses that may not be covered by insurance policies or, for whatever reason, are small enough to warrant self-insuring against.
6. All initial training for one person is included in the initial franchisee fee. Training is offered in Austin, Texas. Additional training in the territory or for additional persons is available for \$250 per day plus any travel costs incurred.
7. Professional and technology services consist of consultations with professional services providers, and ongoing services for Internet and cellular when operating the CP Business.
8. We host an annual convention for all franchisees, typically in spring. This is mandatory for all franchisees. You will be responsible for all of your travel and related expenses. We do not currently charge a fee to attend the convention but reserve the right to charge a reasonable fee in the future to cover our expenses.
9. We host an annual training seminar, typically in fall. This is optional for all franchisees. You will be responsible for all of your travel and related expenses. We do not currently charge a fee to attend the training, but reserve the right to charge a reasonable fee in the future to cover our expenses.
10. We administer a rewards program for franchisees called the CP Points Program. Franchisees earn points in the program by generating sales and by making purchases from designated suppliers. Points accrue each calendar year and may be redeemed in the same calendar year in which they accrue toward the annual CP Points Program trip. To the extent you have not accrued enough points to cover the expense of the trip you may pay the difference to participate on the trip. The trip is to a different location each year. Details about the CP Points Program are contained in the Operations Manual.
11. If you do not pay any amount when due, you must pay a late charge of \$250 for each day the overdue amount remains unpaid plus interest at an annual rate of 10%, or the maximum rate permitted by law, whichever is less.
12. You must hold harmless, indemnify and defend us and pay for any claims and losses resulting from the operation of the CP Business.
13. You may renew your ~~franchise agreement~~ Franchise Agreement for two successive 5-year terms upon meeting certain conditions and payment of a renewal fee at the commencement of each 5-year term.
14. This fee is paid only if you wish to transfer your ownership interest in the franchise. There are other conditions to your ability to transfer.

# ITEM 7

## ESTIMATED INITIAL INVESTMENT

### Your Estimated Initial Investment

| TYPE                                                     | AMOUNT                    | METHOD OF PAYMENT | WHEN DUE                                                         | TO WHOM PAYMENT IS TO BE MADE |
|----------------------------------------------------------|---------------------------|-------------------|------------------------------------------------------------------|-------------------------------|
| INITIAL FRANCHISE FEE                                    | \$0 - \$20,000            | Lump Sum          | When you sign the franchise agreement <u>Franchise Agreement</u> | California Pools              |
| TRAVEL AND LIVING EXPENSES WHILE TRAINING                | \$0 - \$3,500             | As incurred       | As incurred                                                      | Vendors and suppliers         |
| LEASE, UTILITY & SECURITY DEPOSITS (Note 1)              | \$0 - \$7,500             | As incurred       | As incurred                                                      |                               |
| LEASEHOLD IMPROVEMENTS (Note 1)                          | \$0 - \$20,000            | As incurred       | As incurred                                                      |                               |
| CONTRACTOR'S LICENSE, BUSINESS LICENSE & BUSINESS PERMIT | \$0 - \$5,000             | As incurred       | As Incurred                                                      | City, State                   |
| COMPUTER EQUIPMENT                                       | \$0 - \$5,000             | As incurred       | As incurred                                                      | Suppliers                     |
| INSURANCE                                                | \$500 - \$2,500           | As incurred       | As incurred                                                      | Supplier                      |
| GRAND OPENING MARKETING                                  | \$0 - \$5,000             | As incurred       | Before opening                                                   | Suppliers                     |
| LEGAL AND PROFESSIONAL FEES                              | \$0 - \$6,500             | As incurred       | As incurred                                                      | Suppliers                     |
| ADDITIONAL FUNDS - 3 MONTHS AFTER OPENING (Note 2)       | \$7,500 - \$15,000        | As incurred       | As incurred                                                      | Employees and suppliers       |
| <b>TOTAL (Note 3)</b>                                    | <b>\$8,000 - \$90,000</b> |                   |                                                                  |                               |

#### Notes:

1. You do not need to lease office space for the CP Business but if you do, we have provided

this estimate based upon office space of approximately 1,000 square feet.

2. These miscellaneous start-up costs are our estimate of necessary working capital. You may have additional expenses in starting the CP Business.
3. All figures in Item 7 are estimates only. Actual costs will vary for each franchisee depending on a number of factors including the franchisee's management skill, experience and business acumen, the size and location of the territory, sales figures during the first three month period, the franchisee's ability to follow the System, and local market and economic conditions. We base our estimate of these expenses on CPI's experience operating a CP Business in Southern California. The low estimate assumes the franchisee is converting to our System from a license or agency agreement with our affiliate, CPI, and the high estimate assumes the franchise is new to swimming pool and spa contracting. We cannot guarantee that you will not have additional expenses starting the CP Business. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. The amount payable to us is nonrefundable. Whether other amounts are refundable will depend upon your agreement with the applicable supplier or other party.

We do not offer financing to franchisees for any of the above items.

## ITEM 8

### RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

You may only offer products and services to your clients that we approve. We reserve the right to require you to offer certain products and services in the CP Business to create uniformity system-wide.

All services offered in the CP Business must meet our specifications and standards, as described in our Operations Manual.

#### Proprietary Products

We and our affiliate have developed certain swimming pool and spa design specifications and processes for swimming pool and spa construction which incorporate trade secrets and information proprietary to us and to the System, as well as sources for products used in furtherance of such designs (the "Proprietary Products"). These Proprietary Products may include additional items if future products or services are developed and authorized for use in CP Businesses. You must purchase all Proprietary Products only from our designated suppliers and in no event may you alter or attempt to substitute any other product for any Proprietary Product. We reserve the right to designate suppliers, or for us to the sole supplier, of Proprietary Products.

#### Approved Suppliers for Other Products, Inventory or Supplies

From time to time we may include suppliers in the Operations Manual from which we may require you obtain certain products or services for use in the CP Business. In order to obtain our consent to a supplier that is not on our list of designated suppliers but that will supply more than 10% of the services or products that will be used to operate the CP Business, the following



conditions must be met:

1. You must send a written request to us and agree not to sell any products or services of the proposed supplier until we approve of the supplier in writing;
2. The supplier must demonstrate that it can supply an item or service meeting our specifications - this may mean providing us with samples;
3. The supplier must demonstrate its financial soundness, and the reliability of its product or service; and
4. If the item will bear a California Pools trademark, we may require the supplier to sign a license agreement which may include a royalty payment to us.

We generally will notify you of our approval or disapproval of a supplier within 30 days of our receipt of a completed request for approval. We may notify you that the approval of a supplier is revoked at any time if we determine the supplier is not consistent with the System or the standards we set. There is no fee for seeking our approval of a supplier that you desire to use for the CP Business.

~~We operate a website that uses our name and other trademarks and features our products and services. You are not permitted to develop or operate a website relating to the Business, or use our marks online without our express written permission, but we will list all Businesses on our website.~~

You may use the design services of suppliers that meet our criteria by requesting our approval of them in advance.

Because the CP Business does not require office space to operate, you do not need to consult with us or obtain our approval if you choose to lease space for the CP Business.

Other than Poologics and Wildcat, neither we nor our affiliates are approved suppliers, or the only suppliers, of any good or service, and none of our officers owns any interest in any required, recommended or approved supplier.

### Insurance

We require all franchisees to obtain and maintain the insurance coverage set forth in our Operations Manual from a carrier with an AM Best rating of at least A-. The required coverage currently includes Comprehensive General Liability including the following minimum coverages and limits: \$1,000,000/2,000,000 in the aggregate, \$1,000,000 per occurrence, Products Completed Operations \$1,000,000/2,000,000, Personal Injury Advertising Liability \$1,000,000, Broad Form Property Damage Liability \$1,000,000, Blanket Contractual Liability \$1,000,000, Premises Medical Payments \$5,000, Pop-Up Coverage \$100,000. You are also required to maintain workers compensation insurance in accordance with applicable law. Required insurance coverage and limits are subject to change upon notice to you.

### Computer Systems

We operate a website that uses our name and other trademarks and features our products and services. You are not permitted to develop or operate a website relating to the CP Business, or

use our marks online without our express written permission, but we will list all CP Businesses on our website.

All franchisees are required to utilize the Internet portal that is provided by our affiliate, Poologics. The portal contains accounting, business operations and customer relationship management functions. Poologics is the only approved supplier of these services.

~~All franchisees will have access for a fee to the pool and spa design services provided by our affiliate, Wildcat. However, Wildcat is not the exclusive supplier of design services. You may use the design services of alternate suppliers that meet our criteria by requesting our approval of them in advance.~~

\*\*\*

We have negotiated purchase arrangements including price terms with certain material and equipment suppliers for the benefit of our franchisees. These arrangements may change from time to time including the removal and addition of certain suppliers. We derive revenue in the form of a rebate, equal to a percentage of the purchases made by our franchisees, from suppliers with whom we have established purchase arrangements. Some arrangements include the sharing of rebates with franchisees. Purchase arrangements are described in further detail in our Operations Manual.

~~Because this is our first year offering franchises we do not have data to disclose from a prior fiscal year regarding our revenue from required purchases and leases of products and services.~~

In the year ending December 31, 2018, we did not receive revenues from the sale of required purchases and leases of products and services to franchisees from us, our affiliates, or third-party suppliers. Our affiliate, CPI, received revenues from such sale of required purchases and leases of products and services to franchisees from us, our affiliates, or third-party suppliers in the amount of \$1,218,538.76, or approximately 28% of CPI's total revenues of \$4,339,139.74.

There are currently no purchasing or distribution cooperatives. We do not provide material benefits (for example, renewal or granting additional franchises) to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.

We estimate that the required purchases and leases described in this Item will constitute approximately 10% to 15% of all purchases and leases you will incur to establish the CP Business and approximately 20% to 30% of all purchases and leases you will incur to operate the CP Business.

~~Other than Poologics and Wildcat, neither we nor our affiliates are approved suppliers, or the only suppliers, of any good or service, and none of our officers owns any interest in any required, recommended or approved supplier.~~

## ITEM 9

### FRANCHISEE'S OBLIGATIONS

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

| Obligation                                                 | Section in Agreement                                                                                                      | Disclosure Document Item |
|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|--------------------------|
| a. Site selection and acquisition/lease                    | Not Applicable                                                                                                            | Items 8 and 11           |
| b. Pre-opening purchases/leases                            | Sections 8(d) and 10                                                                                                      | Items 5, 7 and 8         |
| c. Site development and other pre-opening requirements     | Not Applicable                                                                                                            | Items 7, 8 and 11        |
| d. Initial and ongoing training                            | Section 7(a)                                                                                                              | Item 11                  |
| e. Opening                                                 | Section 3(a)                                                                                                              | Item 11                  |
| f. Fees                                                    | Sections 5(d), 6, 7(a)(iii), 7(a)(iv), 7(a)(vi), 7(a)(vii), 8(a), 9(h), 10, 11, 14(b)(i), 14(b)(iii)(F), 14(c), 25 and 29 | Items 5, 6, 7 and 11     |
| g. Compliance with standards and policies/Operating Manual | Sections 3, 7(b), 8(c), 9, 10, 11, 12(b), 16(a)(vii) and 16(b)(i)                                                         | Items 8 and 11           |
| h. Trademarks and proprietary information                  | Sections 1, 9(a), 9(b), 12 and 17(b)                                                                                      | Items 13 and 14          |
| i. Restrictions on products/services offered               | Sections 9(a) and (c)                                                                                                     | Items 8 and 16           |
| j. Warranty and customer service requirements              | Sections 9(c)(i), (d) and (f)                                                                                             | Item 11                  |
| k. Territorial development and sales quotas                | Sections 2(b), 2(c), 9(h), and Exhibit A                                                                                  | Item 12                  |
| l. Ongoing product/service purchases                       | Section 9(a)                                                                                                              | Item 8                   |
| m. Maintenance, appearance and remodeling requirements     | Sections 9(d) and (e)                                                                                                     | Item 11                  |
| n. Insurance                                               | Section 10                                                                                                                | Item 8                   |
| o. Advertising                                             | Section 8                                                                                                                 | Items 6 and 11           |
| p. Indemnification                                         | Section 11                                                                                                                | Item 6                   |

| <u>Obligation</u>                                           | <u>Section in Agreement</u>       | <u>Disclosure Document Item</u> |
|-------------------------------------------------------------|-----------------------------------|---------------------------------|
| q. Owner's participation/management/staffing                | Sections 9(c) and 9(f)            | Item 15                         |
| r. Records/reports                                          | Sections 9(h) and 9(k)            | Item 6                          |
| s. Inspections/audits                                       | Section 9                         | Item 11                         |
| t. Transfer                                                 | Section 14                        | Item 17                         |
| u. Renewal                                                  | Section 5                         | Item 17                         |
| v. Post-termination obligations                             | Section 17                        | Item 17                         |
| w. Non-competition covenants                                | Section 13                        | Item 17                         |
| x. Dispute resolution                                       | Section 25                        | Item 17                         |
| y. Other: Personal Guaranty of franchise owners and spouses | Exhibits B and D of the Agreement | Item 22                         |

**Notes:**

(1) Franchisees who are residents in community property states, including Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin, are required to have their spouse sign a spousal consent, in which the spouse must consent to the individual franchisee's execution of the Guaranty and Assumption of Franchisee's Obligations. In all other states, the spousal guaranty is not required.

(2) Each individual who owns an interest in a franchisee that is a corporation or other business entity (and that individual's spouse) must sign an agreement to maintain confidentiality and not to compete and an agreement assuming and agreeing to discharge all obligations of the "franchisee" under the franchise agreement Franchise Agreement.

**ITEM 10**

**FINANCING**

We do not offer financing to you, either directly or indirectly. 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.**

Before you begin to operate your CP Business, we will provide:

- (1) Define the territory for the CP Business. (Franchise Agreement, Sections 2(b)).
- (2) Instruction regarding sub-contracting and selecting tradesman and materials for jobsites. (Franchise Agreement, Section 7(b)).
- (3) Approval of advertising and promotional materials (at your expense). (Franchise Agreement, Section 8).
- (4) Inclusion of the CP Business, including contact information and images of portfolios of completed projects, on our California Pools company website. (Franchise Agreement, Section 8(f)).
- (5) Instruction and training in operating the CP Business and our procedures through meetings, printed material and other media, and access to continuing courses of training at times and locations that we designate. (Franchise Agreement, Section 7(a) and 7(b)).
- (6) Initial training for you and your management. Training may be available for additional persons for additional charges. During training, you will have a copy of the California Pools confidential Operations Manual and other materials designated by us. You must complete training to our satisfaction before commencing the CP Business and in no event, more than 180 days after signing the ~~franchise agreement~~Franchise Agreement. If you do not do so we will have the right to terminate your ~~franchise agreement~~Franchise Agreement, and your initial franchise fee will not be refunded. Initial training shall be conducted in Austin, Texas or at other locations designated by us and shall include training through manuals, classroom training and other classes as required and presented by us. Initial training lasts for approximately 4 days. We may offer online training in the future but currently do not. You will receive no compensation or reimbursement for expenses incurred during participation in training. You will be responsible for all of your expenses to attend the training program, including any lodging, transportation and food. (Franchise Agreement, Section 7(a)).

Following is an outline of the training program:

| <b>TRAINING PROGRAM</b> |                                    |                                     |                 |
|-------------------------|------------------------------------|-------------------------------------|-----------------|
| <b>SUBJECT</b>          | <b>HOURS OF CLASSROOM TRAINING</b> | <b>HOURS OF ON THE JOB TRAINING</b> | <b>LOCATION</b> |
| Marketing               | 2                                  | 0                                   | Austin, TX      |
| Sales                   | 4                                  | 4                                   | Austin, TX      |
| Construction            | 4                                  | 4                                   | Austin, TX      |
| Operations              | 8                                  | 0                                   | Austin, TX      |
| Poologics               | 3                                  | 0                                   | Austin, TX      |
| <b>Totals</b>           | <b>21</b>                          | <b>8</b>                            |                 |

Training is designed to cater to the individual needs and experience of franchisees. Training

programs are held when necessary to train new franchisees but in some cases, training may only be available periodically. We may offer online training in the future. Your training classes may include other franchisees. Steve Terry serves as our training director. Steve has more than 20 years of experience in the industry, and has been with us since our inception in 2017.

We anticipate that you will commence the CP Business within 60 to 90 days after you sign the ~~franchise agreement~~Franchise Agreement and pay the initial franchise fee. The maximum amount of time that you have to commence the CP Business is 210 days after signing the ~~franchise agreement~~Franchise Agreement. If your CP Business has not commenced operations within 210 days after you sign the ~~franchise agreement~~Franchise Agreement, we can terminate the ~~franchise agreement~~Franchise Agreement and your initial franchise fee will not be refunded. The factors that may affect this time include delays in the issuance of licenses, weather conditions or other unforeseeable events, and any delays in scheduling and completing training. You may not commence the CP Business until you have completed the initial training program to our satisfaction.

During the operation of your CP Business, we will:

- (1) Assist you in developing services or products to be offered as part of the CP Business. (Franchise Agreement, Section 7(a)).
- (2) Assist you in establishing and using administrative, bookkeeping, accounting or inventory control procedures (subject to additional fees) and respond to your questions regarding operational issues and provide support on a reasonable basis. (Franchise Agreement, Section 9(k)).
- (3) Subject to additional fees, provide additional training in California Pools services, if requested or we determine it to be necessary. (Franchise Agreement, Section 7(a)).
- (4) Provide updated lists of approved suppliers for the equipment, materials and supplies. (Franchise Agreement, Section 9(a)).
- (5) Furnish you from time to time with updated and revised material for the Operations Manual. (Franchise Agreement, Section 7(b)).
- (6) Provide and direct all leads within your territory that are received by us. (Franchise Agreement, Section 7(a)).
- (7) Design continued marketing and promotional campaigns for the System. (Franchise Agreement, Section 8(c)).
- (8) Provide individualized assistance to you (whether in person, or by phone or email), subject to availability of our personnel. (Franchise Agreement, Section 7(a)).
- (9) Host an Annual Convention for all franchisees to provide updates regarding the System, recognize top performers and collaborate regarding the services and products the System provides. Attendance at the Annual Convention is mandatory. No fee is currently charged for attendance at the Annual Convention, but you are responsible for your expenses in attending, including travel and living expenses. (Franchise Agreement, Section 7(a)).
- (10) Host an annual CP Points Program trip. Franchisees may redeem CP Points

toward attendance costs, including airfare, lodging and food. (Franchise Agreement, Section 7(a)).

During the operation of your CP Business, we may:

- (1) Inspect the CP Business as we deem advisable. (Franchise Agreement, Section 9(j)).
- (2) Interview personnel and clients. (Franchise Agreement, Section 9(j)).
- (3) Inspect and copy any books, records and documents relating to the operation of the CP Business. (Franchise Agreement, Section 9(k)).
- (4) Inspect or audit the CP Business records (bookkeeping, accounting, sales and income tax records and returns). (Franchise Agreement, Section 9(k)).

In addition, you will have access to the following, which may be provided to all franchisees (and not on an individualized basis) from time to time:

- (1) Changes, improvements and developments to the products and services offered. (Franchise Agreement, Section 7(b)).
- (2) Written or recorded materials (such as newsletters and bulletins) made available to all franchisees. (Franchise Agreement, Section 7(b)).
- (3) Research and development of new programs, services, methods and products. (Franchise Agreement, Section 7(a)).
- (4) Negotiated purchase agreements with equipment and materials suppliers to obtain discounted prices and CP Points. (Franchise Agreement, Section 9(a)).
- (5) Annual franchise training seminar to discuss issues affecting the System, including industry changes, new services and products and/or marketing strategies. Franchisees will not be required to attend this seminar, but it is encouraged. No fee is currently charged for attending the seminar, but you are responsible for your expenses in attending, including travel and living expenses. (Franchise Agreement, Section 7(a)).
- (6) A website that we maintain that includes a list of all franchisees that are in good standing with us. We may modify the content of or discontinue this website at any time in our sole discretion. (Franchise Agreement, Section 8(f)).

### **Site Selection**

You may operate the CP Business at any location within the territory, including from a vehicle or home office. You are not required to establish an office. If you establish an office, we do not have to approve your location.

### **Computer System**

We do not currently require that you purchase or license any specific computer hardware other than a laptop computer (any brand is acceptable). We estimate that your cost to purchase a

laptop is approximately \$700 to \$1,500 depending on the brand you select and how it is customized. You are required to pay for and use Poologics on your computer, which currently costs \$2,388 per year (\$199 per month). We reserve the right to require the use of other computer systems in the future. You will be responsible for maintaining, repairing, upgrading and updating any computer systems that you use in the operation of the CP Business directly with your providers. There are no limits or restrictions regarding the cost or frequency with which you may be required to manage your system. We estimate your annual cost to maintain the systems will be \$250 to \$1,250. We will have independent access to the information contained in your Poologics account and we reserve the right to request records from you and from Poologics at any time. Similarly, through Poologics, we will have independent access to information about your gross revenue and the transactions that you enter in to.

### **Marketing**

We rely heavily on superior customer service, quality of construction and materials and word-of-mouth advertising. We have also established and administer a system-wide marketing fund to which you must contribute \$350 monthly. We may elect to disseminate marketing through Internet-based mediums and social media, television, radio and print media such as magazine, billboards, flyers, mailers and newspapers. The Internet-based media coverage may be national in scope and the television, radio and print media coverage may be national, regional or local in scope, in our discretion. We may use funds to employ an outside consultant or agency to assist in the development, production and dissemination of marketing materials. We may also use that revenue to develop promotional and advertising materials for your use. In addition, we may provide sales training or printed material to assist you in selling our products and services. We may on occasion solicit comments from franchisees regarding advertising programs and policies but there will not be a formal advertising council composed of franchisees that will advise us regarding these topics.

We will not prepare financial reports regarding marketing expenditures. Any amounts in the fund not spent during one year will carry over to the next year. No expenditures will be made from the fund to solicit new franchise sales. Fund contributions are neither separately accounted for nor audited. ~~Because this is~~

~~During our first year offering franchises, we do not have data to disclose from a prior fiscal year regarding marketing fund expenditures. 2018 fiscal year, marketing expenditures were spent as follows: 25% on general administration of the marketing fund, 15% on the "Pay Per Click" campaign administration, 40% on social media and the review website content development and management, and 20% on California Pools website development and management.~~

You are required to spend at least 1% of ~~gross revenue~~ Gross Revenue annually on local advertising (but we will not require you to exceed \$25,000 annually). As of the date of this disclosure document, you are not required to participate in a local or regional advertising cooperative.

You may use your own marketing materials to promote the CP Business but all such materials must be pre-approved by us in writing and we reserve the right to prohibit the use of such materials if we deem them to be inappropriate, in our discretion.

We operate a website that uses our name and other trademarks, and features our services and



showcases some of the swimming pools and spas that our affiliate, and its licensees and agents have constructed in the past. We reserve the right to conduct all commerce over the Internet and other means of electronic communication as may in the future be developed. Unless we otherwise agree, you may not operate a separate website for the CP Business.

### **CP Points Program**

We administer the CP Points Program to incentivize franchisees to perform and purchase equipment and materials from designated suppliers. CP Points are earned by achieving certain gross revenue milestones and by purchasing from designated suppliers. Points accrue each calendar year and may be redeemed in the same calendar year in which they accrue toward the annual CP Points Program trip. Details about the CP Points Program are contained in the Operations Manual.

### **Manuals**

During the term of your ~~franchise agreement~~Franchise Agreement, we will loan you a copy of our Operations Manual, which is currently 94 pages. The table of contents of the Operations Manual is disclosed in Exhibit D of this disclosure document.

## **ITEM 12**

### **TERRITORY**

You will receive the right to operate the CP Business within an exclusive territory. The territory will consist of an area within boundaries that we and you agree to when we sign the ~~franchise agreement~~Franchise Agreement. We will not enter into the ~~franchise agreement~~Franchise Agreement unless we have agreed upon the territory. The territory will consist of an area designated by zip codes, counties, cities, roads or highways, or other boundaries that we agree upon. We will determine the size of the territory based upon the experience and resources that you have, the population density and other pertinent factors that may be unique to the area in which you plan to operate the CP Business.

Continued exclusivity for your territory is conditioned upon you being in good standing under the ~~franchise agreement~~Franchise Agreement and achieving your sales quota. It is not conditioned upon market penetration or other performance metrics. We will collaborate with you to determine your first year's sales quota based upon market conditions and anticipated gross revenue. For subsequent years, we will determine your quota as a percentage of the prior years' performance. If you lose exclusivity in your territory then we may conduct the CP Business in the territory or authorize third parties to do so.

We will not have the right to modify your territorial rights unless you are in default of the ~~franchise agreement~~. ~~If you are in default of the franchise agreement and the franchise agreement~~Franchise Agreement. ~~If we have given you a notice of default of the Franchise Agreement and you have not cured such default during the applicable cure period and continue to remain in default, and the Franchise Agreement~~ has not been terminated, then we may operate or grant another person the right to operate the CP Business in your territory.

You may not relocate the CP Business or establish additional CP Businesses without our written

approval. In general, the primary factors that we may consider in deciding whether to approve your request to relocate is whether you are in good standing under the ~~franchise agreement~~Franchise Agreement, whether you have been meeting sales quotas and whether the new location is of a substantially similar character. If it is not, you may be required to pay an additional fee to acquire rights to the new territory. You do not receive any options, rights of first refusal or similar rights to acquire additional franchises or territories. You may only operate one CP Business in your territory but if you buy a California Pools® servicing franchise from us, you may operate both the CP Business and the servicing franchise in the territory.

We reserve all rights that we do not grant to you. For example, we reserve all rights to the use of our name, to open one or more company-owned CP Businesses outside of your territory, to promote our CP Business and to sell our services and products and other services and products inside and outside of your territory using other channels of distribution such as the Internet, direct marketing, or other methods and using other trademarks. We are not required to compensate you for soliciting or accepting orders within your territory.

You do not have the right to use other channels of distribution such as the Internet, catalog sales, telemarketing or other direct marketing or solicitation of customers or prospective customers outside of your territory.

As of the Issuance Date of this disclosure document, we do not intend to establish other franchises or company-owned outlets to sell similar products or services under a different trademark, but we reserve the right to do so.

We have plans to offer a California Pools swimming pool and spa servicing franchise that will operate using the same California Pools trademarks that are used in the CP Business. We anticipate this will ~~first be offered in~~during 2019. We will operate both franchises and training facilities from the same offices. Franchisees of the servicing franchise business will be permitted to operate in your territory but will not be permitted to offer construction or remodeling services.

## ITEM 13

### TRADEMARKS

~~We~~Under the Franchise Agreement, we will grant you the right to conduct a CP Business under the name CALIFORNIA POOLS®, and in connection with related service marks and trademarks. By service marks and trademarks, we mean trade names, trademarks, service marks, logos and other indicia used to identify the CP Business, the California Pools® brand, its services and its products.

You must follow our rules when you use our trademarks. You cannot use a name or mark as part of a corporate name or with modifying words, designs or symbols except for those which we license to you. You may not use our trademarks in the sale of an unauthorized product or service or in a manner not authorized by us in writing.

We reserve the right to modify or change the marks that you use in the operation of the CP Business at any time during the term of your ~~franchise agreement~~Franchise Agreement. This includes changing the "California Pools" mark. You will be responsible for all costs and

expenses associated with modifying and/or changing the marks.

Our principal mark, CALIFORNIA POOLS®, was registered on October 11, 2011, on the Principal Register of the United States Patent and Trademark Office. The registration number is 403669. All required affidavits have been filed.

We received the right to use all trademarks and to license their use to you under an agreement with our affiliate, CPI, dated May 15, 2018. Unless terminated, such agreement continues indefinitely, and such agreement may not be modified without both parties' consent. If such agreement is terminated for any reason, it provides that CPI will continue to honor the rights we grant to you under the ~~franchise agreement~~ Franchise Agreement. No other agreements limit our right to use or license the use of the trademarks.

You must notify us immediately if you learn about an infringement of, or challenge to, your use of our trademarks. Your ~~franchise agreement~~ Franchise Agreement requires us to protect you against claims of infringement if you are using the trademarks as required by your ~~franchise agreement~~ Franchise Agreement and if you are in good standing. You must assist us in protecting any of our rights, at our expense.

If you learn about a third party's use of our trademarks that you believe to be unauthorized, you must notify us immediately. We will decide whether or not to take action against the third party, and you must assist us, at our expense, if we decide to do so. We have the right to control any administrative proceeding or litigation involving our trademarks. If we decide to add a new trademark, or modify or discontinue the use of any trademark, you must use the new trademark or change or discontinue the use of the trademark, all at your expense.

There are no currently effective material determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, or any state trademark administrator or court, or any pending infringement, opposition, or cancellation proceedings. We do not know of any superior prior rights or infringing uses that could materially affect your use of the trademarks.

#### ITEM 14

##### PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

~~The franchised business does not involve any patents. We do not own any rights in any patents and we do not have any pending patent applications.~~

##### Copyrights and Patents

We do not own any right in or to any currently registered or pending patents that are material to the operation of the CP Business, and we reserve the right to file for patents in the future.

We do claim a trade secret rights and a common law copyright in all of our Operations Manual but, though we have not filed for copyright registration. You must notify us immediately when you learn about a challenge to your use of our copyrighted material. We are not obligated to defend or indemnify you against claims arising from your use of the copyrighted material. You

must assist us in protecting any of our rights, at our expense.

If you learn about a third party's use of our copyrighted material which you believe to be unauthorized, you must notify us immediately. We will decide whether or not to take action against the third party, and you must assist us, at our expense, if we decide to do so. We have the right to control any litigation involving our copyrighted material. If we decide to add, modify or discontinue the use of anything covered by a copyright, you must also do so at your expense.

We do not know of any infringing uses that could materially affect your use of the copyrighted material.

~~You also receive the right to use certain of our trade secrets and confidential information including our System, website portals and related marketing and business processes.~~

You must promptly disclose to us all ideas, concepts, techniques or materials relating to a CP Business that you or your owners, employees or contractors create ("Innovations"). Innovations are our sole and exclusive property, part of the System, and works made-for-hire for us. If any Innovation does not qualify as a work made-for-hire for us, you assign ownership of that Innovation, and all related rights to that Innovation, to us and must sign (and cause your owners, employees and contractors to sign) whatever assignment or other documents we request to evidence our ownership or to help us obtain intellectual property rights in the Innovation. We and our affiliates have no obligation to make any payments to you or any other person for any Innovations. You may not use any Innovation in operating your CP Business or in any other way without our prior approval.

#### **Confidential Information**

You also receive the right to use certain of our trade secrets and confidential information including our System, website portals and related marketing and business processes.

We may provide you with other information which we have designated as "Confidential," "Trade Secret," or as "Proprietary Information." Without our prior written consent, you must not disclose the contents of the Operations Manual to any person, except your employees for purposes related solely to the operation of the CP Business, nor reprint or reproduce the Operations Manual, or any other confidential or proprietary information or trade secrets in whole or in part for any purposes. Upon our request, you must obtain agreements from your personnel prohibiting disclosure of any trade secret or proprietary information.

### **ITEM 15**

#### **OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISED BUSINESS**

We require that you participate personally in the direct operation and management of the CP Business or that the operation of the CP Business is at all times under the direct supervision of a manager who has satisfactorily completed our training program and maintains a contractor's license in good standing in the state in which the CP Business is located. You and any of your staff, if you have one, must complete initial training to our satisfaction.

You and any manager or staff who are affiliated or employed by you, that we designate, must also sign a confidentiality and non-competition agreement in a form we approve. There are no requirements for other persons involved in the CP Business to own any equity interest in the CP Business.

#### ITEM 16

##### RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

We require that you offer and sell only those services and products that we have approved. You must offer all services and products that we designate as required in the Operations Manual unless we otherwise agree in writing. It is important that our services and products be consistent and incorporate the same elements wherever offered. This benefits the System and all of our franchisees.

We may add new services or products and change the types of authorized services and products that you offer from the CP Business; there are no limits on our ability to make these changes.

#### ITEM 17

##### RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

##### THE FRANCHISE RELATIONSHIP

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

| Provision                                         | Section in Franchise or Other Agreement | Summary                                                                                                                                                      |
|---------------------------------------------------|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. Length of the franchise term                   | Section 4                               | 10 years.                                                                                                                                                    |
| b. Renewal or extension of the term               | Section 5                               | If you meet certain conditions, and we are still offering franchises, you can enter into the then-current franchise agreement for 2 additional 5-year terms. |
| c. Requirements for franchisee to renew or extend | Section 5                               | You must sign our then-current form of franchise agreement which may contain materially different terms; successfully complete renewal training; sign a      |

| Provision                                  | Section in Franchise or Other Agreement | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                            |                                         | general release; pay the renewal fee, fulfill all your obligations and not have received 3 or more default notices in any 24-month period; you must not be in default under the <u>franchise agreement</u> <u>Franchise Agreement</u> or any other agreement with us; we must not have decided to withdraw from your market; and you must meet requirements for new franchisees.                                                                                                                                                                                                                                                                                                                        |
| d. Termination by franchisee               | None                                    | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| e. Termination by franchisor without cause | None                                    | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| f. Termination by franchisor with cause    | Section 16                              | We can terminate if you default or if the events described in (g) or (h) below occur.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| g. "Cause" defined- curable defaults       | Section 16(b)                           | You have 15 days to cure defaults.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| h. "Cause" defined- non- curable defaults  | Section 16(a)                           | Non-curable defaults: bankruptcy or insolvency; abandonment; material misrepresentation; conduct which reflects unfavorably on us or our system; non-compliance with law; repeated failure to comply with <u>franchise agreement</u> <u>Franchise Agreement</u> requirements; seizure by government official or lien holder; final judgment of more than \$5,000 remains unsatisfied for 30 days; undischarged levy of execution on franchise; conviction of a felony or other criminal misconduct; danger to public health or safety; unauthorized transfer; termination of any other agreement with us; unauthorized use of trademarks or trade secrets; the United States designates you a specially |

| Provision                                              | Section in Franchise or Other Agreement | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| i. Franchisee's obligations on termination/non-renewal | Sections 17(a)-(c)                      | designated national or blocked person.<br><br>Pay all amounts due to us; discontinue use of trademarks and our system; de-identify; return or destroy all supplies with our trademarks; return our Operations Manual and other confidential information; assist in smooth transition of <u>CP Business</u> ; refrain from soliciting clients; refrain from making disparaging remarks; re-assign to California Pools telephone and facsimile numbers and e-mail addresses; cancel fictitious business name statement; and comply with all other requirements in the Operations Manual. |
| j. Assignment of contract by franchisor                | Section 14(a)                           | No restriction on our right to assign.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| k. "Transfer" by franchisee — definition               | Section 14(b)(ii)                       | Includes transfer or encumbrance of franchise agreement <u>Franchise Agreement</u> , assets of the <u>CP Business</u> or greater than 10% ownership interest in your <u>CP Business</u> .                                                                                                                                                                                                                                                                                                                                                                                              |
| l. Franchisor approval of transfer by franchisee       | Section 14(b)(i)                        | You must obtain our consent to all transfers.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

| Provision                                                               | Section in Franchise or Other Agreement | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| m. Conditions for franchisor approval of transfer                       | Section 14(b)(iii)                      | You must not be in default under your <del>franchise agreement</del> <u>Franchise Agreement</u> or any other agreement with us; transferee meets qualifications for new franchisee; transferee must sign the then-current form of franchise agreement and guaranty; transferee must successfully complete initial training; pay the transfer fee; sign a general release; transferee's obligations to you are subordinated to obligations to us; you must transfer all of your agreements with us. If you want to transfer your franchise to an entity, you must own the entity, sign a personal service agreement with the entity, and the entity must agree to your <del>franchise agreement</del> <u>Franchise Agreement</u> (you remain responsible as well and must execute a performance guaranty). |
| n. Franchisor's right of first refusal to acquire franchisee's business | Section 14(c)                           | You put a price on your <u>CP</u> Business and must offer it to us first. We have 30 days to accept or reject the offer. If we reject and you find another buyer then you must offer it to us on the same terms as you offered it to the other buyer and we must be given another opportunity to accept or reject your offer before you may sell it to another buyer.                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| o. Franchisor's option to purchase franchisee's business                | Section 17(d)                           | We have the option of acquiring your assets if the <del>franchise agreement</del> <u>Franchise Agreement</u> expires or terminates.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| p. Death or disability of franchisee                                    | Sections 14(d) and 15                   | If you or your principal dies or become permanently disabled, your executor or representative may either satisfy the then-current qualifications for franchisees or transfer the franchise to a qualified buyer within four months.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |



| Provision                                                                 | Section in Franchise or Other Agreement | Summary                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| q. Non-competition covenants during the term of the franchise             | Section 13(a)                           | You may not be involved in any business similar to ours within your Territory, within the territory of any other existing California Pools franchisee, or within 30-miles from the territory of any other existing California Pools franchisee.                                                              |
| r. Non-competition covenants after the franchise is terminated or expires | Section 13(b)                           | You may not operate a similar business for 2 years within your former Territory, within the territory of any other existing California Pools franchisee, or within 30-miles from the territory of any other existing California Pools franchisee.                                                            |
| s. Modification of the agreement                                          | Section 28                              | No modification without a writing signed by you and us, except that we may amend the Operations Manual.                                                                                                                                                                                                      |
| t. Integration/merger clause                                              | Section 27                              | Only the terms of the <del>franchise agreement</del> <u>Franchise Agreement</u> are binding (subject to state law). Any other promises are not enforceable. Nothing in the <del>franchise agreement</del> <u>Franchise Agreement</u> is intended to disclaim anything contained in this disclosure document. |
| u. Dispute resolution by arbitration or mediation                         | Section 25                              | Except for certain claims, all disputes must be mediated and if not resolved, arbitrated.                                                                                                                                                                                                                    |
| v. Choice of forum                                                        | Section 25                              | Subject to state law, Austin, Texas.                                                                                                                                                                                                                                                                         |
| w. Choice of law                                                          | Section 24                              | Texas law applies, subject to the Lanham Act and applicable state law that cannot be waived.                                                                                                                                                                                                                 |

#### ITEM 18

#### PUBLIC FIGURES

We do not use any public figures to promote our franchise. However, California Pools is a

featured pool contractor on the television show Pool Kings, which airs on the HGTV/DIY Network. The Network has not invested in California Pools and we do not receive any compensation from the Network.

## ITEM 19

### FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in this 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.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised businesses. 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 CP Business, however, we may provide you with the actual records of that CP Business. If you receive any other financial performance information or projections of your future income, you should report it to our us by contacting Steve Terry at [franchise@californiapools.com](mailto:franchise@californiapools.com), the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20

OUTLETS AND FRANCHISEE INFORMATION

Table No. 1  
Systemwide Outlet Summary  
For Years 20152016 to 20172018

| Column 1<br>Outlet Type | Column 2<br>Year | Column 3<br>Outlets at<br>Start of the<br>Year | Column 4<br>Outlets at<br>End of the<br>Year | Column 5<br>Outlets at End<br>of the Year | Column 6<br>Net Change |
|-------------------------|------------------|------------------------------------------------|----------------------------------------------|-------------------------------------------|------------------------|
| Franchised              | 2015             | 20                                             | 21                                           | 22                                        | +1                     |
|                         | 2016             | 21                                             | 22                                           | 24                                        | +1                     |
|                         | 2017             | 22                                             | 24                                           | 20                                        | +2                     |
|                         | <u>2018</u>      |                                                |                                              |                                           | <u>-4</u>              |
| Company-Owned           | 2015             | 3                                              | 3                                            | 2                                         | 0                      |
|                         | 2016             | 3                                              | 2                                            | 1                                         | -1                     |
|                         | 2017             | 2                                              | 1                                            | 2                                         | -1                     |
|                         | <u>2018</u>      |                                                |                                              |                                           | <u>+1</u>              |
| Total Outlets           | 2015             | 23                                             | 24                                           | 24                                        | 0                      |
|                         | 2016             | 24                                             | 24                                           | 25                                        | +1                     |
|                         | 2017             | 24                                             | 25                                           | 22                                        | -3                     |
|                         | <u>2018</u>      |                                                |                                              |                                           | <u>+4</u>              |

Table No. 2  
Transfers of Outlets from Franchisees to New Owners  
(other than the Franchisor)  
For Years 20152016 to 20172018

| Column 1<br>State       | Column 2<br>Year | Column 3<br>Number of Transfers |
|-------------------------|------------------|---------------------------------|
| Total <u>CALIFORNIA</u> | 2015             | 0                               |
|                         | 2016             | 0                               |
|                         | 2017             | 0                               |
|                         | <u>2018</u>      | <u>0</u>                        |

|              |             |          |
|--------------|-------------|----------|
| <u>Total</u> | <u>2016</u> | <u>0</u> |
|              | <u>2017</u> | <u>0</u> |
|              | <u>2018</u> | <u>1</u> |

**Table No. 3**  
**Status of Franchised Outlets**  
**For Years 20152016 to 20172018**

| Column 1<br>State | Column 2<br>Year | Column 3<br>Outlets<br>at<br>Start of<br>Year | Column 4<br>Outlets<br>Opened | Column 5<br>Terminations | Column 6<br>Non-<br>Renewals | Column 7<br>Reacquired<br>by<br>Franchisor | Column 8<br>Ceased<br>Operations<br>Other<br>Reasons | Column 9<br>Outlets<br>at<br>End of<br>the<br>Year |
|-------------------|------------------|-----------------------------------------------|-------------------------------|--------------------------|------------------------------|--------------------------------------------|------------------------------------------------------|----------------------------------------------------|
| California        | 2015             | 17                                            | 0                             | 0                        | 0                            | 0                                          | 4                                                    | 16                                                 |
|                   | 2016             | 16                                            | 2                             | 0                        | 0                            | 0                                          | 0                                                    | 18                                                 |
|                   | 2017             | <u>18</u>                                     | 4                             | 3                        | 0                            | <u>0</u> <u>1</u>                          | <u>1</u>                                             | 18                                                 |
|                   | <u>2018</u>      | 18                                            | <u>0</u>                      | <u>0</u>                 |                              |                                            | 1                                                    | <u>16</u>                                          |
| Florida           | 2015             | 0                                             | 4                             | 0                        | 0                            | 0                                          | 0                                                    | 1                                                  |
|                   | 2016             | 1                                             | 0                             | 0                        | 0                            | 0                                          | 0                                                    | <u>4</u> <u>0</u>                                  |
|                   | 2017             | 1                                             | <u>0</u>                      | 0                        | 0                            | 0                                          | 1                                                    | 0                                                  |
|                   | <u>2018</u>      | <u>0</u>                                      | 0                             |                          |                              |                                            | <u>0</u>                                             |                                                    |
| Nevada            | 2015             | 1                                             | 0                             | 0                        | 0                            | 0                                          | 0                                                    | 1                                                  |
|                   | 2016             | 1                                             | 0                             | 0                        | 0                            | 0                                          | 0                                                    | 1                                                  |
|                   | 2017             | 1                                             | 0                             | 0                        | 0                            | 0                                          | 0                                                    | 1                                                  |
|                   | <u>2018</u>      |                                               |                               |                          |                              |                                            |                                                      |                                                    |
| Texas             | 2015             | 4                                             | 4                             | 0                        | 0                            | 0                                          | 0                                                    | 2                                                  |
|                   | 2016             | 2                                             | 0                             | 0                        | 0                            | 0                                          | 1                                                    | 1                                                  |
|                   | 2017             | 1                                             | 1                             | 0                        | 0                            | 0                                          | <u>0</u>                                             | <u>2</u>                                           |
|                   | <u>2018</u>      | <u>2</u>                                      | <u>0</u>                      |                          |                              |                                            | 0                                                    | 2                                                  |
| Utah              | 2015             | 1                                             | 0                             | 0                        | 0                            | 0                                          | 0                                                    | 1                                                  |

|           |             |           |          |           |           |           |          |           |
|-----------|-------------|-----------|----------|-----------|-----------|-----------|----------|-----------|
|           | 2016        | 1         | 0        | 0         | 0         | 0         | 0        | 4         |
|           | 2017        | <u>42</u> | 1        | 0         | <u>01</u> | 0         | 0        | 2         |
|           | <u>2018</u> |           | <u>0</u> |           |           |           |          | <u>1</u>  |
| Wisconsin | 2015        | 0         | 0        | 0         | 0         | 0         | 0        | 0         |
|           | 2016        | 0         | 0        | 0         | 0         | 0         | 0        | 0         |
|           | 2017        | <u>01</u> | 1        | <u>01</u> | 0         | 0         | 0        | 1         |
|           | <u>2018</u> |           | <u>0</u> |           |           |           |          | <u>0</u>  |
| Total     | 2015        | 20        | 2        | 0         | 0         | 0         | 1        | 24        |
|           | 2016        | 21        | 2        | 0         | 0         | 0         | 4        | 22        |
|           | 2017        | 22        | 7        | 3         | <u>01</u> | <u>01</u> | 2        | 24        |
|           | <u>2018</u> | <u>24</u> | <u>0</u> | <u>1</u>  |           |           | <u>1</u> | <u>20</u> |

**Table No. 4**  
**Status of Company-Owned Outlets**  
**For Years 20152016 to 20172018**

| Column 1<br>State            | Column 2<br>Year | Column 3<br>Outlets at<br>Start of<br>Year | Column 4<br>Outlets<br>Opened | Column 5<br>Outlets<br>Reacquired<br>from<br>Franchisee | Column 6<br>Outlets<br>Closed | Column 7<br>Outlets<br>Sold to<br>Franchisee | Column 8<br>Outlets at<br>End of the<br>Year |
|------------------------------|------------------|--------------------------------------------|-------------------------------|---------------------------------------------------------|-------------------------------|----------------------------------------------|----------------------------------------------|
| All<br>StatesCalifornia<br>a | 2015             | 3                                          | 0                             | 0                                                       | 0                             | 0                                            | 3                                            |
|                              | 2016             | 3                                          | 0                             | 0                                                       | 0                             | 1                                            | 2                                            |
|                              | 2017             | 2                                          | 0                             | 0                                                       | 0                             | 1                                            | 1                                            |
|                              | <u>2018</u>      | <u>1</u>                                   | 0                             | <u>1</u>                                                | 0                             | <u>0</u>                                     | <u>2</u>                                     |
| Total                        | 2015             | 3                                          | 0                             | 0                                                       | 0                             | 0                                            | 3                                            |
|                              | 2016             | 3                                          | 0                             | 0                                                       | 0                             | 1                                            | 2                                            |
|                              | 2017             | 2                                          | 0                             | 0                                                       | 0                             | 1                                            | 1                                            |
|                              | <u>2018</u>      | <u>1</u>                                   | 0                             | <u>1</u>                                                | 0                             | <u>0</u>                                     | <u>2</u>                                     |

**Table No. 5**  
**Projected Openings**  
**As of December 31, 2017** 2018

| State                                 | Franchise Agreements Signed but Outlet Not Opened | Projected New Franchised Outlets in the Next Fiscal Year | Projected New Company-Owned Outlets in the Next Fiscal Year |
|---------------------------------------|---------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------|
| <del>California</del> <u>Alabama</u>  | <u>0</u> <u>1</u>                                 | <u>2</u> <u>0</u>                                        | 0                                                           |
| <del>Michigan</del> <u>California</u> | <u>0</u> <u>1</u>                                 | <u>4</u> <u>2</u>                                        | 0                                                           |
| Texas                                 | 0                                                 | <u>2</u> <u>1</u>                                        | 0                                                           |
| <del>Other States</del> <u>Utah</u>   | <u>0</u> <u>2</u>                                 | <u>4</u> <u>0</u>                                        | 0                                                           |
| Total                                 | <u>0</u> <u>4</u>                                 | <u>9</u> <u>3</u>                                        | 0                                                           |

As of the Issuance Date of this disclosure document, franchisees disclosed in this Item are either licensees or agents of our affiliate, CPI. These licensees and agents operate businesses substantially similar to the business that our franchisees will operate. We plan to convert all licensees and agents to our System.

~~No franchisees have had a franchise terminated, canceled, not renewed or otherwise ceased to do business during the most recently completed fiscal year and all franchisees have communicated with CPI within 10 weeks of the Issuance Date of this disclosure document.~~

Contact information for all franchisees as of December 31, 2018 is listed on Exhibit G. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

During the last three years, no current or former franchisees have signed confidentiality clauses that restrict them from discussing with you their experiences as franchisees of CPI or in our system, as may be applicable.

There are no trademark specific franchisee organizations associated with our franchise system that has either (a) been created, sponsored, or endorsed by us, or (b) is incorporated or otherwise organized under state law and asks us to be included in our disclosure document during the next fiscal year.

## ITEM 21

### FINANCIAL STATEMENTS

Attached as Exhibit C to this disclosure document are: (i) our audited financial statement as of balance sheet as of December 31, 2018, and the related statements of income, changes in stockholders' equity, and cash flows from March 12, 2018, (inception) to December 31, 2018;

and (ii) our unaudited balance sheet as of ~~June~~April 30, 2018 and the related statement of profit and loss for the six month period ended ~~June 30, 2018~~2019. Because we have not been operating for three or more years, we cannot provide the same financial disclosures of a company that has been operating for three or more years.

## ITEM 22

### CONTRACTS

Attached are copies of the following agreements proposed for use in this state:

Exhibit A: Compliance Questionnaire

Exhibit B: Franchise Agreement

## ITEM 23

### RECEIPT

Attached ~~to~~as the end last two pages of this disclosure document, following the Exhibits, is a ~~receipt~~Receipt. Please sign it, date it as of the date you receive ~~the~~this disclosure document, and return it to us. A duplicate of the ~~receipt~~Receipt is attached for your records.

**EXHIBIT A**

**COMPLIANCE QUESTIONNAIRE**

**[See Attached]**



**CALIFORNIA POOLS FRANCHISE INC.**

**Franchise Offer and Sale  
Compliance Questionnaire**

As you know, you and California Pools Franchise Inc. (the "**Franchisor**") are preparing to enter into a Franchise Agreement for the establishment and operation of a California Pools franchise (a "**Business**"). The purpose of this Questionnaire is to determine whether any statements or promises were made to you that the Franchisor has not authorized and that may be untrue, inaccurate, or misleading. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. The following dates and information are true and correct:

- a. \_\_\_\_\_, 20\_\_\_\_ The date of my first face-to-face meeting with any  
Initials \_\_\_\_\_ person to discuss the possible purchase of a franchise.
- b. \_\_\_\_\_, 20\_\_\_\_ The date on which I received Franchisor's  
Initials \_\_\_\_\_ Franchise Disclosure Document ("FDD").
- c. \_\_\_\_\_, 20\_\_\_\_ The date when I received a fully completed copy  
Initials \_\_\_\_\_ (other than signatures) of the Franchise Agreement and  
Addenda (if any) and all other documents I later signed.
- d. \_\_\_\_\_, 20\_\_\_\_ The date on which I signed the Franchise Agreement.  
Initials \_\_\_\_\_

2. Have you received and personally reviewed the Franchise Agreement and each addendum and related agreement attached to it?

Yes \_\_\_\_\_ No \_\_\_\_\_

3. Do you understand all of the information contained in the Franchise Agreement, and each addendum and related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, what parts of the Franchise Agreement, addendum, and/or related agreement do you not understand? (Attach additional pages, as needed.)

4. Have you received and personally reviewed the FDD that was provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

5. Did you sign a receipt for the FDD indicating the date you received it?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Do you understand all of the information contained in the FDD and any state-specific addendum to the FDD?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, what parts of the FDD and/or addendum do you not understand? (Attach additional pages, as needed.)

7. Have you discussed the benefits and risks of establishing and operating a Business with an attorney, accountant, or other professional advisor?

Yes \_\_\_\_\_ No \_\_\_\_\_

Have you had the FDD and Franchise Agreement reviewed by an attorney, accountant, or other professional advisor?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No to either question, do you wish to have more time to do so? Yes \_\_\_\_\_ No \_\_\_\_\_

8. Do you understand that the success or failure of your Business will depend in large part upon your skills and abilities, competition from other businesses, and other economic and business factors?

Yes \_\_\_\_\_ No \_\_\_\_\_

9. Do you understand that no agreement or addendum is effective until it is also signed and dated by the Franchisor?

Yes \_\_\_\_\_ No \_\_\_\_\_

10. Do you understand that there are no promises, representations (other than in the FDD), agreements, "side deals," or other arrangements, written or oral, that are not in the Franchise Agreement?

Yes \_\_\_\_\_ No \_\_\_\_\_

11. If you have answered "No" to any one of questions 8–10, please provide a full explanation of each such answer in the following blank lines. (Attach additional pages, as needed, and refer to them below.) If you have answered "Yes" to each of questions 8–10, please leave the following lines blank.

---

---

---

---

12. Has any employee or other person speaking for the Franchisor made any statement or promise concerning the revenues, profits, or operating costs of a Business operated by the Franchisor or its franchisees, that is contrary to the information contained in the FDD?

Yes \_\_\_\_\_ No \_\_\_\_\_

13. Has any employee or other person speaking for the Franchisor made any statement or promise regarding the amount of money you may earn in operating the Business that is contrary to the information contained in the FDD?

Yes \_\_\_\_\_ No \_\_\_\_\_

14. Has any employee or other person speaking for the Franchisor made any statement or promise concerning the total amount of revenue the Business will generate, that is contrary to the information contained in the FDD?

Yes \_\_\_\_\_ No \_\_\_\_\_

15. Has any employee or other person speaking for the Franchisor made any statement or promise regarding the costs you may incur in operating the Business that is contrary to or different from, the information contained in the FDD?

Yes \_\_\_\_\_ No \_\_\_\_\_

16. Has any employee or other person speaking for the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Business?

Yes \_\_\_\_\_ No \_\_\_\_\_

17. Has any employee or other person speaking for the Franchisor made any statement, promise, or agreement concerning the advertising, marketing, training, support service, or assistance that the Franchisor will furnish to you that is contrary to, or different from, the

information contained in the FDD?

Yes \_\_\_\_\_ No \_\_\_\_\_

18. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise before today?

Yes \_\_\_\_\_ No \_\_\_\_\_

19. Have you paid any money to the Franchisor concerning the purchase of this franchise before today?

Yes \_\_\_\_\_ No \_\_\_\_\_

20. If you have answered "Yes" to any one of questions 12-19, please provide a full explanation of each Yes answer in the following blank lines. (Attach additional pages, as needed, and refer to them below.) If you have answered "No" to each of questions 12-19, please leave the following lines blank.

---

---

---

21. Do you understand that all disputes and claims you may have under the Franchise Agreement and the Personal Guaranty must be heard in Austin, Texas (if they cannot be informally resolved)?

Yes \_\_\_\_\_ No \_\_\_\_\_

22. Do you understand that the Franchise Agreement and the Personal Guaranty provide that you can only collect compensatory damages on any claim under or related to the Franchise Agreement and not any consequential or punitive damages?

Yes \_\_\_\_\_ No \_\_\_\_\_

23. Do you understand that the Franchise Agreement and the Personal Guaranty both include a waiver of jury trial?

Yes \_\_\_\_\_ No \_\_\_\_\_

24. During my negotiations and evaluations leading up to my decision to buy a franchise, I communicated with the following individuals from Franchisor or its affiliates: \_\_\_\_\_

Your responses to these questions are important to us and we will rely on them. By signing this Questionnaire, you are representing to us that you have responded honestly, accurately, and completely to each of the above questions.

Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

**EXHIBIT B**

**FRANCHISE AGREEMENT**

**[See Attached]**

CALIFORNIA POOLS



Franchise Agreement

|            |                                                                     |                     |
|------------|---------------------------------------------------------------------|---------------------|
| <u>1.</u>  | <u>GRANT OF FRANCHISE</u> .....                                     | <u>1</u>            |
| <u>2.</u>  | <u>LOCATION AND PROTECTED TERRITORY</u> .....                       | <u>1</u>            |
| <u>3.</u>  | <u>OPENING</u> .....                                                | <u>2</u>            |
| <u>4.</u>  | <u>TERM OF AGREEMENT</u> .....                                      | <u>2</u>            |
| <u>5.</u>  | <u>RENEWAL OF FRANCHISE</u> .....                                   | <u>3</u>            |
| <u>6.</u>  | <u>FEES</u> .....                                                   | <u>4</u>            |
| <u>7.</u>  | <u>DUTIES OF FRANCHISOR</u> .....                                   | <u>5</u>            |
| <u>8.</u>  | <u>ADVERTISING</u> .....                                            | <u>7</u>            |
| <u>9.</u>  | <u>DUTIES OF FRANCHISEE</u> .....                                   | <u>8</u>            |
| <u>10.</u> | <u>INSURANCE</u> .....                                              | <u>12</u>           |
| <u>11.</u> | <u>INDEMNITY</u> .....                                              | <u>12</u> <u>13</u> |
| <u>12.</u> | <u>MARKS AND TRADE DRESS</u> .....                                  | <u>13</u>           |
| <u>13.</u> | <u>NON-COMPETITION</u> .....                                        | <u>14</u> <u>15</u> |
| <u>14.</u> | <u>ASSIGNMENT AND TRANSFER</u> .....                                | <u>15</u> <u>16</u> |
| <u>15.</u> | <u>OPERATION IN THE EVENT OF ABSENCE, DISABILITY OR DEATH</u> ..... | <u>17</u> <u>18</u> |
| <u>16.</u> | <u>DEFAULT AND TERMINATION</u> .....                                | <u>18</u>           |
| <u>17.</u> | <u>RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION</u> .....  | <u>20</u> <u>21</u> |
| <u>18.</u> | <u>CASUALTY</u> .....                                               | <u>22</u>           |
| <u>19.</u> | <u>UNAVOIDABLE DELAYS</u> .....                                     | <u>22</u> <u>23</u> |
| <u>20.</u> | <u>INVALID OR UNENFORCEABLE PROVISIONS</u> .....                    | <u>22</u> <u>23</u> |
| <u>21.</u> | <u>RELATIONSHIP BETWEEN PARTIES</u> .....                           | <u>22</u> <u>23</u> |
| <u>22.</u> | <u>WAIVER</u> .....                                                 | <u>23</u> <u>24</u> |
| <u>23.</u> | <u>NOTICES</u> .....                                                | <u>23</u> <u>24</u> |
| <u>24.</u> | <u>APPLICABLE LAW</u> .....                                         | <u>23</u> <u>25</u> |
| <u>25.</u> | <u>RESOLUTION OF DISPUTES</u> .....                                 | <u>23</u> <u>25</u> |

|            |                                               |             |
|------------|-----------------------------------------------|-------------|
| <u>26.</u> | <u>TERMINOLOGY .....</u>                      | <u>2526</u> |
| <u>27.</u> | <u>ENTIRE AGREEMENT.....</u>                  | <u>2526</u> |
| <u>28.</u> | <u>AMENDMENT OF AGREEMENT.....</u>            | <u>2627</u> |
| <u>29.</u> | <u>COSTS AND EXPENSES OF ENFORCEMENT.....</u> | <u>2627</u> |
| <u>30.</u> | <u>CAPTIONS.....</u>                          | <u>2627</u> |
| <u>31.</u> | <u>FRANCHISEE'S ACKNOWLEDGMENTS.....</u>      | <u>2627</u> |
| <u>32.</u> | <u>EFFECTIVE DATE.....</u>                    | <u>2829</u> |

## **EXHIBITS**

- Exhibit A     Territory**
- Exhibit B     Spousal Consent**
- Exhibit C     Information Regarding Non-Individual Franchisees**
- Exhibit D     Guaranty and Assumption of Franchisee's Obligations**

## California Pools

### FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is entered into by and between California Pools Franchise Inc., a Wyoming corporation, with its principal business address located at 100 Commons Road, Suite 7, Dripping Springs, Texas 78620 ("**Franchisor**"), ~~on the one hand, and~~ \_\_\_\_\_, with its principal business address located at: \_\_\_\_\_ ("**Franchisee**"), ~~on the other hand. This Agreement is,~~

#### RECITALS

~~for a franchise to operate~~ A. Franchisor has established a method and system for the development and operation of a swimming pool and spa construction and remodeling business under the name CALIFORNIA POOLS® (the "CP Business").

#### RECITALS

A. ~~Franchisor has established a method and system for the development and operation of CP Businesses, which includes, without limitation: the mark CALIFORNIA POOLS® and related names, trademarks, service marks, logos, copyrights, designs, emblems, slogans, commercial symbols and other indicia and associated goodwill now or hereafter designated for use by Franchisor in connection with the System and any and all revisions, modifications and additions thereto, whether or not recorded or registered with the United States Patent and Trademark Office or any other local, state, federal or foreign agency, registrar or body (the "Marks"); distinctive swimming pool and spa designs, a proprietary Internet portal for accounting, business operations and customer relationship management functions, trade dress, a manual incorporating required standards, procedures, policies, and techniques; and advertising, marketing, and promotional programs (the "System").~~

B. Franchisor is willing to grant to Franchisee, and Franchisee desires to obtain from Franchisor, the right to establish and operate a CP Business in accordance with the System and the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of these premises and the mutual covenants contained herein, the sufficiency of which is acknowledged by the parties, the parties agree as follows:

#### **1. GRANT OF FRANCHISE**

Subject to the terms and conditions of this Agreement, Franchisor grants to Franchisee a license to use the Marks and the System solely in the operation of the CP Business within the Territory, as defined below (the "**Franchise**"). Franchisee acknowledges that adherence to the standards and policies of the System is essential for the continued operation of the Franchise granted by this Agreement.

#### **2. LOCATION AND PROTECTED TERRITORY**

(a) Location. Franchisee may operate the CP Business at any location within the Territory (as defined in Section 2(b) below), including from a vehicle or home office. The



location of the CP Business is set forth on **Exhibit A** attached hereto and incorporated by this reference.

(b) Territory. Franchisor will define the Territory using its then current standard criteria. Franchisor will determine the size of the Territory based on the factors that Franchisor deems relevant, which might include Franchisee's experience and resources, the population density and other pertinent factors that may be unique to the area in which Franchisee plans to operate the Franchise. Provided that Franchisee is in compliance with this Agreement, and subject to the subsequent sentence, Franchisor shall not open and operate, or franchise another party to open and operate, a CP Business utilizing the Marks and the System in the area described in **Exhibit A** and identified therein as the territory (the "**Territory**"). In order to maintain the protections of the Territory described in the preceding sentence, Franchisee shall achieve sales quotas established by Franchisor annually. In the first year of operating the CP Business, Franchisor and Franchisee shall agree upon a sales quota based upon market conditions and anticipated Gross Revenues in the Territory. For subsequent years during the term of this Agreement, sales quotas will be established by Franchisor based on Franchisee's performance in prior years. If Franchisee fails to achieve sales quotas in any year, Franchisor reserves the right to conduct the ~~Franchised business~~ CP Business in the Territory or ~~authorize itself or through third parties to do so.~~

(c) Franchisor's Reservation of Rights. Franchisor reserves all rights not specifically granted to Franchisee hereunder. In particular, and not in limitation of the foregoing, Franchisor reserves the right to conduct businesses using marks or commercial symbols different from the Marks either within or outside of the Territory. Subject to Section 2(b) above, Franchisor also reserves the right to: (i) use the Marks, and license the right to others to use the Marks, for purposes other than operating a CP Business, which may include, for example, the operation of a swimming pool and spa servicing business. ~~Franchisor also reserves the right to: and (ii)~~ conduct all commerce over the Internet and other means of electronic commerce as may in the future be developed, and Franchisee has no right to do so except as may be specifically permitted hereunder.

### 3. OPENING

(a) Opening. Franchisee must open its CP Business for business within two hundred ten (210) days after ~~Franchisee signing~~ signing this Agreement. Franchisee shall not commence operations of the CP Business until Franchisor has given its approval in writing. Franchisor reserves the right to conduct inspections of Franchisee's business equipment and materials, or of any other items, prior to giving its approval. Franchisor shall provide Franchisee with such management assistance as Franchisor deems necessary at the commencement of operations and for a short time thereafter.

(b) Relocation. Franchisee may not relocate the CP Business or operate the CP Business in different or additional locations outside of the Territory without Franchisor's prior written consent. Upon approval of Franchisee's request to relocate the CP Business, Franchisee shall pay to Franchisor a relocation fee equal to Two Thousand Five Hundred Dollars (\$2,500).

FRANCHISEE ACKNOWLEDGES THAT ALTHOUGH FRANCHISOR MAY HAVE BEEN INVOLVED IN THE TERRITORY SELECTION PROCESS AND OTHER ASPECTS OF THE DEVELOPMENT OF THE CP BUSINESS, FRANCHISOR MAKES NO WARRANTY, REPRESENTATION OR GUARANTY OF ANY KIND WITH RESPECT TO THE LOCATION,

OR THE SUCCESS OR PROFITABILITY OF THE CP BUSINESS TO BE OPERATED BY FRANCHISEE.

#### 4. TERM OF AGREEMENT

~~This~~ The term of this Agreement shall commence on the date it is signed by Franchisor and shall continue for a period of ten (10) years, subject to earlier termination as provided herein. The term of any lease or sublease (including options) Franchisee enters into for the location of the CP Business, if it elects to lease office space, shall be for such period of time. If Franchisee is acquiring an existing CP Business, the term of any necessary office lease shall be the shorter of: (a) the remaining term of the transferor's franchise agreement; or (b) the remaining term of the existing lease (including options) for the CP Business.

#### 5. RENEWAL OF FRANCHISE

~~Subject to compliance with each and every one of the conditions set forth below, Franchisee has the option to~~ renew ~~the its~~ right to operate the CP Business for two (2) additional, consecutive periods of five (5) years each, provided that all of the following conditions are satisfied prior to the end of the initial term (or each renewal term, as applicable):

(a) Written Notice. Franchisee gives Franchisor written notice of its election to renew not less than twelve (12) months prior to the expiration of the then-current term;

(b) No Default. Franchisee, when notice is given and at the time of renewal, is not in default of any material provision of either this Agreement or any other agreement between Franchisee and Franchisor or their affiliates;

(c) No Monetary Obligations Outstanding. All monetary obligations owed by Franchisee to Franchisor or its affiliate have been satisfied prior to renewal;

(d) Renewal Fee. Franchisee shall pay Franchisor the sum of 50% of the then-current initial franchise fee as a renewal fee;

(e) General Release. Franchisee must execute and deliver a general release of Franchisor and its affiliates, officers, directors, shareholders, employees, agents and representatives in a form acceptable to Franchisor;

(f) Lease. If Franchisee leases office space for the CP Business, Franchisee furnishes Franchisor with a copy of a lease for the CP Business premises indicating that Franchisee has the right to the premises for the renewal term;

(g) Updates. The CP Business must meet Franchisor's then-current requirements or Franchisee must make all expenditures necessary to update the CP Business to meet those requirements;

(h) Re-Training. Franchisee or the Manager, if applicable, shall have successfully completed any retraining or refresher training course Franchisor may require;

(i) Current Agreement. Franchisee shall sign Franchisor's then-current form of Franchise Agreement for a five (5) year term. Franchisee acknowledges that the then-current

form of Franchise Agreement may contain terms that are materially different from those set forth in this Agreement; and

(j) No Repeated Defaults. Franchisee shall not have, during the term of this Agreement or the preceding renewal term, received three (3) or more notices of default in any twenty-four (24) month period.

Franchisee shall have no right to ~~enter into a new agreement with Franchisor~~ renew this Agreement if Franchisee fails to comply with each of the conditions and every condition set forth above in a timely manner or if Franchisee fails to return to Franchisor any documents within thirty (30) days after Franchisor has delivered them to Franchisee.

## 6. FEES

(a) Initial Franchise Fee. ~~In consideration of the franchise granted herein,~~ Franchisee shall pay to Franchisor an initial franchise fee in the amount of set forth on **Exhibit A** in full upon execution of this Agreement. The initial franchise fee is deemed to be fully earned immediately upon payment, and is nonrefundable.

(b) Royalty Fee. Franchisee shall pay to Franchisor a monthly fee (the "**Royalty Fee**") equal to the greater of: (i) One Thousand Dollars (\$1,000), or (ii) four percent (4%) of Gross Revenues per month. For purposes of this Agreement, "**Gross Revenues**" means the entire gross receipts of every kind and nature from all products sold by the CP Business or services performed by Franchisee and excluding only amounts paid to any governmental tax authority.

(c) Advertising Fee. Commencing in the first (1st) month ~~that~~ the CP Business opens through the remainder of the term of this Agreement, Franchisee shall pay to Franchisor an advertising fee equal to Three Hundred Fifty Dollars (\$350) per month (the "**Advertising Fee**").

(d) Poologics User Fee. Commencing in the first month the CP Business opens through the remainder of the term of this Agreement, Franchisee shall pay to Franchisor or its designee a Poologics User Fee equal to One Hundred Ninety-Nine Dollars (\$199) per month (the "**Poologics User Fee**").

(e) Due Date. Franchisee shall pay the Royalty Fee and Advertising Fee on a monthly basis on the tenth (10th) day of every month. Payments shall be made by electronic funds transfer, and Franchisee shall execute and deliver such instruments as are necessary and appropriate to effect such transfers. Franchisee shall also provide Franchisor with a credit card as security for the payment of Royalty Fees and Advertising Fees. Franchisor shall have the right to vary the frequency of the due date (e.g., from monthly to weekly) and the method of payment from time to time. The Royalty Fee and Advertising Fee are non-refundable.

(f) Nonpayment. If Franchisor does not receive Franchisee's Royalty Fee, Advertising Fee, Poologics User Fee or any other payment hereunder by the dates they are due, Franchisee acknowledges that, in addition to exercising all other rights and remedies that Franchisor has, Franchisor may charge Franchisee's credit card (pursuant to Franchisor's standard credit card authorization form) and terminate this Agreement.

(g) Charge on Late Payments. In addition to all other rights and remedies that accrue to Franchisor, if Franchisee fails to pay any amount when due, Franchisee shall pay to Franchisor a late charge of Two Hundred Fifty Dollars (\$250) for each day the overdue amount remains unpaid plus interest at an annual rate of ten percent (10%), or the maximum rate permitted by law, whichever is less. Franchisee acknowledges that this provision does not constitute agreement by Franchisor to accept such payments after they are due or a commitment to extend credit to, or otherwise finance such amounts.

(h) No Withholding of Payment. Franchisee agrees that Franchisee will not, on the grounds of the alleged nonperformance by Franchisor of any of its obligations hereunder or for any other reason whatsoever, withhold payment of any amounts due, nor shall Franchisee have any right of offset.

(i) Application of Payments; Right of Offset. Notwithstanding any designation by Franchisee, Franchisor shall have discretion to apply any payments by Franchisee to any past due indebtedness of Franchisee. In addition, Franchisor shall have the right to offset any amounts due to it or its affiliates against any amounts to be paid to Franchisee.

## **7. DUTIES OF FRANCHISOR**

### **(a) Training and Support.**

(i) Initial Training. Within one hundred eighty (180) days after the date of this Agreement, Franchisee or, if applicable the Manager, as defined below, shall successfully complete Franchisor's initial training. Initial training shall be conducted in Austin, Texas or at other locations designated by Franchisor and shall include training through manuals, classroom training and other classes as required and presented by Franchisor. Franchisee or the Manager, must each complete initial training before the CP Business opens for business to the public.

(ii) Evaluation. Franchisor shall have the right, during the initial training program, to further evaluate Franchisee's fitness to operate the CP Business under this Agreement. In the event Franchisee or the Manager fails to successfully complete the initial training program, Franchisor shall have the right to terminate this Agreement.

(iii) Training Fees. Franchisee shall not be charged an additional fee for providing initial training to the initial Manager. Franchisor may charge a fee to provide initial training to additional Managers or personnel.

(iv) Additional Training and Support. Franchisor may require Franchisee and/or the Manager to attend refresher and additional training courses from time to time and Franchisee acknowledges that there may be a fee charged for such training. Franchisor may, but is not required to, provide individualized assistance to Franchisee (whether in person, or by phone or email), subject to availability of Franchisor's personnel.

(v) Expenses. Franchisee shall be responsible for all expenses, if any, that Franchisee and its Manager may incur in connection with initial or refresher training.

(vi) Annual Convention. Franchisor may, but is not required to, host an annual convention for all franchisees to provide updates regarding the System, recognize top performers and collaborate regarding the services and products the System provides. If

Franchisor hosts such a convention, Franchisee's attendance at the convention shall be mandatory. Franchisor may charge a fee to host the convention. Franchisee is responsible for its expenses in attending, including travel and living expenses.

(vii) Annual Training Seminars. Franchisor may, but is not required to, host an annual franchise training seminar to discuss issues affecting the System, which may include industry changes, new services and products and/or marketing strategies. Franchisor may require Franchisee's participation. Franchisor may charge a fee for such seminar. Franchisee is responsible for its expenses in attending, including travel and living expenses.

(viii) Leads. Franchisor shall use commercially reasonable efforts to provide and direct to Franchisee all leads that Franchisor receives requesting services within Franchisee's Territory.

(ix) Incentive and Points Programs. From time to time, Franchisor may administer certain incentive or points programs to incentivize franchisees to perform and purchase equipment and materials from designated suppliers. Franchisee shall participate in all such programs in accordance with Franchisor's practices and policies.

(x) New Products and Services. Franchisor may, but is not required to, assist Franchisee in developing services or products to be offered as part of the CP Business; provided, however, that all products, services, ideas, concepts, techniques or materials relating to a CP Business (collectively, "**Innovations**"), whether or not protectable intellectual property and whether created by or for Franchisee or its owners, employees or contractors, must be promptly disclosed to Franchisor and shall be deemed to be Franchisor's sole and exclusive property, part of the System, and works made-for-hire for Franchisor. To the extent any Innovation does not qualify as a work made-for-hire for Franchisor, by this paragraph Franchisee assigns ownership of that Innovation, and all related rights to that Innovation, to Franchisor and agrees to sign (and to cause its owners, employees and contractors to sign) whatever assignment or other documents Franchisor requests to evidence Franchisor's ownership or to help Franchisor obtain intellectual property rights in the Innovation. Franchisor and its affiliates have no obligation to make any payments to Franchisee or any other person with respect to any Innovations. Franchisee may not use any Innovation in operating its CP Business or otherwise without Franchisor's prior approval.

(b) Operations Manual. Franchisor will lend to Franchisee for use during the term of this Agreement a copy of Franchisor's proprietary and confidential manual which Franchisor may amend from time to time, containing mandatory specifications, standards, operating procedures and rules for the System (the "**Operations Manual**"). All such specifications, standards, operating procedures and rules prescribed from time to time in the Operations Manual, or otherwise communicated to Franchisee in writing (which may include instruction regarding sub-contracting and selecting tradesman and materials for jobsites), shall constitute requirements of this Agreement and shall be kept confidential by Franchisee. Franchisee will not at any time copy any part of these materials, disclose any information contained in them to others or permit others access to them. Franchisee acknowledges and agrees that the Operations Manual may be modified from time to time to reflect changes in the System; provided, however, that no such modification shall alter Franchisee's fundamental status and rights under this Agreement. All modifications to the Operations Manual shall be binding upon Franchisee upon being mailed or otherwise made available to Franchisee. Franchisee agrees to accept, implement and adopt any such modifications at Franchisee's own cost. The Operations Manual will contain proprietary information belonging to Franchisor and Franchisee

acknowledges that the Operations Manual is, and shall remain, the property of Franchisor. Franchisee shall promptly return the Operations Manual to the Franchisor upon termination or expiration of this Agreement. All references herein to the Agreement shall include the provisions of the Operations Manual and all such mandatory specifications, standards, procedures and rules, and such additions and modifications thereto. Franchisee understands and agrees that it is of substantial value to Franchisor and other franchisees of Franchisor, as well as to Franchisee, that the System establish and maintain a common identity. Franchisee agrees and acknowledges that full compliance with each and every detail of the System and the Operations Manual is essential to preserve, maintain and enhance the reputation, trade demand and goodwill of the System and the Marks and that failure of Franchisee to operate the CP Business in accordance with the System and the Operations Manual can cause damage to all of the other parties described above, as well as to Franchisee. Consistent with the goals of the System, Franchisee shall be responsible for the day-to-day operation of Franchisee's business.

## **8. ADVERTISING**

(a) Advertising Fund. Franchisor shall have the right to establish an advertising fund (the "**Advertising Fund**"). Franchisee agrees and acknowledges that the Advertising Fee may be deposited in Franchisor's general operating account, may be commingled with Franchisor's general operating funds and may be deemed an asset of Franchisor. Despite the foregoing, Franchisor will administratively segregate the Advertising Fund on its books and records. Franchisor will use the Advertising Fund for the purpose of promoting the System as a whole and increasing the goodwill of the Marks. Franchisor will conduct such advertising and marketing of the System and its services as Franchisor deems desirable to promote and enhance the reputation of the System, including, without limitation, producing materials for use in connection with such advertising and marketing. Franchisee understands, acknowledges and agrees that all decisions regarding advertising and marketing, including without limitation the type, quantity, timing, placement and choice of media, market areas and advertising agencies shall be made by Franchisor and shall be final and binding. Franchisee agrees and acknowledges that all costs of the formulation, development and production of any advertising and promotion (including without limitation the proportionate compensation of Franchisor's employees who devote time and render services in connection with such advertising and promotional programs or the administration, accounting and collection of the Advertising Fees) will be paid from the Advertising Fund. Franchisor does not have any obligation to make expenditures that are proportionate or equivalent to Franchisee's Advertising Fees in the market area of the Territory, nor does Franchisor represent that Franchisee will benefit directly or pro rata from the placement of advertising.

(b) Franchisee Expenditures. In addition to the Advertising Fee, Franchisee shall spend at least one percent (1%) of Gross Revenues, but no more than Twenty-Five Thousand Dollars (\$25,000), annually on local advertising, which has been approved by Franchisor as set forth in Section 8(b) below. ~~Despite the foregoing, Franchisor shall not require Franchisee to spend more than Twenty-Five Thousand Dollars (\$25,000) annually on local advertising.~~ The purpose of such local advertising shall be to advance the reputation of the System and the Marks and develop awareness among consumers of them. Upon request from Franchisor, Franchisee shall submit to Franchisor receipts evidencing expenditures for approved local advertising. Franchisor reserves the right to require Franchisee to establish and operate a website that meets Franchisor's specifications and which may be linked to Franchisor's website.

(c) Approval of Advertising. All advertising copy and other materials Franchisee proposes to use shall be in strict accordance and conformity with the standards, formats and specimens set forth in the Operations Manual. Franchisee shall submit the proposed advertising material to Franchisor in advance of publication and shall use only such advertising copy and materials as have been approved in writing by Franchisor. Franchisee agrees and acknowledges that the copyright for any advertising or other materials that Franchisee develops for the CP Business shall automatically be assigned to Franchisor without any further action by the parties required. Franchisee shall also implement and participate in all marketing and promotional campaigns for the System that Franchisor designates from time to time.

(d) Pre-Opening Advertising. Franchisee acknowledges and agrees that adequate pre-opening advertising is essential to the success of the CP Business and agrees to conduct such advertising in connection with the opening of CP Business in accordance with Franchisor's directions and assistance.

(e) Discounts and Coupons. From time to time as part of the advertising and promotional activities conducted by Franchisor, Franchisor may institute discount programs and issue coupons. Franchisee agrees to accept such coupons from customers and to redeem them in accordance with Franchisor's policies then in effect and to participate in such discount programs. However, such programs shall in no way affect Franchisee's right to establish its own prices.

(f) System Websites. Franchisor or one or more of its designees may establish a website or series of websites to advertise, market and promote CP Businesses, the CP Business franchise opportunity, and/or for any other purposes that Franchisor determines are appropriate for CP Businesses (those websites, applications other technological advances are collectively called the "**System Website**"). If Franchisor includes information about the Franchise on the System Website, then Franchisee shall give Franchisor the information and materials that Franchisor periodically requests concerning the Franchise, including contact information and portfolio images from completed projects. Franchisor has the final decision concerning all information and functionality that appears on the System Website and will update or modify the System Website as Franchisor determines. By submitting to Franchisor information or materials for the System Website, Franchisee is representing to Franchisor that the information and materials are accurate and not misleading and do not infringe any third party's rights. Franchisee must notify Franchisor whenever any information about Franchisee or Franchisee's CP Business on the System Website changes or is not accurate.

Franchisor owns all intellectual property and other rights in the System Website and all information it contains. Franchisor may implement and periodically modify Operations relating to the System Website and, at its option, may discontinue all or any part of the System Website at any time. Nothing in this Section shall limit Franchisor's right to maintain websites and technologies other than the System Website or to offer and sell products or services under the Marks from the System Website, another website or technology, or otherwise over the internet without payment or obligation of any kind to Franchisee.

(g) No Fiduciary Duty. Nothing in this Section or anywhere in this Agreement creates a fiduciary relationship between the parties, nor shall anything herein be deemed to create any trust duties between the parties. No covenant shall be implied to vary or interpret the terms of this provision. Copies of Franchisor's periodic reports of the Fund shall be available to Franchisee upon reasonable request.

## 9. DUTIES OF FRANCHISEE

In addition to its duties as set forth elsewhere in this Agreement, Franchisee agrees to perform the following:

(a) Inventory and Supply Specifications. To promote uniformity and quality, and to protect the integrity of the Marks, Franchisee agrees to the following restrictions regarding inventory, supplies and products, as follows:

(i) Proprietary Products. Franchisor and its affiliate have developed certain swimming pool and spa design specifications and processes for swimming pool and spa construction which incorporate trade secrets and information proprietary to Franchisor and the System, as well as sources for products used in furtherance of such designs (the "**Proprietary Products**"). These Proprietary Products may include additional items if future products or services are developed and authorized for use in CP Businesses. Franchisee agrees to purchase all Proprietary Products only from Franchisor's designated suppliers and in no event will Franchisee alter or attempt to substitute any other product for any Proprietary Product. In connection with the operation of the CP Business and any other franchise which Franchisor may grant to Franchisee, Franchisee will only use Proprietary Products when required by Franchisor's or its affiliate's design specifications. Franchisor expressly reserves the right to designate suppliers, or itself to be the sole supplier, of Proprietary Products.

(ii) Advertising and Materials or Supplies Using the Marks. In advertising services and products offered by the CP Business, all advertising material used by Franchisee shall be subject to approval by Franchisor as to quality and design and shall bear trademarks approved by Franchisor.

(iii) All Other Products, Inventory or Supplies. Franchisor will from time to time establish and publish reasonable specifications for the types of products, inventory and supplies authorized for use in connection with the operation of the CP Business. Franchisee may purchase any or all of its products, inventory and supplies that meet Franchisor's specifications from suppliers approved by Franchisor. Franchisor may, in its sole discretion, approve suppliers selected by Franchisee provided the following conditions are first met:

(A) Franchisee shall submit a written request to the Franchisor for approval of the supplier;

(B) The supplier shall demonstrate to Franchisor's satisfaction that it is able to supply an item to Franchisee meeting Franchisor's specifications for such item, including but not limited to, providing Franchisor with samples and the opportunity to inspect its facilities from time to time;

(C) The supplier shall demonstrate to Franchisor's satisfaction that the supplier is of good standing in the business community with respect to its financial soundness and the reliability of its product and service;

(D) The supplier shall obtain, maintain and submit to Franchisor proof of, sufficient insurance coverage (including, but not limited to, product liability coverage) at limits and including coverage acceptable to Franchisor, and include Franchisor and Franchisee as additional named insureds with the right to receive at least thirty (30) days' prior written notice of any modification, cancellation or termination of such policy; and



(E) In the event the item to be supplied is required to bear one of the Marks, such supplier must execute a license agreement (which may include a royalty payment) in a form acceptable to Franchisor.

Until and unless Franchisor notifies Franchisee in writing that it has approved a supplier, Franchisee must continue to purchase from previously approved suppliers. If Franchisor determines that a previously approved supplier no longer conforms to such standards, it shall so notify Franchisee and Franchisee shall thereupon discontinue making purchases from supplier. Franchisor shall, from time to time, publish updated lists of approved suppliers for inventory, supplies and products. Franchisor may, but is not required to, negotiate purchase agreements with suppliers to obtain discounted prices or other benefits to the System.

(b) Confidential Information and Operations. Franchisee acknowledges that the information contained in the Operations Manual constitutes confidential and trade secret information. Additionally, Franchisor may provide Franchisee with other information which has been designated by Franchisor as "Confidential," "Trade Secret," or "Proprietary Information." Without the prior written consent of Franchisor, Franchisee shall neither disclose the contents of the Operations Manual to any person, except employees of Franchisee for purposes related solely to the operation of the CP Business, nor reprint or reproduce the Operations Manual, or any other confidential or proprietary information or trade secrets in whole or in part for any purposes. Upon request by Franchisor, Franchisee shall obtain agreements from its personnel prohibiting disclosure of any trade secret or proprietary information.

(c) Operation of CP Business.

(i) Operation of CP Business. Franchisee shall participate in the operation and management of the CP Business (personally or through a manager approved by Franchisor who has completed the initial training program to Franchisor's satisfaction (the "Manager")) and shall diligently devote Franchisee's best efforts to the operation and management so as to maximize sales and profits, keeping free from conflicting enterprises or any other activities which would be detrimental to or interfere with such operation or management. The CP Business must be directly operated by Franchisee or by the Manager. Franchisee shall operate and maintain the CP Business only in the Territory designated herein and only in accordance with the business standards, procedures, policies, and techniques comprising the System as specified in the Operations Manual. In particular, and not in limitation of the foregoing, Franchisee shall participate in all loyalty and similar programs required by Franchisor. Franchisee acknowledges and agrees that such participation may involve accepting promotional coupons and discounting prices. Franchisee shall conspicuously post on all CP Business documentation, business cards and the like a notice to the effect that the CP Business is a franchised business that is owned and operated independently of Franchisor.

(ii) Services and Products and Services. Products and services offered for sale by the CP Business are essential components of the System and shall be specified by Franchisor in its sole discretion, from time to time, in its Operations Manual or in other written materials. Franchisee shall offer for sale all mandatory products and services and shall not offer for sale any products or services which are not so specified by Franchisor as mandatory or optional.

(d) Jobsite Sanitation and Maintenance Standards. At its sole expense, Franchisee shall at all times maintain jobsites and work areas, in a good, clean, and safe condition.

(e) Staffing Requirements. Franchisee shall maintain an adequate number of neat, clean, competent, and courteous staff associated with the CP Business to insure maximum customer satisfaction and consistent service.

(f) Sales Records and Access to Data in Poologics. Franchisee shall license from Poologics, or another supplier authorized by Franchisor, software or a cloud-based portal for accounting, business operations and customer relationship management functions (the "**Poologics System**"). Franchisee agrees to execute any and all necessary agreements and pay fees in connection with the installation, maintenance and upgrade of the Poologics System. Franchisee understands and agrees that both technological and operational developments may require Franchisee to upgrade or replace components of, or the entire, Poologics System during the term of this Agreement or upon its renewal. Franchisee will upgrade, replace or expand the Poologics System in order to assume and discharge all of the Poologics System related tasks specified, and as modified from time to time, by Franchisor. Franchisee agrees and acknowledges that Franchisor will have independent access to the information in the Poologics System and may access it at any time. Franchisee also agrees to deliver monthly reports of Gross Revenues on a form approved or provided by Franchisor, together with the payment of all fees due under this Agreement.

(g) Legal Compliance. At its sole expense, Franchisee shall comply with all federal, state, and local laws, ordinances and regulations applicable to the ownership and operation of the CP Business.

(h) Right of Inspection. Franchisee shall allow the agents and representatives of Franchisor to inspect the operation of the CP Business at any time for the purpose of examining and inspecting jobsites, equipment, products, supplies, and staff of the CP Business to determine whether Franchisee is in compliance with this Agreement and the standards and policies of the System. In order to monitor the System, Franchisor shall have the right to interview Franchisee's employees and personnel, conduct quality assurance audits, employ mystery shoppers and conduct customer surveys. If Franchisee shall fail to operate the CP Business in accordance with the System, Franchisor may, at its option, and at Franchisee's expense, and in addition to any other remedies of Franchisor hereunder, place a representative of Franchisor in the CP Business until Franchisor shall determine in its sole discretion that there is compliance.

(i) Books and Records. Franchisee shall keep books of account in accordance with good accounting practices which fully and accurately disclose Gross Revenues and shall deliver to Franchisor by the fifteenth (15th) day of the following month, monthly financial statements which accurately reflect current results of the operation of the CP Business. Franchisee shall permit Franchisor, or its agent or representative to inspect and examine Franchisee's books and records at reasonable times. If any audit discloses that reported Gross Revenues of Franchisee have been understated, Franchisee shall immediately pay to Franchisor the amounts due, together with late charges as provided herein. If such audit discloses that the reported Gross Revenues of Franchisee for the period audited have been understated by three percent (3%) or more, Franchisee shall reimburse Franchisor for any and all expenses incurred in connection with or attributable to the audit including without limitation accounting and legal fees and travel expenses, room and board and compensation for Franchisor's agents and representatives. Such payments shall be without prejudice to any other rights and remedies Franchisor may have under this Agreement or otherwise. Franchisee shall maintain the books and records of the CP Business for at least three (3) years. Upon reasonable request from Franchisee, Franchisor may, at its option, assist Franchisee in establishing and using administrative,

bookkeeping, accounting or inventory control procedures (subject to additional fees) and respond to Franchisee's questions regarding operational issues and provide support on a reasonable basis.

(j) Required Disclosure. Franchisee acknowledges that Franchisor may be required by law, regulation or other legal requirement, or may deem it advisable, to disclose information regarding Franchisee or the operation of the CP Business, including without limitation, earnings or other financial performance information. Franchisee agrees that Franchisor shall be entitled to disclose such information and that Franchisor shall have the right to determine the extent and manner in which such disclosure will be made. If Franchisor does not have the information necessary for the disclosure Franchisor determines it will make, Franchisee shall provide such information to Franchisor promptly upon Franchisor's request.

(k) Notification of Legal Proceedings. Franchisee shall notify Franchisor in writing within ten (10) days of the commencement of any action, suit or proceeding, or of the issuance of any order, writ, injunction, award, or decree of any court or government agency which may adversely affect Franchisee's financial condition or ability to perform its duties or meet its obligations hereunder.

(l) Electronic Payment Compliance. Franchisee shall ensure that the CP Business adheres to the System standards applicable to electronic payments including PCI (Payment Card Industry) standards. If required under applicable law, by Franchisor or by one of the credit card companies, Franchisee shall provide Franchisor with evidence of compliance with the PCI standards at Franchisor's request and provide to Franchisor copies of an audit, scanning results or related documentation relating to such compliance.

(m) Privacy Laws. Franchisee shall: (1) abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information (collectively, the "Privacy Laws"); (2) comply with privacy and data protection requirements applicable to the CP Business and as may be set forth in the Operations Manual; (3) notify Franchisor immediately in the event Franchisee discovers any potential issues regarding its or Franchisor's non-compliance under such Privacy Laws; (4) refrain from any action or inaction that may cause Franchisor or any of its affiliates to violate any Privacy Laws; and (5) do and execute, or arrange to be done and executed, each act, document and thing necessary or desirable to keep Franchisor or any of its affiliates in compliance with any Privacy Laws.

## 10. INSURANCE

At all times during the term of this Agreement, Franchisee shall maintain in full force and effect at its sole cost and expense such insurance limits and coverages as Franchisor shall designate from time to time. Franchisee shall also maintain in full force and effect at its sole cost and expense, workers compensation insurance as required by law. Franchisor and all other subsidiaries, affiliates and other parties designated by Franchisor from time to time shall be named as additional insureds. Franchisee shall provide Franchisor with certificates of insurance evidencing the required coverage, which certificates shall be renewed and provided annually and shall contain such detailed information as Franchisor may from time to time request, and Franchisee shall also provide Franchisor with full and complete copies of any and all of the above policies including copies of any renewals or modifications thereto upon request of Franchisor. All insurance policies must be issued by an insurance company licensed to do business in the state where the CP Business is located, approved by Franchisor, and rated A-

or better by A.M. Best & Company, Inc. Franchisee shall cause the companies to agree by endorsement or separate written document that Franchisor shall be given at least thirty (30) days' prior written notice of termination, expiration, cancellation, modification or reduction in coverage limits of any such policy. Upon failure of Franchisee to maintain in effect any of the insurance required, or to furnish to Franchisor satisfactory evidence of such insurance, Franchisor may, in its discretion, obtain insurance coverage on behalf of Franchisee, and Franchisee agrees to promptly execute applications or instruments required to obtain any such insurance and to pay to Franchisor, on demand, all costs, premiums and other expenses incurred by Franchisor. Without limitation of the foregoing, Franchisee shall also set aside one percent (1%) of its Gross Revenues monthly as a reserve against uninsured and/or small claims.

## **11. INDEMNITY**

Franchisee shall, during the term of this Agreement and after the termination or expiration of this Agreement, protect, defend, indemnify and hold the Franchisor, and its affiliates and associates, licensors, officers, directors, owners, employees, agents, representatives and assignees (the "**Indemnified Parties**") harmless against any and all liability for all claims of every kind or nature arising in any way out of or relating to Franchisee's actions or failure to act, whether personal or in connection with the operation of the CP Business, any other actions or failure to act by Franchisee, its agents or representatives or any breach of this Agreement. For purposes of this indemnification, "claims" means and includes all obligations, actual and consequential damages, losses, claims, judgments, demands, liens, reckonings, accounts and costs incurred in the defense of any claim (such as, by way of illustration, but not limitation, accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses). Franchisor shall have the right to defend any such claim against it with counsel of its own choosing and Franchisee agrees to cooperate fully with Franchisor in connection with the defense of any claim. Franchisee shall have no right to settle or refuse to settle any claim; Franchisee shall retain all right to do so. In addition, Franchisee agrees to cooperate fully with Franchisor in any other claims brought by or against Franchisor. The defense of such claim, litigation or administrative proceeding by an Indemnified Party, or by Franchisee on an Indemnified Party's behalf, shall be at the sole cost and expense of Franchisee, who shall hold each Indemnified Party free and harmless from all such obligations and liabilities and shall reimburse an Indemnified Party for all expenses incurred therein, including attorneys' fees. Further, an Indemnified Party shall have the right independently to take any action it may deem necessary, in its sole discretion, to protect and defend itself against any threatened action subject to indemnification hereunder, without regard to expense, forum or other parties that may be involved.

## **12. MARKS AND TRADE DRESS**

(a) Ownership of Marks and Goodwill. Franchisee's right to use the Marks is derived solely from, and is subject to, the terms and conditions of this Agreement. Such right is limited to the operation of the CP Business in accordance with this Agreement and all mandatory standards, specifications and operating procedures prescribed from time to time by Franchisor. Franchisee acknowledges that Franchisor has the right to use and sublicense the use of the Marks pursuant to a license agreement between it and its affiliate, California Pools, Inc. (the "**Licensor**") that owns the Marks (the "**License Agreement**"), and that they are valid trademarks. Franchisee agrees not to contest or oppose, nor to assist anyone else to contest or oppose, directly or indirectly, the License Agreement or Franchisor's rights and use in connection therewith, the Licensor's ownership or use of, application for, or registration of, or

the validity or enforceability of, any of the Marks. Franchisee also agrees not to acquire or use any trademarks that are similar or identical to the Marks. Franchisee agrees that its usage of the Marks and any goodwill established thereby shall inure to the exclusive benefit of the Licensor.

(b) Limitations on Franchisee's Use of Marks and Trade Dress. If local laws require that Franchisee file a registration stating that Franchisee is conducting business under an assumed name or trade name, Franchisee shall state in such document that it is conducting such business as a franchisee of Franchisor. Franchisee shall not use any of the Marks or similar words or colorable imitations thereof as part of any name of any corporation, partnership, limited liability company or other business entity, or with any other prefix, suffix or other modifying words, terms, designs or symbols, or in any modified form or as part of any domain name, web address or similar electronic use; nor may Franchisee use any of the Marks in connection with the sale of any unauthorized products or service or in any other manner not explicitly authorized in writing by Franchisor. Franchisee will not use or display, or permit the use or display, of the trademarks, trade names, service marks, insignias, logotypes or any other commercial symbols or trade dress of any other person or entity in connection with the CP Business without the prior written consent of Franchisor, or as expressly permitted in the Operations Manual.

(c) Defense of Trademarks.

(i) In the event that Franchisee receives notice or learns of a claim, suit, demand or proceeding against Franchisee on account of any alleged infringement, unfair competition, or similar matter relating to Franchisee's use of the Marks or of any of Franchisor's copyrights in accordance with the terms of this Agreement, Franchisee shall promptly notify Franchisor of such claim, suit, demand or proceeding. Franchisee shall have no power, right, or authority to settle or compromise any such claim by a third party without the prior written consent of Franchisor. Provided that Franchisee is in full compliance with this Agreement, Franchisor shall defend Franchisee against any claim by a third party against Franchisee for Franchisee's use of the Marks and copyrighted material in accordance with this Agreement, using attorneys of Franchisor's choosing. Franchisor may elect to compromise or settle any such claim, at its sole discretion. Franchisee agrees to cooperate fully with Franchisor in connection with any such defense. Franchisee irrevocably grants Franchisor authority and power of attorney to defend or settle such claims, demands, suits or proceedings.

(ii) In the event that Franchisee receives notice or is informed or learns that any third party, that Franchisee believes to be unauthorized to use the Marks, is using the Marks or any variants thereof, or is using any of Franchisor's or its affiliate's copyrights, Franchisee shall promptly notify Franchisor. Thereupon, Franchisor shall, in its sole discretion, determine whether or not it wishes to undertake any action against such third party on account of said person's alleged infringement of the Marks or copyrights. In the event the Franchisor undertakes such action, it shall have the authority and power of attorney to defend or settle such action. Franchisee agrees to render such assistance as Franchisor shall reasonably demand to carry out the prosecution of any such action. Franchisee shall have no right to prosecute any claim of any kind or nature whatsoever against such alleged infringer for or on account of said alleged infringement.

(d) Copyright. Franchisee acknowledges that Franchisor has developed, and may further develop during the term of this Agreement, certain artistic designs, and certain other word combinations and other materials designated for use by Franchisee. Franchisee

acknowledges that Franchisor and/or its affiliate retains all right, title and interest thereto as provided by copyright law to the originator of works and, further, that Franchisee is licensed to use such copyrighted materials solely in accordance with the terms and during the term of this Agreement.

(e) Discontinuance of Use of Marks. If it becomes advisable at any time in Franchisor's sole discretion for Franchisee to modify or discontinue use of any Mark or any items of trade dress, or use one or more additional or substitute marks or items, Franchisee agrees to comply with Franchisor's directions to modify or otherwise discontinue the use of such Mark or item of trade dress and to accept, use and display such additional marks or items of trade dress within a reasonable time after notice thereof by Franchisor but in no event more than thirty (30) days after receiving notice from the Franchisor. Franchisor shall not be obligated to compensate Franchisee for any costs incurred by Franchisee in connection with any such addition, modification or discontinuance.

### **13. NON-COMPETITION**

(a) Franchisee acknowledges that Franchisor could not protect the Trade Secrets against unauthorized use or disclosure and could not achieve a free exchange of ideas and information among franchisees in the System if Franchisee held interests in any competitive business. Franchisee acknowledges that Franchisor grants the rights to Franchisee in part in consideration of, and in reliance upon, Franchisee's agreement to deal exclusively with Franchisor. Therefore, Franchisee shall not at any time during the term of this Agreement, individually or in conjunction with any person or entity, have any interest as an owner, investor, shareholder, partner, member, lender, director, officer, manager, ~~employee~~, consultant, guarantor, representative, or agent or in any other manner whatsoever, directly or indirectly, carry on or be engaged in, financially or otherwise, or advise in the establishment or operation of any business involving or related to the sale of swimming pool construction or remodeling services within the Territory (other than the CP Business Franchisee operates under this Agreement), within the territory ~~or~~ of any other existing CP Business, or within thirty (30) miles from the territory of any other existing CP Business.

(b) In addition, and except as otherwise provided in this Section 13(b), for two (2) years after the termination or expiration of this Agreement, Franchisee shall not carry on, be engaged in or advise in the establishment or operation of any business involving or related to the operation of a competitive business selling swimming pool construction or remodeling services or similar businesses described in section (a) above (except under a franchise agreement with Franchisor): (i) within the Territory, (ii) within the territory ~~or~~ of any other existing CP Business, or within thirty (30) miles from the territory of any other existing CP Business. Franchisee agrees and acknowledges that this restriction represents only a limited one on Franchisee's ability to conduct a business and that the purpose of this covenant is not to deprive Franchisee of a means of livelihood, and will not do so, but is rather to protect the goodwill and interest of Franchisor and the System. Despite the foregoing, if Franchisee continuously operated the same or similar type of business to the CP Business that Franchisee will operate under this Agreement for the period of at least twenty-four (24) months immediately preceding the Effective Date of this Agreement (as described in Section 32), then this Section 13(b) shall not apply. For the avoidance of doubt, in all other cases, Franchisee is subject to the prohibitions in this Section 13(b).

(c) Covenants contained in this Section 13 shall be construed as severable and independent, and shall be interpreted and applied consistently with the requirements of

reasonableness and equity. The period, the geographic area and the scope of the restrictions on Franchisee's activities are divisible so that if any provision of the restrictions is invalid, that provision shall be automatically modified to the extent necessary to make it valid.

(d) Franchisee shall require and obtain execution of agreements similar to those set forth in this Section 13 including agreements applicable upon the termination of a person's relationship with Franchisee that shall be effective for a period of two (2) year after such termination from all officers, directors, and holders of a beneficial interest of ten percent (10%) or more of the equity of any entity directly or indirectly controlling Franchisee, if Franchisee is an entity;

(e) All agreements required by this Section 13 shall be in forms satisfactory to Franchisor, including without limitation specific identification of Franchisor as a third-party beneficiary with the independent right to enforce them.

#### **14. ASSIGNMENT AND TRANSFER**

(a) By Franchisor. This Agreement is fully transferable and assignable by Franchisor, in whole or in part, and shall inure to the benefit of any assignee, transferee or other legal successor to its interest herein.

(b) By Franchisee.

(i) The rights granted to Franchisee in this Agreement are personal and Franchisee acknowledges that Franchisor is entering into this Agreement in reliance upon and in consideration of the individual character, skill, attitude, business ability and financial capacity of Franchisee or, if Franchisee is a corporation, partnership, limited liability company or other entity, of its principal owners and officers or partners. Accordingly, Franchisee shall not transfer (as defined below) this Agreement or any interest therein without Franchisor's written consent and without offering Franchisor a right of first refusal. Any attempt at a transfer that violates the provisions of this Section shall constitute a material breach of this Agreement and shall convey no right or interest in this Agreement. A transfer by an individual franchisee to an entity that is wholly owned by the Franchisee and the sole business of which is the operation of the business contemplated by this Agreement shall not be subject to the Franchisor's right of first refusal nor shall Franchisee be required to pay the transfer fee set forth below; provided that Franchisee notifies Franchisor in advance of the transfer and provides Franchisor with all documents Franchisor deems necessary or advisable including without limitation, an assumption agreement and personal guaranty by Franchisee as an individual. Franchisee shall reimburse Franchisor for its expenses in documenting such a transfer.

(ii) For purposes hereof, "transfer" means any voluntary, involuntary, direct or indirect assignment, sale, division, encumbrance, hypothecation, mortgage, pledge or other transfer by Franchisee, in whole or in part, of any interest in this Agreement, any interest in the CP Business or more than ten (10%) of the ownership of Franchisee (either by one or by a series of transfers), if Franchisee is a corporation, partnership, limited liability company or other entity. "Transfer" shall also include, in the event of Franchisee's death, a transfer to the surviving spouse, heirs, estate or other representative of Franchisee (the "Survivor").

(iii) Franchisor may require fulfillment of any or all of the following conditions precedent to the granting of consent to any transfer:

(A) there shall be no existing default in the performance of Franchisee's obligations under this Agreement or under any other agreement with Franchisor or any of its affiliates;

(B) the operation of the CP Business shall be in complete compliance with Franchisor's then-current standards;

(C) the proposed transferee shall be qualified according to Franchisor's then-current standards for new franchisees, and shall have successfully completed Franchisor's initial training program;

(D) the proposed transferee shall have executed Franchisor's then-current standard franchise agreement for a term of years equal to the remaining term of this Agreement, the proposed transferee shall have executed all ancillary agreements then required by Franchisor and all holders of an equity interest in the proposed transferee (if an entity) shall have executed Franchisor's then-current form of Guaranty;

(E) Franchisee shall have paid to Franchisor a transfer fee equal to Five Thousand Dollars (\$5,000) plus fifty percent (50%) of the then current initial franchise fee; provided, however, that in the event such transfer is to a Survivor, the transfer fee shall only consist of the reimbursement of Franchisor's expenses. The entire transfer fee is payable when Franchisee notifies Franchisor of the desire to transfer and is payable regardless of whether or not Franchisor consents to the Transfer;

(F) Franchisee (and its principals if Franchisee is a corporation or other entity) shall have executed a general release in a form acceptable to Franchisor of any and all claims against Franchisor and its officers, directors, employees, affiliates, shareholders, representatives and agents;

(G) any obligations of the transferee to the Franchisee shall be subrogated to the transferee's obligations to Franchisor under the Franchise Agreement it enters into with Franchisor;

(H) if the proposed Transfer is to a business entity, Franchisee must own such business entity, sign a personal service agreement with such business entity, and execute a performance guaranty; and

(I) Franchisee must transfer this Agreement together with all other agreements it has entered into with Franchisor and all rights thereunder to the transferee.

(iv) Franchisor's consent to any transfer shall not constitute a waiver of any claim that Franchisor may have against Franchisee or its owner(s), or of Franchisor's right to demand strict compliance with this Agreement.

(v) No interest in this Agreement or the franchise shall be the subject of a lien, security interest or pledge either in favor of Franchisee as part of a transfer of the Franchise, or otherwise.

(c) Right of First Refusal. Franchisee shall provide Franchisor with complete information on the proposed transferee and terms of the transfer. Within thirty (30) days of receipt of the complete information and documents by Franchisee, Franchisor will inform



Franchisee (i) whether it will exercise its right of first refusal, and (ii) if not, whether it will consent to the transfer. In the event that Franchisor notifies Franchisee that it will exercise its right of first refusal, except as provided below, Franchisor or its nominee will accept the transfer upon the same terms and conditions as set forth in the instruments and documents which embodied the proposed transfer. Franchisor shall not be required, by exercise of its right of first refusal, to perform obligations of the proposed transferee which are merely incidental to the transfer (e.g., employment agreements in favor of individuals, and brokers or finders fees to be paid by the proposed transferee to Franchisee or to any principal of Franchisee). Moreover, Franchisor shall have not less than sixty (60) days from the delivery of Franchisor's notice of exercise to consummate the transfer. If Franchisor elects not to exercise its right of first refusal and consents to the proposed transferee, Franchisee may consummate the proposed transfer, but only upon the terms and conditions set forth in the notice submitted to Franchisor.

(d) Death or Permanent Disability. If Franchisee, or the principal of a Franchisee that is not an individual, dies or is permanently disabled in a manner that prohibits operation of the CP Business, the Survivor or, in the case of permanent disability, the representative of Franchisee shall, within one hundred twenty (120) days of such death or determination of permanent disability, either meet all of the qualifications required of franchisees or shall transfer the Franchise Agreement.

#### **15. OPERATION IN THE EVENT OF ABSENCE, DISABILITY OR DEATH**

The parties hereto acknowledge that it is imperative that the CP Business be operated without any interruption and in a manner that will not cause harm to the CP Business or the System. In order to insure such continued operation, in the event that Franchisee is not able to operate the CP Business, by reason of illness, disability, death, or otherwise, and within one hundred twenty (120) days of such illness or death, Franchisee's executor or representative has not transferred the franchise in accordance with the provisions of this Agreement, Franchisee authorizes Franchisor to operate the CP Business for as long as Franchisor deems necessary and practicable without waiver of any other rights or remedies Franchisor may have under this Agreement. All proceeds from the operation of the CP Business during such period of operation by Franchisor shall be separately accounted for, and the expenses of the CP Business, including reasonable compensation and expenses for Franchisor's representative(s), shall be charged to said proceeds. If Franchisor, in its sole discretion, temporarily operates the CP Business as provided in this section, Franchisee agrees to hold harmless and fully indemnify Franchisor and any representative(s) of Franchisor who may act hereunder.

#### **16. DEFAULT AND TERMINATION**

The following provisions are in addition to and not in limitation of any other rights and remedies Franchisor may have at law or in equity, all of which are expressly reserved. The exercise by Franchisor of any right or remedy shall not be deemed an election of remedies.

(a) With Notice and No Opportunity to Cure. This Agreement shall immediately terminate on delivery of notice of termination to Franchisee by Franchisor upon the occurrence of any of the following events, each of which is deemed to be an incurable breach of this Agreement and each of which is deemed to be "good cause." If Franchisee:

(i) becomes insolvent or admits in writing Franchisee's inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, files a petition under any foreign, state or United States bankruptcy act, receivership statute, or the like or if such a

petition is filed by a third party, or if an application for a receiver is made by anyone and such petition or application is not resolved favorably to Franchisee within ninety (90) days;

(ii) abandons the CP Business by failing to operate it for five (5) consecutive business days or for any shorter period in such circumstances that render reasonable the conclusion that Franchisee does not intend to continue operating the CP Business, unless such failure is due to disaster or similar reasons beyond Franchisee's control;

(iii) has made any material misrepresentation or omission in the application for the CP Business or in any report that Franchisee submits to Franchisor pursuant to this Agreement;

(iv) is convicted by a trial court of or pleads no contest to a felony or other crime or offense or engages in conduct that reflects materially and unfavorably upon the operation and reputation of Franchisor or the System, or if any principal of Franchisee is convicted of or pleads no contest to a felony or other crime or offense or engages in such conduct;

(v) attempts to make or makes an unauthorized assignment, encumbrance or other transfer of Franchisee's rights or obligations under this Agreement;

(vi) is a party to any other agreement with Franchisor or its affiliates that is terminated for Franchisee's breach thereof;

(vii) makes any unauthorized use of the Marks or Trade Secrets or makes any duplication or disclosure of any Trade Secrets including but not limited to any portion of the Operations Manual;

(viii) fails on three (3) or more separate occasions during the term of this Agreement to pay on a timely basis any fees payable hereunder or otherwise fails to comply with this Agreement, whether or not such failures to comply are corrected after notice is delivered to Franchisee and whether or not such failures to comply relate to the same or different requirements of this Agreement;

(ix) shall at any time have the CP Business or its assets or premises seized, taken over or foreclosed by a government official in the exercise of such official's duties, or by a creditor, lien holder or lessor of Franchisee, or a writ or levy of execution shall issue against the franchise granted hereunder or the goods and chattels of Franchisee;

(x) (10) fails, for a period of three (3) days after notification of noncompliance, to comply with any federal, state or local law or regulations applicable to the operation of the CP Business;

(xi) intentionally under-reports its Gross Revenues to Franchisor;

(xii) if a judgment against Franchisee in the amount of more than Five Thousand Dollars (\$5,000) remains unsatisfied (unless an appeal is filed or a supersedeas bond is secured) for a period of more than thirty (30) days;

(xiii) if Franchisor determines, in its sole discretion, that continued operation of the CP Business by Franchisee will result in imminent danger to public health or safety; or

(xiv) if the United States government designates Franchisee or any of its owners (if Franchisee is an entity) a "specially designated national" or "blocked person."

(b) With Notice and Opportunity to Cure. This Agreement shall terminate upon Franchisee's failure to cure any of the following, each of which is deemed to be "good cause":

(i) noncompliance with any requirement in this Agreement not listed in subsection (a) above or the Operations Manual or prescribed by Franchisor within fifteen (15) days after notice thereof is delivered to Franchisee; or

(ii) failure to make payments to Franchisor for any amounts due within fifteen (15) days after notice thereof is delivered to Franchisee.

(c) No Waiver. The description of any default in any notice served upon Franchisee shall in no way preclude the Franchisor from specifying additional or supplemental defaults in any action, arbitration, hearing or suit relating to this Agreement or the termination hereof.

(d) Enforcement. Franchisee acknowledges that the decision to enforce or not to enforce compliance with its rules and regulations by other franchisees shall not affect Franchisor's right to enforce such rules and regulations against Franchisee, even under similar circumstances.

(e) Termination by Franchisor and Liquidated Damages. Franchisee has agreed to operate the Franchise in compliance with this Agreement for the full term of this Agreement. If Franchisee fails to do so, Franchisee acknowledges that Franchisor would be damaged in several ways, including but not limited to: loss of future Royalty Fees, loss of representation in the Territory, confusion of customers, disadvantage in competing for new business and other types of business, and injury to the goodwill in the Marks. Franchisee further acknowledges that it is difficult to estimate the revenues of the Franchise over a period of years and that elements of Franchisor's damages not directly calculated from the Franchise's revenues are inherently difficult to calculate and the proof thereof would be burdensome and costly (although such damages are real and meaningful to Franchisor). Franchisor and Franchisee agree that liquidated damages (as calculated in this Section) are not a penalty and represent a reasonable estimate of just and fair compensation of Franchisor for the damages that it would suffer if Franchisee should fail to operate the Franchise in compliance with this Agreement for the full Term.

(i) In accordance with this Section 16(e), and immediately upon demand from Franchisor, Franchisee shall pay to Franchisor the Measured Amount. As used in this Agreement, the following terms shall have the following meanings:

(A) **"Measured Amount"** shall mean the sum of the average monthly amount due to Franchisor in Royalty Fees during the Calculation Period (defined below), multiplied by sixty (60).

(B) **"Calculation Period"** shall mean the twenty-four (24) months consisting of full calendar months immediately preceding the date on which termination took effect; provided that if the Franchise was not in operation for at least twenty-four (24) months consisting of full calendar months, then the Calculation Period shall be the number of months consisting of full calendar months during which the Franchise was open and in operation.

(ii) If, notwithstanding the provisions of this Agreement, the assets of the Franchise are transferred to a competitor, or any other prohibited event, as a result of which Franchisor has the right to terminate this Agreement, Franchisee will pay to Franchisor the amount of liquidated damages that is due under this Section times one hundred fifty percent (150%).

(iii) In addition to liquidated damages, Franchisor will have the right to recover reasonable attorneys' fees and court costs incurred in collecting such sums plus interest on all amounts due under this Section which will accrue from the date such liquidated damages are due until paid. Such legal remedies will not preclude Franchisor from any equitable remedies to which it may be entitled under applicable law. Franchisee's obligation to pay Franchisor liquidated damages, if applicable, and other sums pursuant to this Section will survive termination of this Agreement. Payment of liquidated damages to Franchisor will not affect the obligations of Franchisee to take action or abstain from taking action after the termination of this Agreement as required by Section 17 below or Franchisor's remedies in the event that Franchisee does not comply with its obligations thereunder.

## **17. RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION**

(a) Payment of Amounts Owed to Franchisor. Franchisee agrees to pay Franchisor immediately after the effective date of termination or expiration of this Agreement, all amounts due to Franchisor and all other amounts owed to Franchisor or its affiliates which are then unpaid.

(b) Marks. After the termination or expiration of this Agreement, Franchisee will:

(i) not directly or indirectly at any time or in any manner identify Franchisee or any business with which Franchisee is affiliated as a current or former franchisee or licensee of Franchisor, or as otherwise associated with Franchisor, or use any Mark, any imitation thereof or other indicia of the CP Business in any manner or for any purpose, or utilize for any purpose any trade name, trade or service mark or other commercial symbol that suggests or indicates a connection or association, or former connection or association, with the Franchisor;

(ii) at Franchisor's option, return or destroy (and if destroyed, Franchisee must set forth with particularity in a writing signed by Franchisee or a principal thereof the items destroyed) all supplies bearing any Marks;

(iii) refrain from engaging in a competing business as provided in Section 13 above;

(iv) stop using the Marks and the System and return to Franchisor all copies of the Operations Manual and all other proprietary information, including, without limitation, client lists;

(v) stop all use of all telephone numbers, facsimile numbers, e-mail addresses, home pages, web sites and the like that are associated with the CP Business and cooperate with Franchisor in causing all applicable telephone companies and other service providers to reassign such numbers and addresses to Franchisor or its nominee including, without limitation, signing telephone transfer forms upon the execution of this Agreement or upon demand by Franchisor for use by Franchisor upon expiration or termination of this Agreement;

(vi) subject to applicable law, refrain from soliciting clients or personnel of the CP Business, and turn over all customer information and data to Franchisor;

(vii) take such action as may be required to cancel all fictitious or assumed name or equivalent registrations relating to Franchisee's use of any Marks;

(viii) assist in the smooth transition of the business to any successor franchisee;

(ix) refrain from making any disparaging comments regarding Franchisor;

(x) if applicable, take such steps as are necessary to change the décor, signage, flooring, fixtures, furniture and equipment and other elements of décor and trade dress so that the premises from which Franchisee operated the CP Business no longer resemble the CP Business; and

(xi) comply with all further requirements set forth in the Operations Manual.

(c) Continuing Obligations. All obligations of the parties that expressly or by nature survive the expiration or termination of this Agreement, including without limitation, Sections 11, 12 and 13, and shall continue in full force and effect subsequent to and notwithstanding its expiration or termination until they are satisfied in full or by nature expire.

(d) Option to Purchase. Upon termination or expiration of this Agreement, Franchisor or its nominee shall have the option, exercisable for sixty (60) days following the effective date of termination or expiration, to purchase the assets of the CP Business. The purchase price for the assets will be the fair market value as determined by the parties. If the parties are unable to agree upon the fair market value of the assets, they shall jointly select an independent appraiser to do so. Franchisee and Franchisor shall each pay one-half (½) of the cost of appraisal. The fair market value of the assets shall be determined without giving effect to goodwill. Franchisor may deduct any amounts Franchisee owes to Franchisor, any liabilities relating to the assets, and, if Franchisor has not complied with the requirements of this Agreement to upgrade the CP Business, the amount necessary to upgrade the CP Business to reflect Franchisor's then-current image. The purchase price will be payable fifty percent (50%) at the time of closing and the balance in three (3) equal quarterly installments of principal plus interest at a rate per annum equal to the prime lending rate charged by Franchisor's bank determined as of the closing date. If the purchase is exercised following Franchisor's termination of this Agreement for cause or termination by Franchisee in breach of this Agreement, any and all costs, expenses, and liabilities incurred by Franchisor, including attorneys' fees and the cost of appraisal, in exercising this option and in acquiring said property, as well as any and all monies due and owing from Franchisee to Franchisor, plus any damages, expenses and costs incurred or suffered by Franchisor by reason of any default, breach, or violation of this Agreement by Franchisee, shall be deducted from the purchase price.

## **18. CASUALTY**

If the CP Business is damaged by fire or other casualty, Franchisee will expeditiously repair the damage. If the damage or repair requires closing the CP Business, Franchisee will immediately notify Franchisor, will repair or rebuild the CP Business in accordance with Franchisor's specifications, and will reopen the CP Business for continuous business operations as soon as reasonably practicable (but in any event within one year after closing of the CP Business),

giving Franchisor advance notice of the date of reopening. If the CP Business is not reopened in accordance with this paragraph, this Agreement shall terminate immediately upon notice by Franchisor to Franchisee.

#### **19. UNAVOIDABLE DELAYS**

In the event of failure to perform or delays in the performance of any duties hereunder caused by forces not within the reasonable preventive control of the party due to perform, for example (without limitation), government regulations, fire, flood, labor disputes, natural disasters, acts of God, civil disorders, riots, insurrections, work stoppages, slowdowns or disputes, or other similar events, such failures or delays shall not cause a default in said performance, but, in the event of delay, the parties shall extend the time of performance for a period of time equivalent to the length of delay, or for such other reasonable period of time as agreed to between the parties, provided that such extension shall not enlarge or extend the term of Agreement.

#### **20. INVALID OR UNENFORCEABLE PROVISIONS**

If any provision of this Agreement, or its application to any person or circumstances, is invalid or unenforceable, then the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

#### **21. RELATIONSHIP BETWEEN PARTIES**

(a) Nothing herein contained shall be deemed or construed to create the relationship of principal and agent, partnership, joint venture or employment, or a fiduciary relationship, and neither party shall hold itself out as an agent, legal representative, partner, subsidiary, joint venturer, servant or employee of the other party or its affiliate. With respect to all matters pertaining to the operation of the business conducted hereunder, the Franchisee is, and shall be, an independent contractor. Neither Franchisor nor the Franchisee has the right to bind or obligate the other to any obligations or debts.

(b) It is acknowledged that the Franchisee is the independent owner of its business, shall be in full control thereof, and shall conduct such business in accordance with its own judgment and discretion, subject only to the provisions of this Agreement. Franchisee shall conspicuously identify itself as the independent owner of its business and as a franchisee of the Franchisor. No party hereto shall be obligated by, or have any liability for, any agreements, representations or warranties made by the other nor shall the Franchisor be liable for any damages to any person or property, directly or indirectly, arising out of the operation of the Franchisee's business, whether caused by Franchisee's negligent or willful action or failure to act. Neither party shall have liability for any sale, use, excise, income, property or other tax levied upon the business conducted by the other party or in connection with therewith.

(c) Without limiting any of Franchisee's indemnification obligations in Section 11, in consideration of the right to operate the CP Business granted to Franchisee, Franchisee, on behalf of itself and its predecessors, affiliates, owners, directors, officers, employees, representatives, agents, successors and assigns (for purposes of this Section 21, the "Franchisee Releasors"), hereby release, discharge and agree to hold harmless the Franchisor and its predecessors, affiliates, owners, directors, officers, employees, representatives, agents, successors and assigns (for purposes of this Section 21, the "Franchisor Releasees") from any and all suits, claims, liabilities, demands, promises, obligations, costs, expenses, actions and causes of action of every nature, character and description, in law or in equity, whether

presently known or unknown, vested or contingent, suspected or unsuspected, which the Franchisee Releasees now own or hold or have at any time heretofore owned or held or may at any time own or hold against the Franchisor Releasees arising out of or in any way related to Franchisee's independent contractor status including, without limitation, wage and hour laws, misclassification theories or any similar type of laws or liability theories aimed at protecting employees ("Released Claims"). Franchisee Releasees hereby covenant not to bring any suit, action, or proceeding, or make any demand or claim of any type, against the Franchisor Releasees with respect to the Released Claims. Any of the Franchisor Releasees may plead or assert the covenant not to sue in this Section 21 as a complete defense and bar to any claim brought against any of them in contravention of this Section 21 and, if any such claim is brought against any of them, the Franchisee Releasees, jointly and severally, shall indemnify, defend, and hold harmless any such Franchisor Releasees from and against any such claim. The Franchisee Releasees acknowledge that they have read and understand the significance and consequences of Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Nevertheless, the Franchisee Releasees acknowledge that this Section 21 has been agreed upon and they expressly waive any and all rights which any of them may have under Section 1542 of the California Civil Code, or any other state or federal statute or common law principle of similar effect. Neither Franchisor nor Franchisee shall make any express or implied agreements, guarantees or representations on behalf of the other, or incur any debt in the name of or on behalf of the other, or represent that Franchisee has any relationship with Franchisor other than as a franchisee of Franchisor pursuant to this Agreement. Franchisor shall not be obligated by or have any liability under any agreements or representations made by Franchisee, nor shall Franchisor be obligated for any damages to any person or property directly or indirectly arising out of the operation of the Franchised Business.

## **22. WAIVER**

No failure of Franchisor or Franchisee to exercise any power hereunder granted, or to insist on strict compliance by the other with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Waiver by either party of any particular default by the other shall not affect or impair any rights with respect to any subsequent default of the same or of a different nature; nor shall any delay or omission of either party to exercise any rights arising from a default affect or impair any rights as to said default or any subsequent default.

## **23. NOTICES**

All notices hereunder shall be hand delivered or sent by express mail, federal express or air courier or by registered or certified mail to Franchisor and Franchisee at the respective addresses set forth on the first page of this Agreement, unless Franchisor and/or Franchisee shall from time to time change said addresses by written notice to the other as provided herein. Any notice given by registered or certified mail shall be deemed received by the party to whom it

is addressed on the third day after such notice is deposited in the United States mail with postage thereon fully prepaid, return receipt requested. Any notice given by express mail, federal express or air courier shall be deemed given the next business day.

## 24. APPLICABLE LAW

This Agreement shall be governed in all respects and aspects by the laws of the State of Texas, excluding its conflict of law rules, and subject to the Lanham Act (15 U.S.C. 1051 et seq.).

## 25. RESOLUTION OF DISPUTES

(a) Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (in each case, a "Dispute"), the Dispute shall first be submitted to mediation on an expedited basis in Austin, Texas, administered by the ~~Judicial American Arbitration and Mediation Service~~ ("JAMS Association" ("AAA"), or its successor, in accordance with ~~the JAMS rules and procedures~~ its Commercial Mediation Procedures AAA then in effect. Either party may commence mediation by providing to JAMSAAA and the other party a written request for mediation, setting forth the subject of the Dispute and the relief requested, with the expectation that the first mediation session shall occur within forty-five (45) days of such written request. The party seeking the mediation must submit the following in addition to any demand or filing required by JAMSAAA: a full and specific description of the claim(s) under this Agreement including without limitation an identification of the specific provisions that the other party has breached, documentary evidence of the facts alleged by the complaining party and a declaration that under penalty of perjury that all facts stated in the claim and documentation are true and correct and do not fail to state facts known to the complaining party that are material to the determination of the Dispute. The parties will cooperate with JAMSAAA and with one another in selecting a neutral mediator from the JAMSAAA panel of neutrals and in scheduling the mediation proceedings. The mediator must be a retired judge or an attorney licensed to practice law in Texas and experienced in complex commercial transactions. If the parties are unable to select the mediator within ten (10) business days after receipt of the mediation notice by JAMSAAA, then JAMSAAA shall designate the mediator. The parties covenant that they will (i) participate in the mediation in good faith, (ii) share equally in the costs of the mediator and related JAMSAAA administrative costs, and (iii) pay in advance the estimated reasonable fees and costs of the mediation, as may be specified in advance by the mediator. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMSAAA employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any reference, arbitration, litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. In the event it is necessary, any party may file a motion in the state court located in Austin, Texas to compel the other party to participate in the mediation and the prevailing party shall be awarded its costs and expenses, including reasonable attorneys' fees in connection with such motion. If the Dispute is not resolved within ten (10) business days after the first mediation session, either party may (i) give written notice to JAMSAAA and the other party that the mediation is terminated and (ii) submit any remaining Disputes to binding arbitration pursuant to Section (b) below.

(b) If the parties are unable to resolve the Dispute pursuant to subsection (a) above, then the parties ~~may~~shall submit the Dispute to final and binding arbitration in Austin, Texas,



administered by JAMSAAA, or its successor, in accordance with the rules and procedures of JAMSits Commercial Arbitration Rules then in effect. The parties agree that any and all Disputes that are submitted to arbitration in accordance with this Agreement shall be decided by one (1) neutral arbitrator who is a retired judge or attorney licensed to practice law in Texas who is experienced in complex commercial transactions. If the parties are unable to agree on an arbitrator, JAMSAAA shall designate the arbitrator. The parties will cooperate with JAMSAAA and with one another in selecting the arbitrator and in scheduling the arbitration proceedings in accordance with applicable JAMSAAA procedures. The arbitration shall be conducted in accordance with the JAMS ComprehensiveAAA Commercial Arbitration Rules. Any party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with JAMSAAA, with a copy to the other party. The party seeking arbitration must submit the following in addition to any demand or filing required by JAMSAAA: a full and specific description of the claim(s) under this Agreement including without limitation an identification of the specific provisions that the other party has breached, documentary evidence of the facts alleged by the complaining party and a declaration under penalty of perjury that all facts stated in the claim and documentation are true and correct and do not fail to state facts known to the complaining party that are material to the determination of the Dispute. Any award issued as a result of such arbitration shall be final and binding between the parties thereto and shall be enforceable by any court having jurisdiction over the party against whom enforcement is sought. The parties expressly acknowledge and understand that by entering into this Agreement, they each are waiving their respective rights to have any Dispute between the parties hereto adjudicated by a court or by a jury.

(c) The parties recognize that their relationship is unique and that each franchisee is situated differently from all other franchisees, and that no one franchisee can adequately represent the interest of others. Therefore, the parties agree that any arbitration, suit, action or other legal proceeding shall be conducted and resolved on an individual basis only and not on a class-wide, multiple plaintiff, consolidated or similar basis.

(d) The prevailing party in any legal proceeding will be entitled to recover as an element of such party's cost of arbitration, suit or proceeding, and not as damages, reasonable attorneys' fees to be fixed by the arbitrator or by the court. Nothing in this Agreement shall be construed as limiting or precluding either party from bringing any action in any court of competent jurisdiction for injunctive or other extraordinary relief, without the necessity of posting a bond (and if bond shall nevertheless be required, the parties agree that the sum of One Hundred Dollars (\$100) shall be sufficient bond), in connection with the Marks, Trade Dress, Proprietary Information or Trade Secrets. The parties shall have the immediate right to seek such injunctive or other extraordinary relief at any time, including without limitation, during the pendency of an arbitration or other proceeding. This covenant shall be independent, severable and enforceable notwithstanding any other rights or remedies which such party may have.

## **26. TERMINOLOGY**

All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Agreement or any section, paragraph, or clause herein may require, as if such word had been fully and properly written in the appropriate number and gender.

## **27. ENTIRE AGREEMENT**

(a) This Agreement and the exhibits attached hereto and incorporated herein, if any, contain the entire agreement of the parties and there are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the parties hereto other than those set forth and duly executed in writing in this Agreement.

(b) Upon execution of this Agreement by Franchisor, all previous agreements, contracts, arrangements or undertakings of any kind relative to the Franchise granted herein are canceled, and as between the parties hereto, all claims and demands are fully satisfied; provided, however, that this paragraph shall have no effect upon written agreement(s) signed by both parties, whenever executed, except to the extent that such written agreement specifically refers to and modifies or cancels this Agreement. Nothing in this Agreement shall disclaim or require Franchisee to waive reliance on any representation that Franchisor made in the most recent disclosure document (including its exhibits and amendments) that Franchisor delivered to Franchisee or its representative. If Franchisee is a corporation, partnership or other entity, those shareholders, partners and other persons owning an interest in such entity shall sign Franchisor's form of confidentiality and non-competition agreement. If Franchisee is a corporation, partnership or other entity, Franchisor will determine which of the shareholders, partners or other principals shall sign Franchisor's form of Guaranty and Assumption of Franchisee's Obligations, in accordance with Franchisor's criteria, set forth on **Exhibit D** attached hereto and incorporated herein.

(c) Franchisee's spouse or, the spouses of all owners of Franchisee if Franchisee is an entity, shall execute a spousal consent in the form attached hereto as **Exhibit B**.

## **28. AMENDMENT OF AGREEMENT**

This Agreement shall not be modified or amended except by written agreement executed by both parties hereto. No subsequently published manual or other publication of Franchisor shall materially alter the parties' rights and obligations under this Agreement. Notwithstanding the preceding sentence, Franchisor may unilaterally amend the Operations Manual from time to time.

## **29. COSTS AND EXPENSES OF ENFORCEMENT**

The prevailing party shall recover the reasonable costs and expenses, including reasonable attorneys' fees, incurred by such party in connection with any legal proceeding involving the enforcement of any of the provisions of this Agreement.

## **30. CAPTIONS**

The section headings throughout this Agreement are for convenience and reference only, and the words contained therein shall not be held to expand, modify, amplify, or aid in the interpretation or construction of this Agreement.

## **31. FRANCHISEE'S ACKNOWLEDGMENTS**

(a) NEITHER FRANCHISEE (INCLUDING, WITHOUT LIMITATION, ANY AND ALL OF ITS DIRECTORS AND OFFICERS, IF ANY), NOR ANY OF ITS AFFILIATES OR THE FUNDING SOURCES FOR EITHER IS A SPECIALLY DESIGNATED NATIONAL OR BLOCKED PERSON. NEITHER FRANCHISEE NOR ANY OF ITS AFFILIATES IS DIRECTLY OR INDIRECTLY OWNED OR CONTROLLED BY THE GOVERNMENT OF ANY COUNTRY THAT

IS SUBJECT TO AN EMBARGO BY THE UNITED STATES GOVERNMENT. NEITHER FRANCHISEE NOR ANY OF ITS AFFILIATES IS ACTING ON BEHALF OF A GOVERNMENT OF ANY COUNTRY THAT IS SUBJECT TO SUCH AN EMBARGO. FRANCHISEE FURTHER REPRESENTS AND WARRANTS THAT IT IS IN COMPLIANCE WITH ANY APPLICABLE ANTI-MONEY LAUNDERING LAW, INCLUDING, WITHOUT LIMITATION, THE USA PATRIOT ACT. FRANCHISEE AGREES THAT IT WILL NOTIFY FRANCHISOR IN WRITING IMMEDIATELY UPON THE OCCURRENCE OF ANY EVENT THAT WOULD RENDER THE FOREGOING REPRESENTATIONS AND WARRANTIES OF THIS SECTION INCORRECT.

(b) BY SIGNING THIS AGREEMENT YOU ARE AGREEING TO HAVE ALL DISPUTES, CLAIMS OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION IN AUSTIN, TEXAS, AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THOSE MATTERS LITIGATED IN A COURT OR JURY TRIAL. BY SIGNING THIS AGREEMENT YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL EXCEPT TO THE EXTENT THAT THEY ARE SPECIFICALLY PROVIDED FOR UNDER THIS AGREEMENT. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION YOU MAY BE COMPELLED TO ARBITRATE UNDER FEDERAL OR STATE LAW. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

(c) NO REPRESENTATION, PROMISE, GUARANTEE OR WARRANTY WAS MADE TO INDUCE THE EXECUTION OF THIS AGREEMENT OR IN CONNECTION HERewith WHICH IS NOT EXPRESSLY CONTAINED HEREIN. FRANCHISEE RECOGNIZES THAT NEITHER FRANCHISOR NOR ANY OTHER PERSON CAN GUARANTEE FRANCHISEE'S SUCCESS IN THE CP BUSINESS. BY THE EXECUTION AND ACCEPTANCE OF THIS AGREEMENT, THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ THE SAME AND UNDERSTAND EACH PROVISION HEREOF. THIS AGREEMENT, ALTHOUGH DRAWN BY FRANCHISOR, SHALL NOT BE CONSTRUED MORE STRICTLY AGAINST ONE PARTY THAN AGAINST THE OTHER PARTY.

(d) FRANCHISEE ACKNOWLEDGES THAT HE OR SHE HAS HAD THE OPPORTUNITY, AND HAS BEEN ADVISED BY FRANCHISOR, TO CONSULT WITH FRANCHISEE'S OWN INDEPENDENT ADVISORS SUCH AS ATTORNEYS, ACCOUNTANTS, BANKERS AND BUSINESS CONSULTANTS REGARDING THIS FRANCHISE AND THE BUSINESS CONTEMPLATED BY THIS AGREEMENT AND THAT FRANCHISEE IS NOT RELYING ON ANY REPRESENTATIONS OR STATEMENTS OTHER THAN THOSE SET FORTH IN THIS AGREEMENT. FRANCHISEE FURTHER AGREES AND ACKNOWLEDGES THAT FRANCHISEE SHALL COMPLY WITH ALL APPLICABLE LAW IN THE OPERATION OF THE CP BUSINESS AND ITS BUSINESS AND SHALL CONSULT WITH ITS OWN INDEPENDENT ADVISORS TO THE EXTENT NECESSARY TO DO SO; FRANCHISOR SHALL NOT BE RESPONSIBLE FOR THE OPERATION OF FRANCHISEE'S BUSINESS. WHENEVER A PROVISION OF THIS AGREEMENT PROVIDES FOR FRANCHISOR'S REVIEW AND CONSENT OR APPROVAL, FRANCHISOR'S REVIEW SHALL NOT BE TO DETERMINE COMPLIANCE WITH LAW, WHICH COMPLIANCE IS THE SOLE RESPONSIBILITY OF FRANCHISEE.

[SIGNATURES ON NEXT PAGE]

**32. EFFECTIVE DATE**

This Agreement shall become effective and binding upon execution and delivery by Franchisor.

DATE: \_\_\_\_\_

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

DATE: \_\_\_\_\_

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

DATE: \_\_\_\_\_

CALIFORNIA POOLS FRANCHISE INC.

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

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

## EXHIBIT A

(1) Address of CP Business:

---

---

---

(2) Territory:

---

---

---

EXHIBIT B

SPOUSAL CONSENT

The undersigned each being the spouse of a Franchisee (or the spouse of an owner of the Franchisee) hereby states:

That he or she has read and understands the Franchise Agreement; and

That he or she consents to the terms and conditions of the Franchise Agreement, including but not limited to those concerning transfer, and

That he or she consents to execution of the Franchise Agreement by Franchisee; and

That he or she consents to execution of the Guaranty and Assumption of Franchisee's Obligations.

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

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

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

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

EXHIBIT C

INFORMATION REGARDING  
NON-INDIVIDUAL FRANCHISEES

(1) If Franchisee is a corporation or partnership or other entity, there is set forth below the name, address, title and percentage ownership of each shareholder, partner or member of Franchisee:

| <u>NAME</u> | <u>ADDRESS</u> | <u>TITLE</u> | <u>PERCENTAGE<br/>OWNERSHIP</u> |
|-------------|----------------|--------------|---------------------------------|
| <hr/>       |                |              |                                 |

(2) If Franchisee is a corporation or limited liability company, there is set forth below the name, address and title of each officer and director or manager of Franchisee:

| <u>NAME</u> | <u>ADDRESS</u> | <u>TITLE</u> |
|-------------|----------------|--------------|
| <hr/>       |                |              |

(3) The address where Franchisee's records are maintained is:

\_\_\_\_\_

(4) There is set forth below the name, address and title of each of Franchisee's principal officers or partners who will be devoting their full time efforts to the operation of the licensed business.

| <u>NAME</u> | <u>ADDRESS</u> | <u>TITLE</u> |
|-------------|----------------|--------------|
| <hr/>       |                |              |

DATE: \_\_\_\_\_

\_\_\_\_\_  
Name and Title of Person Completing Exhibit

\_\_\_\_\_  
Signature

## EXHIBIT D

### GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement (the "**Agreement**") with California Pools Franchise Inc. ("**Franchisor**") of even date herewith, each of the undersigned hereby personally and unconditionally: (1) guarantees to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that \_\_\_\_\_ ("**Franchisee**") shall punctually pay and perform each and every undertaking, agreement, and covenant set forth in the Agreement; and (2) agrees to be personally bound by and personally liable for the breach of each and every provision in the Agreement, including but not limited to monetary obligations.

Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (4) any right he/she may have to require that an action be brought against Franchisee or any other person as a condition of liability; and (5) any and all other notices and demands and legal and equitable defenses to which he/she may be entitled.

Each of the undersigned consents and agrees that: (1) his/her liability under this guaranty shall be joint and several; (2) he/she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) he/she will individually comply with all the provisions and subsections of the Agreement and any renewals and amendments thereto; (4) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (5) such liability shall not be diminished, relieved, or otherwise affected by any extension of time, credit, or other indulgence which Franchisor may, from time to time, grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall, in any way, modify or amend this guaranty which shall be continuing and irrevocable during the term of the Agreement and thereafter.

If any provision of this Guaranty and Assumption Agreement is deemed to be invalid or inoperative, for any reason, that part shall be deemed modified to the extent necessary to make it valid and operative or if it cannot be so modified, then severed, and the remainder of the Guaranty and Assumption Agreement shall continue in full force and effect as if it had been executed and entered into with the invalid portion so modified or eliminated.

[SIGNATURES ON NEXT PAGE]



IN WITNESS WHEREOF, each of the undersigned hereto affixed his/her signature effective on the same day and year as the executed Agreement.

GUARANTOR(S)

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

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

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

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

CALIFORNIA POOLS FRANCHISE INC.

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

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

**EXHIBIT C**

**FINANCIAL STATEMENTS**

[See Attached]

# California Pools Franchise, Inc.

## BALANCE SHEET

As of April 30, 2019

|                                     | TOTAL               |
|-------------------------------------|---------------------|
| <b>ASSETS</b>                       |                     |
| Current Assets:                     |                     |
| Bank Accounts                       |                     |
| 1000:Checking                       | 174,766.31          |
| <b>Total Bank Accounts</b>          | <b>\$174,766.31</b> |
| Accounts Receivable                 |                     |
| 1150:Accounts Receivable            | 40,272.19           |
| <b>Total Accounts Receivable</b>    | <b>\$40,272.19</b>  |
| Other Current Assets:               |                     |
| Undeposited Funds                   | 5.00                |
| <b>Total Other Current Assets</b>   | <b>\$5.00</b>       |
| <b>Total Current Assets</b>         | <b>\$215,043.50</b> |
| <b>TOTAL ASSETS</b>                 | <b>\$215,043.50</b> |
| <b>LIABILITIES AND EQUITY</b>       |                     |
| Liabilities                         |                     |
| Current Liabilities                 |                     |
| Accounts Payable                    |                     |
| Accounts Payable (A/P)              | 0.00                |
| <b>Total Accounts Payable</b>       | <b>\$0.00</b>       |
| <b>Total Current Liabilities</b>    | <b>\$0.00</b>       |
| Long-Term Liabilities               |                     |
| Steimle Family Trust                | 100,000.00          |
| <b>Total Long-Term Liabilities</b>  | <b>\$100,000.00</b> |
| <b>Total Liabilities</b>            | <b>\$100,000.00</b> |
| Equity                              |                     |
| 3200 Retained Earnings              | 24,349.90           |
| Net Income                          | 90,693.60           |
| <b>Total Equity</b>                 | <b>\$115,043.50</b> |
| <b>TOTAL LIABILITIES AND EQUITY</b> | <b>\$215,043.50</b> |

THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES ARE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED AN OPINION WITH REGARD TO THEIR CONTENT OR FORM.

**CALIFORNIA POOLS FRANCHISE INC.**  
**FINANCIAL STATEMENTS**  
**FROM MARCH 12, 2018 (INCEPTION) TO**  
**DECEMBER 31, 2018**

# **CALIFORNIA POOLS FRANCHISE INC.**

**CONTENTS**  
**DECEMBER 31, 2018**

---

|                                              | Page   |
|----------------------------------------------|--------|
| <b>INDEPENDENT AUDITOR'S REPORT</b>          | 1 – 2  |
| <b>FINANCIAL STATEMENTS</b>                  |        |
| Balance Sheet                                | 3      |
| Statement of Income                          | 4      |
| Statement of Changes in Stockholder's Equity | 5      |
| Statement of Cash Flows                      | 6      |
| Notes to Financial Statements                | 7 – 12 |

## **INDEPENDENT AUDITOR'S REPORT**

Board of Directors  
California Pools Franchise Inc.

### **Report on the Financial Statements**

We have audited the accompanying financial statements of California Pools Franchise Inc. (the "Company"), which comprise the balance sheet as of December 31, 2018, the related statements of income, changes in stockholder's equity and cash flows from March 12, 2018 (inception) to December 31, 2018, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

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

### **Auditor's Responsibility**

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

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

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

Board of Directors  
California Pools Franchise Inc.  
Independent Auditor's Report  
Page Two

**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of California Pools Franchise Inc. as of December 31, 2018, and the results of its operations and its cash flows from March 12, 2018 (inception) to December 31, 2018 in accordance with the accounting principles generally accepted in the United States of America.

*Singer Lewak LLP*

April 8, 2019

**CALIFORNIA POOLS FRANCHISE INC.****BALANCE SHEET  
DECEMBER 31, 2018**

---

**ASSETS****Current assets**

|                     |            |
|---------------------|------------|
| Cash                | \$ 113,551 |
| Accounts receivable | <u>799</u> |

|                     |                          |
|---------------------|--------------------------|
| <b>Total assets</b> | <b><u>\$ 114,350</u></b> |
|---------------------|--------------------------|

**LIABILITIES AND STOCKHOLDER'S EQUITY****Current liabilities**

|                      |                 |
|----------------------|-----------------|
| Income taxes payable | <u>\$ 4,283</u> |
|----------------------|-----------------|

|                          |                     |
|--------------------------|---------------------|
| <b>Total liabilities</b> | <b><u>4,283</u></b> |
|--------------------------|---------------------|

**Stockholder's equity**

|                                                                                                               |               |
|---------------------------------------------------------------------------------------------------------------|---------------|
| Common stock, \$0.0001 par value,<br>50,000,000 shares authorized,<br>5,000,000 shares issued and outstanding | 500           |
| Preferred stock, \$0.0010 par value,<br>5,000,000 shares authorized,<br>0 shares issued and outstanding       | -             |
| Additional paid-in capital                                                                                    | 99,500        |
| Retained earnings                                                                                             | <u>10,067</u> |

|                                   |                       |
|-----------------------------------|-----------------------|
| <b>Total stockholder's equity</b> | <b><u>110,067</u></b> |
|-----------------------------------|-----------------------|

|                                                   |                          |
|---------------------------------------------------|--------------------------|
| <b>Total liabilities and stockholder's equity</b> | <b><u>\$ 114,350</u></b> |
|---------------------------------------------------|--------------------------|

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



**CALIFORNIA POOLS FRANCHISE INC.**  
**STATEMENT OF INCOME**  
**From March 12, 2018 (Inception) to December 31, 2018**

|                                                 | <u>Amount</u>           | <u>% of<br/>Revenue</u> |
|-------------------------------------------------|-------------------------|-------------------------|
| <b>Revenues</b>                                 |                         |                         |
| Royalty fees                                    | \$ 17,461               | 83.1                    |
| Advertising income                              | <u>3,554</u>            | <u>16.9</u>             |
| Total revenues                                  | 21,015                  | 100.0                   |
| <b>General and administrative expenses</b>      | <u>6,665</u>            | <u>31.7</u>             |
| <b>Income before provision for income taxes</b> | 14,350                  | 68.3                    |
| <b>Provision for income taxes</b>               | <u>4,283</u>            | <u>20.4</u>             |
| <b>Net income</b>                               | <u><b>\$ 10,067</b></u> | <u><b>47.9</b></u>      |

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

**CALIFORNIA POOLS FRANCHISE INC.**  
**STATEMENT OF CHANGES IN STOCKHOLDER'S EQUITY**  
**From March 12, 2018 (Inception) to December 31, 2018**

|                                            | Common Stock     |               | Preferred Stock |             | Additional<br>Paid-in Capital | Retained<br>Earnings | Total             |
|--------------------------------------------|------------------|---------------|-----------------|-------------|-------------------------------|----------------------|-------------------|
|                                            | Shares           | Amount        | Shares          | Amount      |                               |                      |                   |
| <b>Balance, March 12, 2018 (Inception)</b> | -                | \$ -          | -               | \$ -        | \$ -                          | \$ -                 | \$ -              |
| Issuance of common stock                   | 5,000,000        | 500           | -               | -           | 99,500                        | -                    | 100,000           |
| Net income                                 | -                | -             | -               | -           | -                             | 10,067               | 10,067            |
| <b>Balance, December 31, 2018</b>          | <b>5,000,000</b> | <b>\$ 500</b> | <b>-</b>        | <b>\$ -</b> | <b>\$ 99,500</b>              | <b>\$ 10,067</b>     | <b>\$ 110,067</b> |

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

**CALIFORNIA POOLS FRANCHISE INC.**  
**STATEMENT OF CASH FLOWS**  
**From March 12, 2018 (Inception) to December 31, 2018**

---

**Reconciliation of net income to net cash flows  
from operating activities**

|                                                                                    |               |
|------------------------------------------------------------------------------------|---------------|
| Net income                                                                         | \$ 10,067     |
| Adjustments to reconcile net income to net cash<br>flows from operating activities |               |
| (Increase) decrease in                                                             |               |
| Accounts receivable                                                                | (799)         |
| Increase (decrease) in                                                             |               |
| Income taxes payable                                                               | <u>4,283</u>  |
| Net cash flows from operating activities                                           | <u>13,551</u> |

**Cash flows from financing activities**

|                                          |                |
|------------------------------------------|----------------|
| Proceeds from issuance of common stock   | <u>100,000</u> |
| Net cash flows from financing activities | <u>100,000</u> |

**Net change in cash** 113,551

**Cash, inception of corporation** -

**Cash, end of year** \$ 113,551

**Supplemental disclosure for cash flows information**

|                   |                    |
|-------------------|--------------------|
| Income taxes paid | <u>\$ -</u>        |
| Interest paid     | <u><u>\$ -</u></u> |

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

# CALIFORNIA POOLS FRANCHISE INC.

## NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 2018

---

### NOTE 1 – BUSINESS ACTIVITIES

California Pools Franchise Inc. (the “Company”) was incorporated on March 12, 2018 in the state of Wyoming. The Company is principally engaged in granting franchise licenses to potential franchisees throughout the United States for the purpose of construction of swimming pools for residential and commercial properties.

### NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Basis of Presentation

The accompanying financial statements are presented using the accrual basis of accounting in accordance with generally accepted accounting principles in the United States of America.

#### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

#### Franchise Operations

The Company grants franchises to investors under franchise agreements for 10-year terms (and includes two options to extend, each for five years) to operate the Company’s swimming pool and spa construction and remodeling businesses in specific locations. Upon the signing of the franchise agreement, the Company receives an initial franchise fee of \$0, \$10,000, or \$20,000 from the franchisee. The highest fee is charged to franchisees that are new to the swimming pool and spa construction and remodeling business. The lower fee is charged to franchisees that have been operating a swimming pool and spa construction and remodeling business and that are converting to the California Pools brand. The initial fee is waived for franchisees that have been operating a California Pools swimming pool and spa construction and remodeling business as a licensee or agent of the Company’s affiliate, California Pools, Inc.

#### Revenue Recognition

##### *Franchise Revenue*

Revenue from sales of individual franchises is recognized when the franchise opens or converts to a California Pools franchise.

# CALIFORNIA POOLS FRANCHISE INC.

NOTES TO FINANCIAL STATEMENTS  
DECEMBER 31, 2018

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

### Revenue Recognition (Continued)

#### *Royalty Fee and Advertising Income*

In addition to the franchise fee, each of the franchise locations is required to remit to the Company a monthly royalty fee of 4% of adjusted gross revenue (as defined in the Franchise Agreement), and a monthly advertisement fee of \$350, or at rates determined by their individual agreements.

### Accounts Receivable

The Company's accounts receivable primarily represents royalties and advertising fees due from franchisees. Credit losses are provided for in the financial statements based on management's evaluation of historical and current industry trends. Although the Company expects to fully collect amounts due, actual collections may differ from estimated amounts. As of December 31, 2018, management determined a reserve was not required.

### Income Taxes

Income taxes are provided on the liability method whereby deferred tax assets are recognized for deductible temporary differences and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment. A valuation allowance is provided for deferred assets in the event it is more likely than not that the Company will not realize tax assets through future operations.

The Company recognizes the impact of tax positions in the financial statements if the positions are more likely than not to be sustained on an audit, based on the technical merits of the position. To date, the Company has not recorded any uncertain tax positions.

The Company recognizes potential accrued interest and penalties related to uncertain tax positions in income tax expense. From March 12, 2018 (inception) to December 31, 2018, the Company did not recognize any amount in potential interest and penalties associated with uncertain tax positions.

The following table summarizes the open tax years for each major jurisdiction:

| <u>Jurisdiction</u> | <u>Open Tax Year</u> |
|---------------------|----------------------|
| Federal             | 2018                 |
| State               | 2018                 |

# CALIFORNIA POOLS FRANCHISE INC.

## NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 2018

### NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### Recently Adopted Accounting Pronouncements

In October 2018, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2018-17, *Consolidation (Topic 810): Targeted Improvements to Related Party Guidance for Variable Interest Entities* (ASU 2018-17), which supersedes the private company alternative for common control leasing arrangements issued in 2014 and expands it to all qualifying common control arrangements. Under the new standard, a private company could make an accounting policy election to not apply VIE guidance to legal entities under common control (including common control leasing arrangements) when certain criteria are met. This accounting policy election must be applied by a private company to all current and future legal entities under common control that meet the criteria for applying the alternative. A private company will be required to continue to apply other consolidation guidance, specifically the voting interest entity guidance. ASU 2018-17 is effective for years beginning after December 15, 2020, and is to be applied retrospectively, with early application permitted. The adoption of ASU 2018-17 did not have a material effect on the financial statements.

#### Recently Issued Accounting Pronouncements

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers* (Topic 606), which supersedes the revenue recognition requirements in *Revenue Recognition* (Topic 605), and requires entities to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Additionally, this guidance requires that entities disclose the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. In August 2015, the FASB issued ASU 2015-14, *Revenue from Contracts with Customers* (Topic 606): *Deferral of the Effective Date*, which defers the effective date of ASU 2014-09 one year, making it effective for annual reporting periods beginning after December 15, 2018. In March 2016, the FASB issued ASU 2016-08, *Revenue from Contracts with Customers—Principal versus Agent Considerations* (Reporting Revenue Gross Versus Net), which clarifies gross-versus-net revenue reporting when another party is involved in the transaction. In April 2016, the FASB issued ASU 2016-10, *Revenue from Contracts with Customers—Identifying Performance Obligations and Licensing*, which amends the revenue guidance on identifying performance obligations and accounting for licenses of intellectual property. In May 2016, the FASB issued ASU 2016-12, *Revenue from Contracts with Customers—Narrow-Scope Improvements and Practical Expedients*, which provides narrow-scope improvements to the guidance on collectability, noncash consideration, and completed contracts at transition. In December 2016, the FASB issued ASU 2016-20, *Technical Corrections and Improvements to Topic 606, Revenue from Contracts with Customers*, which amends the guidance on performance obligation disclosures and makes technical corrections and improvements to the new revenue standard. The standard is effective for annual reporting periods beginning after December 15, 2018, including interim periods within that reporting period, and permits early adoption on a limited basis. The Update permits the use of either the retrospective or cumulative effect transition method. The Company has not yet selected a transition method, and management is assessing the impact of this new guidance on the Company's financial statements.

# CALIFORNIA POOLS FRANCHISE INC.

## NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 2018

---

### NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### Recently Issued Accounting Pronouncements (Continued)

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. The guidance in this ASU supersedes the leasing guidance in Topic 840, *Leases*. Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for years beginning after December 15, 2019, including interim periods within those years. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. In January 2018, the FASB issued ASU 2018-01, *Leases (Topic 842)—Land Easement Practical Expedient for Transition to Topic 842*, and permits an entity to elect an optional transition practical expedient to not evaluate under Topic 842 land easements that exist or expired before the entity's adoption of Topic 842 and that were not previously accounted for as leases under Topic 840. An entity that elects this practical expedient should apply the practical expedient consistently to all of its existing or expired land easements that were not previously accounted for as leases under Topic 840. In July 2018, the FASB issued ASU 2018-11, *Leases (Topic 842)—Targeted Improvements*, which provides entities with an additional (and optional) transition method to adopt the new leases standard. Under this new transition method, an entity initially applies the new leases standard at the adoption date and recognizes a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption consistent with preparers' requests. Consequently, an entity's reporting for the comparative periods presented in the financial statements in which it adopts the new leases standard will continue to be in accordance with current GAAP (Topic 840, *Leases*). An entity that elects this additional (and optional) transition method must provide the required Topic 840 disclosures for all periods that continue to be in accordance with Topic 840. The effective date and transition requirements for these amendments to ASU 2016-02 are the same as the effective date of ASU 2016-02. The Company is currently evaluating the impact of the adoption of this guidance on its financial statements.

# CALIFORNIA POOLS FRANCHISE INC.

## NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 2018

---

### NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### Recently Issued Accounting Pronouncements (Continued)

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which creates a new credit impairment standard for financial assets measured at amortized cost and available-for-sale debt securities. The ASU requires financial assets measured at amortized cost (including loans, trade receivables and held-to-maturity debt securities) to be presented at the net amount expected to be collected, through an allowance for credit losses that are expected to occur over the remaining life of the asset, rather than incurred losses. The ASU requires that credit losses on available-for-sale debt securities be presented as an allowance rather than as a direct write-down. The measurement of credit losses for newly recognized financial assets (other than certain purchased assets) and subsequent changes in the allowance for credit losses are recorded in the statement of income as the amounts expected to be collected change. The ASU is effective for fiscal years beginning after December 15, 2020, and interim periods within fiscal years beginning after December 15, 2021. Early adoption is permitted for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. The Company is currently evaluating the impact of the adoption of this guidance on its financial statements.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. ASU 2016-15 provides guidance on how certain cash receipts and cash payments should be presented and classified in the Statement of Cash Flows, with the objective of reducing existing diversity in practice with respect to these items. ASU 2016-15 is effective for annual periods and interim periods within those years, beginning after December 15, 2017. ASU 2016-15 will be effective for the Company on January 1, 2019. Early adoption is permitted. ASU 2016-15 requires a retrospective transition method. However, if it is impracticable to apply the amendments retrospectively for some of the issues, the amendments for those issues would be applied prospectively as of the earliest date practicable. This standard will not have a material impact on the Company's results of operations or financial position. The Company is currently evaluating the impact the adoption of this guidance will have on its financial statements.

### NOTE 3 – CONCENTRATIONS OF RISK

#### Cash

The Company maintains its cash balances in a financial institution located in the United States. From time to time, deposits exceed amounts insured by the Federal Deposit Insurance Corporation (FDIC). Deposits held in noninterest-bearing transaction accounts are aggregated with any interest-bearing deposits the owner may hold in the same ownership category, and the combined total insured up to \$250,000. As of December 31, 2018, the Company had no deposits in excess of the federally insured amounts. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk on cash.



# CALIFORNIA POOLS FRANCHISE INC.

## NOTES TO FINANCIAL STATEMENTS DECEMBER 31, 2018

### NOTE 4 – FRANCHISED LOCATIONS

From March 12, 2018 (inception) to December 31, 2018, the Company granted two new franchise licenses and one of these franchisees became fully operational, at which time the Company recognized the franchise fee income. Both of these franchise licenses had been previously operating as a licensee or agent of the Company's affiliate, California Pools, Inc.; as such, no franchise revenue was recorded.

### NOTE 5 – STOCKHOLDER'S EQUITY

On March 12, 2018, the Company was authorized to issue 50,000,000 shares of common stock, in which the Company issued 5,000,000 shares of common stock to a single stockholder. On March 12, 2018, the Company was also authorized to issue 5,000,000 shares of preferred stock.

### NOTE 6 – COMMITMENTS, CONTINGENCIES AND RELATED PARTY TRANSACTIONS

#### Litigation

From time to time, the Company is involved in certain legal matters which arise in the normal course of operations. Management believes, based in part on the advice of legal counsel, that the resolution of such matters will not have a material adverse effect on the financial position of the Company.

### NOTE 7 – INCOME TAXES

The provision for income tax consisted of the following from March 12, 2018 (inception) to December 31, 2018:

|                                   |                        |
|-----------------------------------|------------------------|
| Federal                           | \$ 3,014               |
| State                             | <u>1,269</u>           |
| <b>Provision for income taxes</b> | <b><u>\$ 4,283</u></b> |

### NOTE 8 – SUBSEQUENT EVENTS

Management evaluated all activity through April 8, 2019 (the issue date of the financial statements) and concluded that no other subsequent events have occurred that would require recognition in the financial statements or disclosure in the notes to financial statements.

## **EXHIBIT D**

### **OPERATIONS MANUAL TABLE OF CONTENTS**

|                                                                   |           |
|-------------------------------------------------------------------|-----------|
| <b>TABLE OF CONTENTS .....</b>                                    | <b>II</b> |
| <b>INTRODUCTION .....</b>                                         | <b>1</b>  |
| Manual Purpose and Organization .....                             | 1         |
| Correspondence and Communication .....                            | 1         |
| Manual Terminology .....                                          | 1         |
| Welcome to California Pools .....                                 | 1         |
| Mission Statement .....                                           | 2         |
| Our Story .....                                                   | 2         |
| About Our Founder/Team .....                                      | 3         |
| Ethical Standards .....                                           | 3         |
| Legal and Regulatory .....                                        | 4         |
| Confidentiality .....                                             | 4         |
| Definition of Trade Secrets and Confidential Information .....    | 4         |
| The California Pools Operations Manual .....                      | 5         |
| Change of Address .....                                           | 6         |
| Franchise Disclosure Document (FDD) and Franchise Agreement ..... | 6         |
| Independently Owned and Operated .....                            | 6         |
| System Compliance .....                                           | 7         |
| Complete Franchisee Training .....                                | 7         |
| What Franchisees Can Expect from Corporate .....                  | 7         |
| What Corporate Expects from Franchisees .....                     | 8         |
| Keeping an Eye on the Competition .....                           | 9         |
| California Pools Franchise Visibility .....                       | 9         |
| Brand Identity, Trademarks and Copyrights .....                   | 9         |
| Logo Usage .....                                                  | 10        |
| Conclusion .....                                                  | 10        |
| <b>STARTUP .....</b>                                              | <b>11</b> |
| General Suggested Best Practice Guidelines .....                  | 11        |
| Pre-Opening Checklist .....                                       | 11        |
| Form the Business .....                                           | 12        |
| Different Types of Business Entities .....                        | 12        |
| Obtain Business Licenses and Forms .....                          | 13        |
| Business Accounting Records .....                                 | 13        |
| Insurance .....                                                   | 14        |
| Required Insurance .....                                          | 14        |
| Additional Named Insured .....                                    | 15        |
| Hire a Lawyer or CPA .....                                        | 15        |
| Initial Supplies and Equipment .....                              | 15        |
| Site Selection .....                                              | 15        |
| Guidance through the start-up phase .....                         | 16        |
| Computer Hardware and Software .....                              | 16        |
| System Backup .....                                               | 16        |

|                                                            |           |
|------------------------------------------------------------|-----------|
| System Maintenance .....                                   | 16        |
| Additional Office Equipment .....                          | 16        |
| California Pools Business Number and E-Fax .....           | 16        |
| Training Requirements .....                                | 16        |
| Training New Employees .....                               | 17        |
| Continuing Education and Training Opportunities .....      | 17        |
| Annual Franchise Meeting (AFM) .....                       | 17        |
| Code of Conduct While Attending Training or Seminars ..... | 18        |
| Grand Opening .....                                        | 18        |
| Grand Opening Checklist .....                              | 19        |
| Twelve Week Grand Opening Checklist .....                  | 19        |
| Twelve Weeks .....                                         | 19        |
| Eleven Weeks .....                                         | 19        |
| Ten Weeks .....                                            | 20        |
| Nine Weeks .....                                           | 20        |
| Eight Weeks .....                                          | 20        |
| Seven to Six Weeks .....                                   | 20        |
| Five to Four Weeks .....                                   | 21        |
| Three Weeks .....                                          | 21        |
| Two Weeks .....                                            | 21        |
| One Week: Grand Opening Week .....                         | 22        |
| Promoting the Business Prior to Opening .....              | 22        |
| <b>ACCOUNTING .....</b>                                    | <b>23</b> |
| Financial Privacy and Confidentiality .....                | 23        |
| Roles and Responsibilities .....                           | 23        |
| Franchise Owner Obligations and Opportunities .....        | 23        |
| Financial Support Roles and Responsibilities .....         | 23        |
| Benefits of Financial Management .....                     | 24        |
| Financial Management Terminology .....                     | 24        |
| Break-Even Point .....                                     | 24        |
| Analyzing a Break-Even Point .....                         | 25        |
| Generally Accepted Accounting Practices (GAAP) .....       | 25        |
| Benchmarks .....                                           | 25        |
| Gross Profit Margin .....                                  | 25        |
| Cost Of Goods Sold .....                                   | 25        |
| Expenses as a Percentage of Sales: .....                   | 25        |
| Net Profit Margin .....                                    | 26        |
| Hiring an Accountant .....                                 | 26        |
| Accounting and Bookkeeping Methods .....                   | 26        |
| Cash Method Accounting .....                               | 27        |
| Accrual Method Accounting .....                            | 27        |
| Chart of Accounts .....                                    | 27        |
| Reports .....                                              | 27        |
| Profit & Loss/ Income Statement .....                      | 27        |
| Balance Sheet .....                                        | 27        |
| Statement of Cash Flows .....                              | 28        |
| Payments to California Pools Franchise, LLC .....          | 29        |
| Royalties .....                                            | 29        |
| System Marketing Fund .....                                | 29        |
| Local Marketing Expenditure .....                          | 30        |

|                                                    |           |
|----------------------------------------------------|-----------|
| Royalty and Marketing Fund Payments.....           | 30        |
| Sending Payments and Reports to Corporate.....     | 30        |
| Taxes.....                                         | 30        |
| Retaining and Storing Records.....                 | 30        |
| Bookkeeping.....                                   | 31        |
| General Accounting Backup Best Practices.....      | 32        |
| Daily Accounting.....                              | 32        |
| Weekly Accounting.....                             | 32        |
| Bi-Weekly.....                                     | 33        |
| Monthly Accounting.....                            | 33        |
| Quarterly Accounting.....                          | 33        |
| Annual Accounting.....                             | 33        |
| Payment Transactions.....                          | 34        |
| Cash:.....                                         | 34        |
| Credit Cards:.....                                 | 34        |
| Checks.....                                        | 34        |
| Processing Checks.....                             | 35        |
| Payroll.....                                       | 35        |
| Taxes.....                                         | 35        |
| Federal Income Tax.....                            | 35        |
| Federal Unemployment Tax: FUTA.....                | 35        |
| Sales Tax.....                                     | 36        |
| Payroll Taxes.....                                 | 36        |
| Payroll Reporting and Payment.....                 | 36        |
| Electronic Federal Tax Payment System (EFTPS)..... | 37        |
| Filing Dates.....                                  | 37        |
| Independent Contractors vs. Employees.....         | 37        |
| Charitable Donations.....                          | 38        |
| Conclusion.....                                    | 38        |
| <b>STAFF ROLES AND EXPECTATIONS.....</b>           | <b>38</b> |
| Have Fun!.....                                     | 38        |
| Professionalism.....                               | 39        |
| Uniform Program and Policy.....                    | 39        |
| Uniform Standards.....                             | 39        |
| Staff Attitude.....                                | 40        |
| Replying to Client Inquiries.....                  | 40        |
| Professional Response.....                         | 40        |
| Prompt Response.....                               | 40        |
| Purposeful Response.....                           | 40        |
| Telephone Etiquette.....                           | 41        |
| <b>EMPLOYEE MANAGEMENT.....</b>                    | <b>41</b> |
| Labor Law Compliance.....                          | 41        |
| General Guidelines to Laws & Regulations.....      | 42        |
| EEOC.....                                          | 43        |
| Immigration and Control Act.....                   | 44        |
| List of Federal Laws Governing Employment.....     | 44        |
| Fair Wages.....                                    | 45        |
| Workplace Safety.....                              | 45        |
| Worker's Compensation.....                         | 45        |

|                                                                  |           |
|------------------------------------------------------------------|-----------|
| Employee Benefits Security Act.....                              | 45        |
| Employee Protection Act.....                                     | 45        |
| Uniformed Service Employment and Reemployment Act.....           | 45        |
| Employee Polygraph Protection Act (EPPA).....                    | 45        |
| Garnishment of Wages.....                                        | 46        |
| Family Medical Leave Act.....                                    | 46        |
| The Veterans' Preference Act.....                                | 47        |
| Required Postings.....                                           | 47        |
| Statutory Benefits.....                                          | 47        |
| Social Security.....                                             | 47        |
| Worker's Compensation.....                                       | 47        |
| Unemployment Insurance.....                                      | 48        |
| Family Medical Leave Act (FMLA).....                             | 48        |
| Jury Duty.....                                                   | 48        |
| Military Leave.....                                              | 48        |
| Voting Leave.....                                                | 48        |
| Bereavement Leave.....                                           | 48        |
| Personal Leave.....                                              | 48        |
| Rest and Lunch Breaks.....                                       | 49        |
| Possible Other Benefits.....                                     | 49        |
| <b>EMPLOYMENT POLICIES TO CONSIDER.....</b>                      | <b>49</b> |
| Employee Handbooks.....                                          | 49        |
| Employee Meetings Policy.....                                    | 50        |
| Employee Files Policy.....                                       | 50        |
| Employee Safety and Security Policy.....                         | 51        |
| Incident and Accident Reporting.....                             | 51        |
| Harassment Policy.....                                           | 51        |
| Hours of Work and Paydays Policy.....                            | 52        |
| Contractors / 1099 Employees Policies.....                       | 52        |
| Smoking Policy.....                                              | 52        |
| Substance Abuse Policy.....                                      | 52        |
| Workplace Search Policy.....                                     | 52        |
| Overtime Policy.....                                             | 52        |
| Attendance and Schedule Adherence Policy.....                    | 53        |
| Performance Review Policy.....                                   | 53        |
| Employee Standards of Conduct Policies.....                      | 53        |
| Discipline and Termination Policy.....                           | 54        |
| Considerations When Hiring Employees.....                        | 55        |
| Recruiting.....                                                  | 56        |
| Recruiting Considerations: What positions need to be hired?..... | 56        |
| Job Descriptions.....                                            | 56        |
| Sourcing.....                                                    | 57        |
| Applications.....                                                | 57        |
| Collecting Applications and Resumes.....                         | 57        |
| Sorting Applications and Resumes.....                            | 57        |
| Selecting Interview Candidates.....                              | 58        |
| Interview Process.....                                           | 59        |
| Topics to Avoid.....                                             | 59        |
| The Post-Interview Process.....                                  | 60        |
| References.....                                                  | 60        |

|                                                |    |
|------------------------------------------------|----|
| Background Information.....                    | 60 |
| Offering the Position.....                     | 60 |
| New Hire Paperwork.....                        | 61 |
| New Employee Orientation.....                  | 62 |
| Training New Employees.....                    | 62 |
| Termination.....                               | 63 |
| Involuntary Terminations.....                  | 63 |
| Resignation.....                               | 63 |
| Separation Dates.....                          | 63 |
| Rehire.....                                    | 64 |
| Referrals & References.....                    | 65 |
| Financial Institutions.....                    | 65 |
| DAILY BUSINESS OPERATIONS.....                 | 65 |
| General Business Operations Information.....   | 66 |
| Daily Business Operations Information.....     | 66 |
| CLIENT SERVICE.....                            | 67 |
| Professionalism.....                           | 67 |
| On the Job Etiquette.....                      | 67 |
| Uniform Standards and Personal Appearance..... | 68 |
| Promptness.....                                | 68 |
| Handling Complaints.....                       | 68 |
| Follow up and Investigate Complaints.....      | 68 |
| Thank.....                                     | 68 |
| Conclusion.....                                | 68 |
| MARKETING.....                                 | 69 |
| California Pools Marketing Philosophy.....     | 69 |
| Basic Marketing Strategies.....                | 69 |
| Create a Marketing Plan.....                   | 69 |
| Press Kit.....                                 | 69 |
| List development.....                          | 69 |
| News releases.....                             | 69 |
| Talking with Prospects.....                    | 70 |
| Website.....                                   | 70 |
| Flyers.....                                    | 70 |
| Gather Client Information.....                 | 70 |
| Email Program.....                             | 70 |
| Referrals.....                                 | 71 |
| Word of Mouth.....                             | 71 |
| SOCIAL MEDIA.....                              | 72 |
| What is Social Media?.....                     | 72 |
| Social Media Policy.....                       | 72 |
| The Choice to Participate.....                 | 72 |
| Social Media Legal Requirements.....           | 73 |
| SAFETY AND SECURITY.....                       | 75 |
| Maintain a Safe Workplace.....                 | 75 |
| Safety Training.....                           | 75 |

|                                                            |                  |
|------------------------------------------------------------|------------------|
| Prevent Accidents and Injuries.....                        | 76               |
| Safety Standards.....                                      | 76               |
| OSHA Safety Training Requirements.....                     | 76               |
| Insurance.....                                             | 77               |
| SECURITY.....                                              | 78               |
| Internal Theft.....                                        | 78               |
| Crisis Situations.....                                     | 78               |
| Crisis Definitions.....                                    | 78               |
| Handling a Crisis.....                                     | 79               |
| Working with the Police and Other Government Agencies..... | 79               |
| Communicating with Employees.....                          | 79               |
| What to Tell Clients.....                                  | 80               |
| What to Tell a Victim's Family.....                        | 80               |
| Requests for Information.....                              | 81               |
| Safety and Security Chapter Conclusion.....                | 81               |
| MUTUAL NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT..... | 82               |
| <b><u>TOTAL PAGES</u></b> .....                            | <b><u>94</u></b> |

**EXHIBIT E**

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

| <b>STATE</b>      | <b>STATE ADMINISTRATOR</b>                                                                                                                                                                         | <b>AGENT FOR SERVICE OF PROCESS</b>                                                                                                                                         |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CALIFORNIA</b> | Department of Business Oversight<br>One Sansome Street, Suite 600<br>San Francisco, CA 94104<br>415-972-8559<br>866-275-2677                                                                       | Commissioner of Business Oversight<br>320 West 4th Street, Suite 750<br>Los Angeles 90013-2344<br>866-275-2677                                                              |
| <b>FLORIDA</b>    | Department of Agriculture & Consumer Services<br>Division of Consumer Services<br>Mayo Building, Second Floor<br>Tallahassee, FL 32399-0800<br>850-245-6000                                        | N/A                                                                                                                                                                         |
| <b>HAWAII</b>     | State of Hawaii<br>Business Registration Division<br>Securities Compliance Branch<br>Dept. of Commerce and Consumer Affairs<br>335 Merchant Street, Room 203<br>Honolulu, HI 96813<br>808-586-2722 | Hawaii Commissioner of Securities<br>Same Address                                                                                                                           |
| <b>MICHIGAN</b>   | Michigan Department of Attorney General<br>Consumer Protection Division<br>Antitrust and Franchise Unit<br>G. Mennen Williams Building, 1 <sup>st</sup> Floor<br>Lansing, MI 48913<br>517-373-7117 | N/A                                                                                                                                                                         |
| <b>NEW YORK</b>   | NYS Department of Law<br>Investor Protection Bureau<br>28 Liberty Street, 21 <sup>st</sup> Floor<br>New York, NY 10005<br>212-416-8236                                                             | New York Secretary of State<br>New York Department of State<br>One Commerce Plaza<br>99 Washington Avenue, 6 <sup>th</sup> Floor<br>Albany, NY 12231-0001<br>(518) 473-2492 |
| <b>TEXAS</b>      | Secretary of State<br>Statutory Documents Section<br>P.O. Box 12887<br>Austin, TX 78711-2887<br>512-475-1769                                                                                       | N/A                                                                                                                                                                         |
| <b>UTAH</b>       | Utah Department of Commerce<br>Consumer Protection Division<br>160 East 300 South (P.O. Box 45804)<br>Salt Lake City, UT 84145-0804<br>TELE: 801-530-6601<br>FAX: 801-530-6001                     | N/A                                                                                                                                                                         |



| STATE     | STATE ADMINISTRATOR                                                                                                                                   | AGENT FOR SERVICE OF PROCESS                                                                                       |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| VIRGINIA  | State Corporation Commission<br>Division of Securities and Retail Franchising<br>1300 E. Main Street, 9th Floor<br>Richmond, VA 23219<br>804-371-9051 | Clerk of the State Corporation Commission<br>1300 E. Main Street, 1st Floor<br>Richmond, VA 23219<br>804-371-9733  |
| WISCONSIN | Wisconsin Dept. of Financial Institutions<br>Division of Securities<br>345 W. Washington Avenue, 4th Floor<br>Madison, WI 53703<br>608-266-8557       | Wisconsin Commissioner of Securities<br>345 W. Washington Avenue<br>4th Floor<br>Madison, WI 53703<br>608-266-8557 |

## **EXHIBIT F**

### **STATE ADDENDA**

The following modifications are to the California Pools Franchise Inc. Franchise Disclosure Document and may supersede, to the extent then required by valid applicable state law, certain portions of the Franchise Disclosure Document and Franchise Agreement.

## **CALIFORNIA**

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.

Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may, by rule or order require, before a solicitation of a proposed material modification of an existing franchise.

Neither the franchisor nor any person 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 these persons from membership in this association or exchange.

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 contains 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. Sec. 101 et seq.).

The franchise agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

You must sign a general release if you transfer your franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

The franchise agreement requires binding arbitration. The arbitration will occur in Austin, Texas, with the costs being borne by each party, except in certain cases in which the prevailing party will be entitled to recover its costs and attorneys' fees.

The franchisor's fiscal year end is December 31.

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF OUR WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT [www.dbo.ca.gov](http://www.dbo.ca.gov).

## HAWAII

THESE FRANCHISES HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OF THE STATE OF HAWAII OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OF THE STATE OF HAWAII THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT WITH THIS STATE ADDENDUM, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

THIS ADDENDUM AND THE FRANCHISE DISCLOSURE DOCUMENT CONTAIN A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

We have registrations on file in the States of California, Hawaii, Michigan, and New York, ~~Virginia and Wisconsin.~~

During the previous 12 months (i) no state has refused, by order or otherwise, to allow us to register this franchise, (ii) no state has revoked or suspended our right to offer franchises in their state, and (iii) we have not withdrawn a proposed registration to franchise in any state.

## **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 E 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 NYS DEPARTMENT OF LAW, INVESTOR PROTECTION BUREAU, 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 risk factors are added to the State Cover Page of the Franchise Disclosure Document:

**THE FRANCHISOR IS AT AN EARLY STAGE OF DEVELOPMENT AND HAS A LIMITED OPERATING HISTORY. THIS FRANCHISE IS LIKELY TO BE A RISKIER INVESTMENT THAN A FRANCHISE IN A SYSTEM WITH A LONGER OPERATING HISTORY.**

**YOU MUST MAKE MINIMUM ROYALTY, ADVERTISING, AND OTHER PAYMENTS, REGARDLESS OF YOUR SALES LEVELS. YOUR INABILITY TO MAKE THE PAYMENTS MAY RESULT IN TERMINATION OF YOUR FRANCHISE AND LOSS OF YOUR INVESTMENT.**

**YOU MUST MAINTAIN MINIMUM SALES PERFORMANCE LEVELS. YOUR INABILITY TO MAINTAIN THESE LEVELS MAY RESULT IN LOSS OF ANY TERRITORIAL RIGHTS YOU ARE GRANTED, TERMINATION OF YOUR FRANCHISE, AND LOSS OF YOUR INVESTMENT.**

3. 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.

4. The following is added to the end of Item 4:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of the offering circular: (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 1 year after that officer or general partner of the franchisor held this position in the company or partnership.

5. The following is added to the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

6. The following is added to the end of the "Summary" sections of Item 17(c), entitled Requirements for you to renew or extend, and Item 17(m), entitled Conditions for our approval of transfer:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

7. The following language replaces the "Summary" section of Item 17(d), entitled Termination by you:

You may terminate the agreement on any grounds available by law.

8. The following is added to the end of the "Summary" section of Item 17(j), entitled Assignment of contract by us:

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

9. The following is added to the end of the "Summary" sections of Item 17(v), entitled Choice of forum, and Item 17(w), entitled 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.

## **VIRGINIA**

The Franchise Agreement is amended to include the following statement:

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



## **WISCONSIN**

With respect to franchise agreements governed by Wisconsin law, the following shall supersede any inconsistent provision:

The Wisconsin Fair Dealership Law applies to most franchise agreements in the state and prohibits termination, cancellation, nonrenewal or substantial change in the competitive circumstances of a dealership agreement without good cause. The Law further provides that 90 days' prior written notice of the proposed termination, etc. must be given to the dealer. The dealer has 60 days to cure the deficiency and if the deficiency is so cured the notice is void. The disclosure document and franchise agreement are hereby modified to state that the Wisconsin Fair Dealership Law, to the extent applicable, supersedes any provisions in the Franchise Agreement that are inconsistent with that Law. Wis. Stats. Ch. 135, Wisconsin Fair Dealership Law, SEC 32.06(3), Wis. Adm. Code.

**EXHIBIT G**

**LIST OF FRANCHISEES**

**[See Attached]**

(Added graphics)

CALIFORNIA POOLS OFFICELIST

(Added graphics)

| SUMMARY                |                                   |                 |                                    |                |            |                  |                                                  |                                |
|------------------------|-----------------------------------|-----------------|------------------------------------|----------------|------------|------------------|--------------------------------------------------|--------------------------------|
| UNITS AS OF 12/31/2018 |                                   |                 |                                    |                |            |                  |                                                  |                                |
| UNITS LEFT IN 2018     |                                   |                 |                                    |                |            |                  |                                                  |                                |
| ACTIVE LOCATIONS       |                                   |                 |                                    |                |            |                  |                                                  |                                |
| LOCATION NAME          | ENTITY NAME                       | CONTACT NAME    | CITY, STATE                        | CONTACT PHONE  | GROUP      | AGREEMENT SIGNED | Notes                                            |                                |
| CORONA                 | Wet Dreams, Inc.                  | Quinton Steimle | Corona, California                 | (951) 283-3134 | AGENCY     | 1/25/2010        |                                                  |                                |
| HIGH DESERT            | Liquid Management                 | Jim Montini     | Rancho Cucamonga, California       | (909) 890-9907 | AGENCY     | 12/1/2008        |                                                  |                                |
| MALIBU / SFV           | VMARK                             | Vaniz Steimle   | Ventura, California                | (310) 627-2741 | AGENCY     | 12/11/2015       |                                                  |                                |
| ORANGE COUNTY (N)      | BILL MURPHEY CONSTRUCTION         | Bill Murphey    | Anaheim, California                | (714) 269-1580 | FRANCHISEE | 8/1/2018         |                                                  |                                |
| ORANGE COUNTY (S)      | RV Strong, Inc.                   | Ryan Vaughn     | San Clemente, California           | (949) 378-6308 | FRANCHISEE | 3/26/2019        | Transferred from a Company Store that was close  |                                |
| RIVERSIDE              | Foster Enterprises                | David Foster    | Temecula, California               | (951) 795-4090 | AGENCY     | 12/4/2015        |                                                  |                                |
| SAN DIEGO (N)          | Southern California Pools, Inc.   | Mike Welch      | San Marcos, California             | (760) 744-8868 | AGENCY     | 3/24/1988        |                                                  |                                |
| SAN DIEGO (S)          | Sea Level Group, Inc              | Jim Bellamy     | La Mesa, California                | (619) 821-2068 | AGENCY     | 8/2/2017         |                                                  |                                |
| SAN GABRIEL            | Sweetwater Pools                  | Wyatt Stewart   | San Dimas, California              | (626) 332-0936 | AGENCY     | 2/1/2018         | Transferred from Mike Sorenson.                  |                                |
| SAN LUIS OBISPO        | PoolWise, Inc.                    | Ryan Skelton    | Los Osos, California               | (805) 750-7074 | AGENCY     | 4/4/2017         |                                                  |                                |
| SANTA BARBARA          | Rocky Piper Corp.                 | Myles Steimle   | Camarillo, California              | (805) 335-8436 | AGENCY     | 2/2/2013         |                                                  |                                |
| SANTA CLARITA          | SKT Corporation                   | Bill McLaughlin | Valencia, California               | (661) 702-8500 | AGENCY     | 2/1/2012         |                                                  |                                |
| SOUTH BAY              | COMPANY STORE                     | Robert Monroe   | Torrance, California               | (310) 598-1930 | COMPANY    | N/A              |                                                  |                                |
| TEMECULA               | Poolsthetics LLC                  | Walt Virak      | Temecula, California               | (951) 551-5619 | AGENCY     | 5/11/2017        |                                                  |                                |
| THOUSAND OAKS          | MC Enterprises, Inc.              | Mike Exstrom    | Newbury Park, California           | (805) 495-7220 | AGENCY     | 3/4/2014         |                                                  |                                |
| UPLAND                 | Liquid Management                 | Jim Montini     | Rancho Cucamonga, California       | (909) 483-4215 | AGENCY     | 12/1/2008        |                                                  |                                |
| WEST COVINA            | Kresge Brothers, Inc              | Rick Kresge     | Claremont, California              | (909) 767-2584 | AGENCY     | 10/23/2013       |                                                  |                                |
| LAS VEGAS              | Waterfront Pools, LLC             | Mary Howell     | Las Vegas, Nevada                  | (702) 407-6830 | LICENSEE   | 9/23/2013        |                                                  |                                |
| AUSTIN                 | Precision Watershapes, Inc.       | Justin McGuire  | Austin, Texas                      | (512) 942-2574 | FRANCHISEE | 10/4/2018        | Converted from a license agreement to franchise. |                                |
| DALLAS                 | Aquatic Solutions, LLC            | Vince Coreil    | Dallas, Texas                      | (469) 726-2776 | FRANCHISEE | 11/30/2018       | Converted from a license agreement to franchise. |                                |
| PROVO                  | Zephyr Pools                      | Michael Burrup  | Provo, Utah                        | (702) 606-7068 | FRANCHISEE | 1/4/2019         |                                                  |                                |
| SALT LAKE CITY         | Deepwater Pools, LLC              | Ryan Blocker    | Kaysville, Utah                    | (801) 657-5727 | LICENSEE   | 9/12/2012        |                                                  |                                |
| INACTIVE LOCATIONS     |                                   |                 |                                    |                |            |                  |                                                  |                                |
| LOCATION NAME          | ENTITY NAME                       | CONTACT NAME    | CITY, STATE                        | CONTACT PHONE  | GROUP      | AGREEMENT SIGNED | AGREEMENT TERMINATED                             | REASON FOR DELETION            |
| PALM DESERT            | AJEP Builders                     | Adam Graham     | LaQuinta, California               | (760) 771-6141 | AGENCY     | 9/8/2017         | 4/16/2019                                        | Terminated - Not Communicating |
| EMERALD COAST          | Emerald Coast Pools, Inc.         | Larry Young     | Orange Beach, AL                   | (251) 597-0142 | FRANCHISEE | 1/10/2019        | Pending                                          | Mutual Termination             |
| PROVO                  | United Contracting Solutions, LLC | Brandon Moncur  | Midvale, Utah                      | (801) 205-4902 | LICENSEE   | 7/15/2016        | 10/3/2018                                        | Canceled                       |
| GREEN BAY              | CP Wisconsin Enterprises, LLC     | Shawn Schoen    | Kaukauna, Wisconsin                | (920) 419-8061 | LICENSEE   | 4/3/2017         | 1/23/2019                                        | Terminated                     |
| LOS ANGELES            | Ohana Pools, LLC                  | Kimo Horn       | Torrance, California               | (310) 598-1930 | COMPANY    | 5/26/2017        | 1/23/2018                                        | Ceased to do Business          |
| IRVINE                 | Mike Baldasare, Inc.              | Mike Baldasare  | Rancho Santa Margarita, California | (714) 575-9286 | AGENCY     | 3/7/2016         | 4/1/2018                                         | Ceased to do Business          |

**CALIFORNIA POOLS FRANCHISE INC.**  
**RECEIPT**

The disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If we offer you a franchise, we must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to us in connection with the proposed franchise sale. New York requires you to receive this disclosure document at the earlier of the first personal meeting or ten business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we provide you with this disclosure document ten business days before you sign a binding agreement with, or make payment to us or one of our affiliates in connection with the proposed sale.

If we do 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 applicable state agency.

Following is information about the franchise seller(s) involved in this transaction:

Steve Terry  
100 Commons Road, Suite 7  
Dripping Springs, Texas 78620

We authorize the agent listed in Exhibit E to this disclosure document to receive service of process.

I received a disclosure document issued ~~May 31, 2018, as amended July 31, 2018~~2019, that included the following Exhibits:

- A. Compliance Questionnaire
- B. Franchise Agreement
- C. Financial Statements
- D. Operations Manual Table of Contents
- E. State Franchise Administrators and Agents for Service of Process
- F. State Addenda
- G. List of Franchisees

\_\_\_\_\_  
Date

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Print Name

individually and as an officer, partner or member  
of \_\_\_\_\_

a (\_\_\_\_\_ corporation)

a (\_\_\_\_\_ partnership)

a (\_\_\_\_\_ limited liability company)

which has been or will be formed to act as franchisee

Address:

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Area Code Phone Number

**CALIFORNIA POOLS FRANCHISE INC.**  
**RECEIPT**

The disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If we offer you a franchise, we must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to us in connection with the proposed franchise sale. New York requires you to receive this disclosure document at the earlier of the first personal meeting or ten business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we provide you with this disclosure document ten business days before you sign a binding agreement with, or make payment to us or one of our affiliates in connection with the proposed sale.

If we do 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 applicable state agency.

Following is information about the franchise seller(s) involved in this transaction:

Steve Terry  
100 Commons Road, Suite 7  
Dripping Springs, Texas 78620

We authorize the agent listed in Exhibit E to this disclosure document to receive service of process.

I received a disclosure document issued ~~May 31, 2018, as amended July 31, 2018~~2019, that included the following Exhibits:

- A. Compliance Questionnaire
- B. Franchise Agreement
- C. Financial Statements
- D. Operations Manual Table of Contents
- E. State Franchise Administrators and Agents for Service of Process
- F. State Addenda
- G. List of Franchisees

\_\_\_\_\_  
Date

\_\_\_\_\_  
Franchisee

\_\_\_\_\_  
Print Name

individually and as an officer, partner or member  
of \_\_\_\_\_

a (\_\_\_\_\_ corporation)

a (\_\_\_\_\_ partnership)

a (\_\_\_\_\_ limited liability company)

which has been or will be formed to act as franchisee

Address:

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Area Code Phone Number