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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable G.D. Morgan, Jr.

Case No. 2023-CP-23-02302
Appellate Case No. 2023-001957

BA Holdings, Inc.,

Appellant,

v.

Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan,

Respondents.

RECORD ON APPEAL

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I certify that this designation contains no matter which is irrelevant to this appeal.

/s/ David L. Paavola

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July 26, 2024

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2302302

BA Holdings Inc
PLAINTIFF(S)

Zay N Limo LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Please see page two below.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Oct 16 9:03 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendants' Motion for Partial Summary Judgment as to all Claims Asserted in the Complaint by Plaintiff BA Holdings, INC. and Plaintiff's Motion to Amend Complaint. Based on a review of the file, submissions by the parties, and oral arguments, the Defendants' motion is hereby GRANTED. The evidence reveals that Plaintiff never had the right to sell a Big Air Franchise nor the right to sell the Anderson territory. Furthermore, Plaintiff did not have the rights to own and operate any franchises. Although, BA Greenville LLC did have the rights to own one franchise, they did not have the right to sell a franchise or the Anderson territory. Nor did Plaintiff have the authority to open an additional franchise. Based on the decision on Defendant's motion, Plaintiff's Motion to Amend is moot and therefore denied. Counsel for Defendants to prepare a formal order.

It is so ordered.

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Greenville Common Pleas

Case Caption: BA Holdings Inc vs. Zay N Limo LLC , defendant, et al

Case Number: 2023CP2302302

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE 13th JUDICIAL CIRCUIT
	)	
BA HOLDINGS, INC.,	)	Case No. 2023-CP-2302302
	)	
Plaintiff,	)	**ORDER**
	)	
v.	)	
	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN,	)	
	)	
Defendants,	)	
	)	

This matter is before the Court on Defendants Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan's Motion for Partial Summary Judgment as to all Claims Asserted in the Complaint by Plaintiff BA Holdings, Inc. (including Breach of Contract, Breach of Guaranties, and Unjust Enrichment), and Plaintiff's Motion for Leave to Amend the Complaint (which proposed amended pleading included a second plaintiff, BA Greenville, LLC, also represented by Plaintiff's counsel of record and commonly owned by Dustin Pelletier). On October 10, 2023, the Court held a hearing on both motions. Considering the motions to be interrelated, the Court first heard arguments on Plaintiff's subsequently filed motion, and then heard arguments on Defendants' earlier filed motion, and took both motions under advisement together before making its rulings. Based on the oral arguments and the Court's review of the submissions by the parties and the entirety of the record, Defendants' motion is hereby GRANTED, and Plaintiff's motion is DENIED.

As more fully set forth below, there is no genuine issue as to any material fact before the Court. Taking the evidence in a light most favorable to Plaintiff, the record reveals that Plaintiff never had the rights, at issue, to sell a Big Air franchise or an Anderson territory, nor did it have

the right to own and operate any franchises. Though Plaintiff's assignee and proposed second plaintiff, BA Greenville, LLC, did have the right to own and operate one franchise, it too did not have the right to sell a Big Air franchise or an Anderson territory, nor did it have the authority to open an additional franchise. Accordingly, all claims asserted in the Complaint, whether based on the express written contract attached as Exhibit 1 thereto or the alternative theory of unjust enrichment made therein, are disposed of as a matter of law, with prejudice. The Court has also fully considered, in a light most favorable, the proposed amended pleading and would summarily dispose of it on the same legal grounds, both as to Plaintiff and Plaintiff's assignee and proposed second plaintiff, BA Greenville, LLC, thereby making Plaintiff's motion clearly futile and moot.

LEGAL STANDARD

Leave to Amend

Under Rule 15(a), SCRCP, "leave shall be freely given when justice so requires and does not prejudice any other party." "Although leave to amend should generally be 'freely given,'. . . it may be denied where the proposed amendment would be futile." *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012).

Partial Summary Judgment

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

The legal standard on a motion for partial summary judgment is set forth in Rule 56, SCRCP.

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In pertinent part, Rule 56 (c), SCRCP, provides:

> …The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law…

Construing this rule, just this year, the Court of Appeals held:

> We now clarify that the 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." 403 S.C. at 477, 744 S.E.2d at 166.

The Kitchen Planners, LLC v. Friedman, 2020-001669 (Ct. App. August 23, 2023).

Further, under Rule 56(e), SCRCP:

> …an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Rule 56 (g), SCRCP, prohibits the improper use of affidavits to avoid summary judgment and unnecessarily protract litigation:

> Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 56 (d), SCRCP, in pertinent part, allows for partial summary judgment:

> If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy

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> and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

"Courts and commentators have stated that a partial summary judgment under Rule 56[] is an appropriate procedure whereby a court can narrow the scope of trial." *Limehouse v. Resolution Trust Corp.*, 862 F.Supp. 97 (D.S.C. 1994). "Chief among the functions of summary judgment are those of avoiding long and expensive litigation productive of nothing and curbing the danger that threat of such litigation will be used to harass or to coerce settlement." *Id*

FINDINGS OF MATERIAL FACT NOT SUBJECT TO GENUINE DISPUTE

The contract at issue in both motions before the Court is entitled "Assignment and Assumption Agreement," and it is attached as Exhibit 1 to both the Complaint and the proposed amended pleading (the "Contract"). The Contract was entered into by and between, and executed by, Plaintiff BA Holdings, Inc. and Defendant Zay N Limo, LLC (with accompanying guaranties signed by the other Defendants Sharif Farhan and Mohammad Farhan), on February 18, 2021.

Exhibit 1 *FINAL FOR EXECUTION*

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") dated as of January 29, 2021 ("Effective Date"), is entered into by and between BA HOLDINGS, INC., a South Carolina corporation ("Assigning Party") and ZAY N LIMO, LLC, a South Carolina limited liability company ("Assuming Party").

. . .

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BA HOLDINGS, INC.

By: 2/18/21
Name: Dustin Pelletier
Title: President

ZAY N LIMO, LLC

By: 2/18/21
Name: Mohammad Farhan
Title: Member

The Contract began with Plaintiff's claim to own and to have the right to sell franchise rights in Anderson, South Carolina, incorporating by reference Plaintiff's agreement with the franchisor, Big Air Franchising, LLC.

RECITALS

Assigning Party desires to assign to Assuming Party all its rights, including exclusive marketing rights, to the Anderson County, South Carolina territory (the "Anderson Territory") owned by Assigning Party pursuant to its franchise agreement with ©Big Air Franchising, LLC (the "Franchise Agreement"). The Anderson Territory is more fully described as zip codes. See, Exhibit A.

. . .

8.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes"

. . .

schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

The Contract purported to sell, assign, grant, convey, and transfer such franchise rights, title, duties, and obligations.

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Anderson Territory.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties and obligations related to the Anderson Territory on and after the Effective Date.

The Contract also included representations and warranties, made by Plaintiff, about its authority, as of the effective date of the Contract, to sell, assign, grant, convey, and transfer such franchise rights, title, duties, and obligations, and its full performance of and compliance with its agreement with the franchisor.

4. Representations and Warranties.

4.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the State of South Carolina.

(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.

(f) It is the sole legal and beneficial owner of the all the rights to the Anderson Territory on the Effective Date, free and clear of any lien, security interest, charge or encumbrance, except for the rights of ©Big Air Franchising, LLC to the Anderson Territory.

(g) The Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement.

(h) It has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date.

The Contract provided that its consideration involved the exchange of the purported assignment in return for (expectedly, ten years or more) of monthly royalties and fees: 1% of monthly gross sales + 5% of monthly net profits + $5,000 per month.

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2. Consideration.

2.1 For the entire time Term, Assuming Party agrees to pay the following to Assigning Party as consideration for the assignment of the Anderson Territory:

(a) A sum equal to 1% of the monthly gross sales of Assuming Party. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Gross sales will be calculated for the monthly immediately preceding the payment date.

(b) A sum equal to 5% of the monthly net profits of Assuming Party. Net profits will be calculated by taking the gross revenue and subtracting expenses. Expenses include normal operating expenses and excludes Owner personal expenses, salaries of Owners greater than $45,000 in the aggregate, new major equipment expenses greater than $5,000 per purchase, and bonuses, if any. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Net profits will be calculated for the monthly immediately preceding the payment date.

(c) A monthly management fee of Five Thousand and 00/100 ($5,000.00). The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term.

The Contract included an entire agreement clause (aka merger or integration), superseding all else.

8.8 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

The Contract also included an amendment clause, requiring a writing signed by each party to the Contract.

8.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each party to this Agreement.

The Contract also included a no third-party beneficiaries clause, limiting the benefits of the Contract to its parties.

8.12 No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

After initiating this action and suing Defendants in this Court based on the Contract, Plaintiff has since admitted it was not a proper party to the Contract (which it drafted). Plaintiff

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adopted a new position: that BA Greenville, LLC, an entity that Plaintiff is the sole and controlling member of, should have entered into the Contract with Defendants instead of Plaintiff.

> 34. As to Paragraphs 67 through 73 of the Counterclaims, Plaintiff admits only that the proper party to the Assignment and Assumption Agreement should have been BA Greenville, LLC and that Plaintiff is the sole and controlling member of BA Greenville, LLC. Plaintiff denies the remaining allegations of Paragraphs 67 through 73.

Mid-litigation, on August 14, 2023, Plaintiff then purported to clean up the Contract by unilaterally creating and executing a new document, without Defendants.

> Attached is a copy of an Assignment of Contract by which BA Holdings, Inc. assigned its interest in the Zay N Limo agreement to BA Greenville, LLC in order to clean up the error in that agreement. Pursuant to Rule 11, I am asking for Defendants' consent to allow us to amend our pleadings to address this issue and name BA Greenville, LLC as a plaintiff. Please let me know if Defendants will consent to the amendment.

Plaintiff's newly created document is titled as an assignment.

> **ASSIGNMENT OF CONTRACT**
>
> THIS ASSIGNMENT OF CONTRACT (this "Assignment") is made and entered into as of August 14, 2023, by and between BA Holdings, Inc. ("Assignor") and BA Greenville, LLC ("Assignee").

Dustin Pelletier signed the newly created document for both the Plaintiff and the new assignee, which he commonly owns and controls.

> IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.
>
> BA HOLDINGS, INC.
>
> Dustin Pelletier
> President
>
> BA GREENVILLE, LLC
>
> Dustin Pelletier
> Member

The newly created document renames the Contract, changing it from "Assignment and Assumption Agreement" to "Territory Release Agreement." It likewise recharacterizes the intent

of the Contract, stating that Plaintiff "intended to release certain rights of Assignee" by entering into the Contract. By contrast, the word "release" appears nowhere in the Contract, which, as already discussed, instead purports to sell franchise rights and title owned by Plaintiff and to transfer and convey Plaintiff's franchise duties and obligations to Defendants.

> 4. Assignor entered into that certain Assignment and Assumption Agreement with Zay N Limo, LLC ("Zay N Limo"), dated January 29, 2021 (the "Territory Release Agreement"), pursuant to which Assignor intended to release certain rights of Assignee, including exclusive marketing rights, to the Anderson County, South Carolina territory conferred to Assignee by Big Air Franchising, LLC under the Franchise Agreement.

The newly created document then purports to make the new assignee the "substitute counterparty" to the Contract and the party that in "effect" made the representations and warranties therein "as of" the time they were made.

> 5. Assignor inadvertently included itself as the contracting party in the Territory Release Agreement. Assignor now desires to assign to Assignee all its right, title, and interest in and to the Territory Release Agreement (the "Assigned Interests").
>
> 6. Assignee desires to become the substitute counterparty to the Territory Release Agreement with Zay N Limo and to assume and perform all the debts, liabilities, and obligations of Assignor in respect of the Assigned Interests under the Territory Release Agreement, and the other agreements, documents and materials that govern the rights and obligations of Assignor under the Territory Release Agreement, from and after the date hereof (collectively, the "Assumed Obligations").
>
> . . .
>
> Section 4. Representations and Warranties. Assignee hereby affirms that the representations and warranties set forth in the Territory Release Agreement are true and correct in all material respects as to Assignee on and as of the date hereof with the same effect as if made on the effective date of the Territory Release Agreement.

In its proposed amended complaint, Plaintiff alleges that the Contract was "in error in at least two ways," and that one of these errors is corrected by the newly created document. Plaintiff does not allege that the other error is corrected or that any of the other errors it alludes to are corrected.

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9. The Assignment Agreement is in error in at least two ways: (a) BA Greenville should be the counterparty, not BAH; and (b) it should provide for the assignment of the Anderson Territory back to BAF instead of assigning it directly to Zay.

. . .

~~14.~~24. On August 14, 2023, BAH, in an attempt to correct the error identified in Paragraph 9(a), above, assigned its right, title, and interest in the Assignment Agreement to BA Greenville. A copy of that assignment is attached hereto as **Exhibit 3**.

Dustin Pelletier's affidavit Plaintiff filed in opposition to Defendants' motion for partial summary judgment characterizes the same as being "mistakes" that "I made" and an "attempt to rectify my error."

21. When drafting the Assignment Agreement, I made two mistakes: (a) I inadvertently included BAH as the counterparty when it should have been BA Greenville; and (b) the Assignment Agreement should have provided for release of the Anderson Territory back to BAF instead of assigning it directly to Zay N Limo.

22. BAH has since assigned the Assignment Agreement to BA Greenville to attempt to rectify my error. A copy of that assignment is attached as Exhibit B.

During discovery, it appears Plaintiff also produced the agreements between itself and the franchisor (incorporated by reference in the Contract) and between its new assignee of the Contract and the franchisor (which Plaintiff now contends should have been the agreement incorporated by reference in the Contract).

The first agreement referenced above, between Plaintiff and the franchisor, authorized Plaintiff to act as a sales agent for the franchisor and entitled it to receive 50% of the franchise fees and royalties paid to the franchisor from the franchisor in the form of sales commissions.

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REGIONAL DIRECTOR AGREEMENT

This Regional Director Agreement ("**Agreement**") is entered into and made effective as of the 1st day of April, 2018, by and between **Big Air Franchising, LLC,** a California limited liability company, with a principal place of business at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and BA Holding INC, located at P.O. Box 171592, Spartanburg, SC 29301 ("**Regional Director**").

. . .

5.2. Sales Service Commission Payments. The Sales Service Commission shall depend upon the source of the franchise lead. If the lead is generated solely and independently by Regional Director, then the Sales Services Commission shall be an amount equal to fifty percent (50%) of the Initial Franchise Fees paid to Franchisor. If the lead is generated by any other source, then Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. If a sales lead is generated solely and independently by Regional Director prior to Regional Director completing the Initial Regional Director Training Program and the Franchisee Training Program and/or complying with all other obligations required to be met prior to opening the RD Business, Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. Franchisor retains the sole right to determine the source of the lead, and Franchisor's determination shall be final. Regional Director will also be required to contribute to the Franchise Development Fund in accordance with Section 4.2. The Sales Service Commissions will be payable to Regional Director within twenty (20) days after the Franchise Sales Conditions have been fulfilled, provided that the Initial Franchise Fees have not been deposited into an escrow or impound account, in which case, the Sales Service Commission will be payable to Regional Director within ten (10) days after Franchisor has received funds out of escrow, from the impound account or received funds that were previously deferred. Regional Director shall not receive any Sales Service Commission for franchises sold on or before the date of this Agreement or for Big Air Trampoline Businesses owned and operated by Franchisor, its affiliates or designees ("**Company Businesses**") in the RD Development Area, if any.

. . .

5.4. Commission on Royalty Payments. Franchisor shall pay to Regional Director, within twenty (20) days of the end of the month, fifty percent (50%) of all royalty payments ("**Royalties**") actually received from each Franchisee in the RD Development Area during the previous month ("**Royalty Commission**"). Regional Director shall be entitled to receive Royalty Commissions each month unless Regional Director has failed to perform, in any material respect, the services described in Section 8 during the prior month including, but not limited to, the conducting of periodic inspections and the filing of written reports as required by Section 8.6.

Plaintiff concedes in its proposed amended complaint that this agreement with the franchisor gave it no right to sell franchise rights.

2. BAH became the Regional Developer for BAF for the State of South Carolina pursuant that certain Regional Director Agreement, dated April 1, 2018 (the "RD Agreement"). Pursuant to the RD Agreement, BAH is responsible for advertising, recruiting, screening, and reviewing prospects for Big Air trampoline business franchises within the State of South Carolina and receives a commission on the franchise fees paid by new franchisees. However, BAH does not have authority to sell BAF franchises.

The second agreement referenced above was between the franchisor and another franchisee, Plaintiff's new assignee of the Contract, BA Greenville, LLC.

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made this 7th day of October, 2017 day of, by and between **BIG AIR FRANCHISING, LLC**, a California limited liability company, located at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and **BA Greenville, LLC** located at 11 Ridgewood Drive, Greenville, SC 29615 ("**Franchisee**").

That agreement made it expressly clear that Plaintiff had no rights thereunder by reason of its membership interests in BA Greenville, LLC.

15.5 With and after each valid assignment of this Agreement pursuant to this Section 15, the assignee or assignees of Franchisee shall be deemed to be Franchisee under this Agreement and will be bound by and liable for all of Franchisee's existing and future obligations. No stockholder in any corporation, member in any limited liability company or partner in any partnership which becomes Franchisee shall have any rights under this Agreement by reason of his, her or its stock ownership, membership interest or partnership interest.

That agreement gave that franchisee the right, license, and duty to operate only "one" franchise business in a defined territory.

2. GRANT OF LICENSE.

2.1 Subject to all the terms and conditions of this Agreement, Franchisor hereby grants to Franchisee, and Franchisee accepts, for the term of this Agreement, the right and license ("**License**") to:

(a) Operate one Big Air Trampoline Business upon the terms and conditions of this Agreement in one territory described in **Attachment A** ("**Territory**");

. . .

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DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

. . .

(c) **"Big Air Trampoline Business"** - means the business operations conducted or to be conducted by Franchisee consisting of selling and providing an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related Products using Franchisor's System and in association with the Marks.

It appears that franchisee has always operated its "one" franchise business in Greenville, specifically, at its trampoline recreation center located at 36 Park Woodruff Drive (meaning that it had no right to operate a second one in Anderson, 37 miles away, and could not sell such a right that it did not own), which Plaintiff admitted in replying to allegations in Defendant's counterclaims.

19. Plaintiff admits the allegations of Paragraphs 24 through 27 of the Counterclaims. Plaintiff is the sole and controlling member of BA Greenville, LLC, which is a franchisee of Big Air Franchising, LLC.

. . .

26. One of the franchise agreements produced by Plaintiff is by and between BA Greenville, LLC, as franchisee, and Big Air Franchising, LLC, as franchisor, for a franchise business identified as #1703, which operates at 36 Park Woodruff Drive, Greenville, South Carolina 29607.

Without expanding the franchisee's right, license, and duty to operate only "one" franchise business in the defined territory, the agreement also included a provision stating that the franchisor or its affiliate would not establish or license another franchise business in a defined buffer territory of zip codes surrounding the one operating franchise business.

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4. TERRITORY

4.1 During the Term and for so long as Franchisee is in compliance with all of its obligations hereunder, except as otherwise provided in this Agreement, and subject to Franchisor's reservation of rights as set forth in Section 4.2 and as provided in Section 4.4 **below**, neither Franchisor nor any Affiliate will establish or license another person or entity to establish a Big Air Trampoline Business using the Marks licensed to Franchisee within the Territory encompassed by the boundaries set forth in **Attachment A**, attached hereto and incorporated herein by reference. Except as otherwise specifically provided in this Agreement, this Agreement does not restrict Franchisor or its Affiliates and does not grant rights to Franchisee to pursue any of Franchisor's or its Affiliates other business concepts other than the Big Air Trampoline Business.

DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

(a) "**Agreement**" - means this agreement, attachments, and all instruments in amendment hereof.

(b) "**Affiliate**" - means any person or entity that controls, is controlled by, or is in common control with, Franchisor or Franchisee.

The agreement strictly prohibited and deemed "void" any attempted assignment of the franchisee's rights and duties, without compliance with numerous terms and conditions and restrictions therein, and "prior written approval" from the franchisor.

15.4 Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee. Accordingly, this Agreement, Franchisee's rights and interests hereunder, the property and assets owned and used by Franchisee in connection with the Big Air Trampoline Business, and any shares, stock, membership or interest in any corporation, limited liability company, or other entity having an interest in the Big Air Trampoline Business, shall not be voluntarily or involuntarily, directly or indirectly sold, pledged, assigned, transferred, shared, subdivided, sub-franchised, encumbered or transferred in any way (including, without limitation, in the event of the death of Franchisee if Franchisee is an individual), in whole or in part, in any manner whatsoever without the prior written approval of Franchisor, which approval will not be unreasonably withheld or delayed, and compliance with all terms of this Section 15. Any unauthorized sale, assignment, transfer or other conveyance, by operation of law or otherwise, or any attempt to do so, shall be deemed void and grounds for termination of this Agreement by Franchisor.

The agreement includes several pages of conditions and restrictions. For example, the proposed assignment could not grant a subfranchise.

15.11 Franchisee shall not have the right to grant a subfranchise.

As another example, the franchisee was required to provide the franchisor with an exact copy of a purchase offer and give it a right of first refusal.

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> 15.6 If Franchisee shall at anytime determine to sell, in whole or in part, the Big Air Trampoline Business, Franchisee shall obtain a bona fide, executed, written offer ("**Purchase Offer**") for the Big Air Trampoline Business together with all real or personal property, leasehold improvements and other assets used by Franchisee in its Big Air Trampoline Business from a responsible, arms' length, and fully disclosed purchaser and shall submit an exact copy of such Purchase Offer to Franchisor. Franchisor will have a right of first refusal to purchase the Big Air Trampoline Business as provided in Section 16.

Plaintiff admitted that the franchisor did not participate in the negotiation and execution of the Contract, nor give its "prior written approval" to the Contract.

> 22. As to Paragraph 41 of the Counterclaims, Plaintiff admits only that Big Air Franchising, LLC did not participate in the negotiation and execution of the Assignment and Assumption Agreement. Plaintiff denies the remaining allegations of Paragraph 41.

Plaintiff additionally admitted that it has provided no services of any kind or anything of value that it owns to earn the monthly fees it has demanded under the Contract or otherwise, by not timely responding to certain requests for admissions, under Rule 36, SCRCP.

> 1. Admit that BA Holdings, Inc. did not actually provide any management services for which it has demanded a monthly management fee of $5,000 in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.
>
> 2. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.
>
> 3. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

The evidence submitted shows that Defendants have paid the franchisor, which has shared 50% of the franchise fees and royalties with Plaintiff in the form of sales commissions.

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8. As to Paragraph 6 of the Counterclaims, Plaintiff admits only that Defendants entered into the Franchise Agreement with Big Air Franchising, LLC, and that agreement speaks for itself. Plaintiff denies all allegations of Paragraph 6 inconsistent with the Franchise Agreement and denies the remaining allegations of Paragraph 6.

. . .

10. As to Paragraph 8 of the Counterclaims, Plaintiff is informed and believes that Zay paid to Big Air Franchising, LLC the franchise fee required by the Franchise Agreement. Plaintiff's participation, if any, in the proceeds of the franchise fee paid to Big Air Franchising, LLC is governed by the Regional Director Agreement entered into by Plaintiff and Big Air Franchising, LLC, which speaks for itself. Plaintiff denies any allegations of Paragraph 8 inconsistent with the Franchise Agreement and the Regional Director Agreement and denies the remaining allegations of Paragraph 8.

Defendants have refused to pay anything extra to Plaintiff, or BA Greenville, LLC, under the Contract or otherwise. This issue is now squarely before the Court.

PROCEDURAL HISTORY

Plaintiff e-filed the summons and complaint on May 9, 2023 and Defendants accepted service of the same on May 12, 2023.

Together with the summons and complaint, Plaintiff served discovery requests on Defendants, namely, requests for admissions under Rule 36, SCRCP, to which Defendants timely responded pursuant to the rules on June 23, 2023.

Plaintiff made an initial production of documents, responding to Defendants' informal requests for documents relating to the Contract, on May 15, 2023.

Defendants timely filed and served their answer and counterclaims on June 8, 2023, to which Plaintiff filed its reply on August 7, 2023.

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Defendant Zay N Limo, LLC served its first set of discovery requests on Plaintiff on June 8, 2023, including requests for admissions, interrogatories, and requests for production. Plaintiff made a request for a 30-day extension to respond to that discovery, to which Defendant Zay N Limo, LLC consented. Plaintiff then timely provided its responses to the requests for admissions on August 7, 2023; however, Plaintiff untimely provided its responses to the interrogatories and requests for production on August 11, 2023. Meanwhile, Defendant Mohammad Farhan served his first set of discovery requests on Plaintiff on August 3, 2023, including requests for admissions, interrogatories, and requests for production. It appears Plaintiff acknowledged receipt, but then did not timely respond to those discovery requests within 30 days or request an extension and no extension was ever agreed to by Defendants. 61 days after those discovery requests were served, on October 3, 2023, Plaintiff made an attempt to answer the requests for admissions, but did not attempt to respond to the corresponding interrogatories and requests for production.

On August 14, 2023, Plaintiff executed and produced its newly created document, discussed above, which assigned the Contract to BA Greenville, LLC and unilaterally attempted to amend the Contract. The same day, Defendants filed their Motion for Partial Summary Judgment. The motion was placed on the roster, on August 16, 2023, to be heard on October 10, 2023. Plaintiff filed its Motion for Leave to Amend its Complaint (attaching its proposed amended pleading) on September 25, 2023. Plaintiff filed its affidavit opposing partial summary judgment, two business days before the hearing, on October 6, 2023.

Both motions were heard by the Court on October 10, 2023. Considering the motions to be interrelated, the Court first heard Plaintiff's subsequently filed motion, and then heard Defendant's first filed motion. The Court took both motions under advisement together and carefully reviewed the record before making its rulings.

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LEGAL ELEMENTS OF THE CLAIMS

The Complaint and proposed amended pleading both make claims for breach of contract and breach of guaranty relating to the same contract. The elements for these claims are as follows: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage suffered by the claimant as a direct and proximate result of the breach. *See Fuller v. Eastern Fire & Cas. Ins. Co.*, 124 S.E.2d 602, 240 S.C. 75 (1962) ("This being an action for the breach of contract, the burden was upon the respondent to prove the contract, its breach, and the damages caused by such breach.").

The Complaint and proposed amended pleading also both make claims for unjust enrichment. "To recover restitution in the context of unjust enrichment, the plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value." *Inglese v. Beal*, 742 S.E.2d 687, 691, 403 S.C. 290 (Ct. App. 2013).

CONCLUSIONS OF LAW

After filing this lawsuit, Plaintiff conceded it has no valid legal claim against Defendants, as set forth above. The crux of the issue before the Court now is whether Plaintiff's newly created document can clean up the Contract to give Plaintiff's new assignee a valid legal claim to litigate further under Plaintiff's proposed amended complaint. The Court finds it cannot.

The Contract's express provisions – that it is the sole and entire agreement between the parties superseding all else; that it cannot be unilaterally amended; and that there are no third-party beneficiaries – control this decision under black letter contract law. *See* Black's Law Dictionary 880 (9th ed.2009) (defining an integration clause, also termed a merger clause, as "[a] contractual

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provision stating that the contract represents the parties' complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract"); *Wilson v. Landstrom*, 315 S.E.2d 130, 281 S.C. 260 (Ct. App. 1983) ("A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement.") (citing Williston On Contracts § 633 (3d ed. 1961) and other authority); *Wilson*, 315 S.E.2d 130, 281 S.C. 260 ("The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing.") (citing *Armour Fertilizer Works v. Hyman*, 120 S.C. 375, 113 S.E. 330 (1922); *M'Dowall v. Beckly*, 9 S.C.L. (2 Mill) 265 (1818)); *Davis v. Kb Home of South Carolina Inc.*, 394 S.C. 116, 713 S.E.2d 799 (Ct. App. 2011), *aff'd in part, vacated in part*, 429 S.C. 634, 842 S.E.2d 653 (2014) ("[W]hen the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term to the agreement, even when the writing is silent as to the particular term sought to be established.") (citing *U.S. Leasing Corp.*, 294 S.C. at 318, 364 S.E.2d at 205; *Blackwell v. Faucett*, 117 S.C. 60, 65, 108 S.E. 295, 296 (1921) (noting if the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term thereto)); *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) ("The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed."); *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) ("The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.").

Without Defendants' agreement, Plaintiff cannot unilaterally amend the sole and entire agreement between it and Defendants in the middle of this litigation. More particularly, Plaintiff

cannot rename the Contract, changing it from "Assignment and Assumption Agreement" to "Territory Release Agreement." Nor can Plaintiff recharacterize the intent of the Contract, stating that Plaintiff "intended to release certain rights of Assignee" by entering into the Contract. By contrast, the word "release" appears nowhere in the Contract, which, as shown, instead purports to sell franchise rights and title owned by Plaintiff and to convey and transfer Plaintiff's franchise duties and obligations to Defendants.

Likewise, Plaintiff cannot now make its new assignee the "substitute counterparty" to the Contract and the party that in "effect" made the representations and warranties therein "as of" the date they were made by Plaintiff. The assignee steps into the assignor's shoes as of the time of the assignment and cannot change who entered into the agreement in the first place, and who made representations and warranties therein and what was their meaning and effect when made. *See Singletary v. Aetna Cas. & Sur. Co.*, 447 S.E.2d 869, 316 S.C. 199 (Ct. App. 1994) ("An assignee of a chose in action can claim no higher rights than his assignor had *at the time* of the assignment.")(emphasis added).

Also, Plaintiff is expressly barred by the Contract from advancing any arguments based on parol evidence to try to controvert, rewrite, or add to the Contract. Plaintiff's newly created document and proposed amended complaint both seem to try to do that, as does the affidavit that Plaintiff filed in opposition to this motion, by Dustin Pelletier. The four corners of the Contract drafted by Plaintiff and attached by Plaintiff to its Complaint and its proposed amended pleading control as a matter of law.

Notwithstanding, even assuming *arguendo* that none of the above contract law applies here, Plaintiff's new assignee, BA Greenville, LLC, would not have had the right to enter into the Contract with Defendants to begin with, either. Nor does it have any equitable right to restitution.

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In sum, the two agreements with the franchisor produced by Plaintiff establish that neither Plaintiff, nor its new assignee, BA Greenville, LLC, were in the position to double sell and charge extra fees to Defendants for the rights and duties to open a new Big Air franchise business in Anderson. Attempting to do so was wrong and inequitable. Plaintiff only had the right to receive sales commissions equal to 50% of all franchise fees and royalties paid by Defendants to the franchisor (which it admittedly received). Plaintiff's new assignee of the Contract, BA Greenville, LLC, only had the right, license, and duty to operate the "one," already existing franchise business in Greenville; and numerous conditions and restrictions prohibited and rendered "void" any attempted assignment of the same without the franchisor's "prior written approval" (which it admittedly did not receive). Because neither Plaintiff, nor BA Greenville, LLC, had the rights they purported to sell Defendants and made representations and warranties about that were indisputably false, neither has a valid claim under the Contract or the alternative theory of unjust enrichment asserted in the Complaint and the proposed amended pleading.

Any issue that Plaintiff raises about Big Air Franchising, LLC breaching or amending its franchise agreement with BA Greenville, LLC (regarding the provision therein stating that the franchisor or its affiliate would not establish or license another franchise business in a defined buffer territory of zip codes surrounding the one operating franchise business) is between those parties – not Defendants. Moreover, Plaintiff, under common ownership with BA Greenville, LLC, and acting as a sales agent and affiliate of Big Air Franchising, LLC, was responsible for causing Big Air Franchising, LLC to sell Defendants their franchise business in Anderson, for which Plaintiff is already being rewarded with the right to receive 50% of the franchise fees and royalties paid by Defendants to the franchisor in the form of sales commissions.

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Finally, by not timely responding to certain requests for admissions, as set forth above, under Rule 36, SCRCP, Plaintiff additionally admitted that it has provided no services of any kind or anything of value that it owns to earn the monthly fees it has demanded under the Contract or otherwise. *See* Rule 36, SCRCP ("The *matter is admitted* unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney...") (emphasis added); *Nexstar Media Grp., Inc. v. Davis Roofing Grp.*, LLC, 431 S.C. 593, 848 S.E.2d 597 (Ct. App. 2020) ("This court has affirmed the seriousness of the ramifications for a failure to respond to requests in a timely matter."); *Moore, Matter of*, 494 S.E.2d 804, 329 S.C. 294 (1997) ("Because of this failure to reply, the Request for Admissions were deemed admitted.").

CONCLUSION

There is no genuine issue as to any material fact before the Court. For the reasons set forth above, Defendants' Motion for Partial Summary Judgment as to all Claims Asserted in the Complaint by Plaintiff BA Holdings, Inc. is GRANTED. Plaintiff's Motion for Leave to Amend the Complaint, which proposed amended pleading included a second plaintiff, BA Greenville, LLC, has been fully considered and is DENIED as futile and moot.

IT IS SO ORDERED.

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Greenville Common Pleas

Case Caption: BA Holdings Inc vs. Zay N Limo LLC , defendant, et al

Case Number: 2023CP2302302

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2302302

BA Holdings Inc
PLAINTIFF(S)

Zay N Limo LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter is before the Court on Plaintiff's Motion to Reconsider Order Granting Partial Summary Judgment and Denying Plaintiff's Motion to Amend Complaint. Based on a thorough review of the file, pleadings, prior arguments and past and present submissions of the parties, the motion is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/20/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Nov 21 9:40 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Greenville Common Pleas

Case Caption: BA Holdings Inc vs. Zay N Limo LLC , defendant, et al

Case Number: 2023CP2302302

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

ELECTRONICALLY FILED - 2023 May 09 9:41 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. **SUMMONS**

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 1122 Barnwell Street, Suite B, Columbia, South Carolina, 29201, within Thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Brian A. Autry

Brian A. Autry (SC Bar No.: 69401)
Ashley C. Thibault (SC Bar No.: 103522)
Kenison, Dudley & Crawford, LLC
1122 Barnwell Street, Suite B
Columbia, SC 29201
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Attorneys for Plaintiff

May 9, 2023
Columbia, South Carolina

ELECTRONICALLY FILED - 2023 May 09 9:41 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. **COMPLAINT** (Non-Jury)

Plaintiff, BA Holdings, Inc. ("Plaintiff"), by and through its undersigned attorneys, complaining of the Defendants Zay N Limo, LLC ("Zay"), Sharif Farhan ("Sharif"), and Mohammad Farhan ("Mohammad"), (collectively, "Defendants"), and would respectfully show unto this Court as follows:

JURISDICTION AND VENUE

1. Plaintiff is a corporation organized under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

2. Upon information and belief, Defendant Zay is a limited liability company organized under the laws of the State of South Carolina, with its principal place of business in Anderson County, South Carolina.

3. Upon information and belief, Defendant Sharif is a resident and citizen of Anderson County, South Carolina.

4. Upon information and belief, Defendant Mohammad is a resident and citizen of Greenville County, South Carolina.

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5. Venue and jurisdiction are proper in this Court. All Defendants have agreed, in writing, to venue and jurisdiction in this Court.

6. Plaintiff and Defendants have voluntarily waived their rights to a jury trial in their agreements with each other.

GENERAL ALLEGATIONS

7. On February 18, 2021, Plaintiff entered into an Assignment and Assumption Agreement ("Agreement") with Zay for Plaintiff to release the Anderson Territory to allow Zay to enter into a franchise agreement with Big Air Franchising, LLC in the Anderson Territory. A true and correct copy of the Agreement is attached hereto as **Exhibit 1**.

8. Pursuant to Section 2.1 of the Agreement, Zay was to pay Plaintiff on the tenth day of each month a sum equal to one percent of the monthly gross sales, a sum equal to five percent of the monthly net profits, and a monthly management fee of Five Thousand and 00/100 Dollars ($5,000.00) ("Payments").

9. Pursuant to Section 2.3 of the Agreement, late Payments bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Zay will also reimburse Plaintiff for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

10. In conjunction with the Agreement, Sharif and Mohammad each signed a Guaranty Agreement ("Guaranty Agreements") stating that Sharif and Mohammad were personally liable for payment and performance of the Agreement. A true and correct copy of the Guaranty Agreements are attached hereto as **Exhibit 2**.

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11. Pursuant to Section 1 of the Guaranty Agreements, Sharif and Mohammad guaranteed to Plaintiff the full and punctual payment and performance of the Agreement, plus all costs, expenses, and fees, including reasonable attorney's fees and expenses, related to the enforcement of Plaintiff's rights.

12. Zay has not remitted Payments to Plaintiff in accordance with the Agreement.

13. Plaintiff made demands to Defendants to remit Payments, but no Payments were made.

14. Pursuant to Section 2.4 of the Agreement, Zay is to provide financial information for an audit within three days of a request by Plaintiff.

15. On April 8, 2023, Plaintiff sent written notice to Zay of its intent to examine and audit the books and records of Zay.

16. Zay has not provided its financial information to Plaintiff for an audit.

17. On April 11, 2023, Plaintiff sent Defendants a letter demanding Payments and financial disclosures under the Agreement.

18. Defendants did not respond to Plaintiff's April 11, 2023 letter.

19. On April 25, 2023, Plaintiff sent Defendants a second letter demanding Payments and financial disclosures under the Agreement.

20. Defendants did not respond to Plaintiff's April 25, 2023 letter.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Defendant Zay)

21. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim herein.

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22. The Agreement entered into by Plaintiff and Zay was a binding contract for Plaintiff to release the Anderson Territory to allow Zay to enter into a franchise agreement with Big Air Franchising, LLC in the Anderson Territory.

23. Zay breached the Agreement by failing to make Payments when due and failing to provide audit information upon request, as described above.

24. Pursuant to the terms of the Agreement, Plaintiff is entitled to collect attorneys' fees and costs incurred to enforce the terms of the Agreement, including litigation costs.

25. Plaintiff is entitled to judgment against Zay in the amounts to be determined at trial. Plaintiff is further entitled to collect from Zay prejudgment interest, attorneys' fees, and costs associated with sending the pre-suit demands and the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment- Defendant Zay)

26. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim herein.

27. In the alternative, and without relinquishing Plaintiff's assertion that there is a valid contract, should the Court find that there was no valid Agreement, Zay has been unjustly enriched.

28. Plaintiff allowed Zay to use and operate the Big Air Franchise for Zay's benefit.

29. Plaintiff allowed Zay to operate the Big Air Franchise with the understanding that Zay would compensate Plaintiff for use of the Big Air Franchise.

30. Zay knew or should have known that by operating the Big Air Franchise, Zay was required to make Payments to Plaintiff.

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31. Zay has been unjustly enriched by operating the Big Air Franchise without payment, and Plaintiff is entitled to judgment fairly compensating Plaintiff for Zay's operation of the Big Air Franchise in the amount to be determined at trial, together with interest, costs and such other relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Guaranty- Defendants Sharif and Mohammad)

32. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim herein.

33. Defendants Sharif and Mohammad are personal guarantors of the Agreement pursuant to the Guaranty Agreements. See, Exhibit 2.

34. The Guaranty Agreements provide that Defendants Sharif and Mohammad are liable for full payments to Plaintiff and indebtedness under the Agreement.

35. The Guaranty Agreements also provide that Defendants Sharif and Mohammad are liable to pay attorneys' fees and costs incurred by Plaintiff in enforcement of the Agreement and collection of amounts due and owing.

36. Defendants have not made Payments to Plaintiff on the outstanding balance due. By virtue of the Guaranty Agreements, Defendants Sharif and Mohammad are personally liable for the debt.

37. Plaintiff is entitled to a judgment against Defendants Sharif and Mohammad in the amounts to be determined at trial, plus prejudgment interest, attorneys' fees, and the costs associated with sending the pre-suit demands and the costs of this action.

WHEREFORE, Plaintiff, BA Holdings, Inc., prays this Court for the following relief:

A. For Judgment against Defendant Zay on Plaintiff's first cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

B. In the alternative, for judgment against Defendant Zay on Plaintiff's second cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

C. For judgment against Defendants Sharif and Mohammad on Plaintiff's third cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest; and

D. Any such other relief as the Court deems just and proper.

s/ Brian A. Autry
Brian A. Autry (SC Bar No.: 69401)
Ashley C. Thibault (SC Bar No.: 103522)
Kenison, Dudley & Crawford, LLC
1122 Barnwell Street, Suite B
Columbia, SC 29201
Office: (864) 242-4899
E-mail: autry@conlaw.com
E-mail: thibault@conlaw.com
Attorneys for Plaintiff

May 9, 2023
Columbia, South Carolina

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KDC KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

Brian A. Autry
Member
Licensed in SC
1122 Barnwell Street, Suite B
Columbia, SC 29201
864.242.4899
autry@conlaw.com

May 11, 2023

VIA ELECTRONIC FILING AND E-MAIL
The Honorable Paul B. Wickensimer
Clerk of Court
Greenville County Circuit Court
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601
clerkofcourt@greenvillecounty.org

RE: REDACTED EXHIBITS FOR ELECTRONIC FILING
BA Holdings, Inc. v. Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan
C.A. No.: 2023-CP-23-02302

Dear Mr. Wickensimer,

Enclosed for electronic filing, please find the updated redacted Exhibits to Plaintiff's Complaint. Please remove and destroy the previously filed Exhibits to Plaintiff's Complaint and substitute the following attached Exhibits to Plaintiff's Complaint:

1. Exhibit 1 the Assignment and Assumption Agreement and
2. Exhibit 2 the Guaranty Agreements of Sharif Farhan and Mohammad Farhan.

Sincerely,

Brian Autry

BAA/act

cc: Jason S. Smith, Esq.
Hellman Yates & Tisdale, PA
105 Broad Street, Third Floor
Charleston, SC 29401 js@hellmanyates.com

Exhibit 1

FINAL FOR EXECUTION

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ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") dated as of January 29, 2021 ("Effective Date"), is entered into by and between BA HOLDINGS, INC., a South Carolina corporation ("Assigning Party") and ZAY N LIMO, LLC, a South Carolina limited liability company ("Assuming Party").

RECITALS

Assigning Party desires to assign to Assuming Party all its rights, including exclusive marketing rights, to the Anderson County, South Carolina territory (the "Anderson Territory") owned by Assigning Party pursuant to its franchise agreement with ©Big Air Franchising, LLC (the "Franchise Agreement"). The Anderson Territory is more fully described as zip codes. See, Exhibit A.

Sharif Farhan and Mohammad Farhan are the sole members of Assuming Party's limited liability company (each an "Owner" and, together, "Owners").

Assuming Party desires to accept such assignment of rights and delegation of obligations for the Anderson Territory.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Anderson Territory.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties and obligations related to the Anderson Territory on and after the Effective Date.

1.3 Term. The term of this Agreement is equal to the length of time that Assuming Party operates a Big Air franchise in Anderson County, South Carolina pursuant to a franchise agreement with ©Big Air Franchising, LLC (the "Term").

2. Consideration.

2.1 For the entire time Term, Assuming Party agrees to pay the following to Assigning Party as consideration for the assignment of the Anderson Territory:

(a) A sum equal to 1% of the monthly gross sales of Assuming Party. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Gross sales will be calculated for the monthly immediately preceding the payment date.

(b) A sum equal to 5% of the monthly net profits of Assuming Party. Net profits will be calculated by taking the gross revenue and subtracting expenses. Expenses include normal operating expenses and excludes Owner personal expenses, salaries of Owners greater

than $45,000 in the aggregate, new major equipment expenses greater than $5,000 per purchase, and bonuses, if any. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Net profits will be calculated for the monthly immediately preceding the payment date.

(c) A monthly management fee of Five Thousand and 00/100 ($5,000.00). The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term.

2.2 All payments will be made by WIRE TRANSFER WITH BACKUP PAYMENT delivered to PO BOX 171592, SPARTANBURG, SC 29301.

2.3 All late payments shall bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Assuming Party will also reimburse Assigning Party for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Assigning Party does not waive by the exercise of any rights hereunder), Assigning Party shall be entitled to suspend any of its obligations hereunder if the Assuming Party fails to pay any amount when due hereunder and such failure continues for fourteen (14) days following written notice thereof.

2.4 Audit Rights.

(a) Within seven (7) days after the end of each month during the Term, Assuming Party will provide Assigning Party with an accounting of its operating costs, expenses, sales, revenues, and related items from the immediately preceding month, along with any other information related thereto and reasonably requested by Assigning Party.

(b) Assigning Party shall have the right to examine and audit the books and records of Assuming Party upon three (3) days' advance written notice. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

3. Continuing Obligations.

3.1 Assuming Party.

(a) Assuming Party will accept, at its Anderson location ("Big Air Anderson"), coupons, gift cards, passes, annual passes, etc. that originated from Assigning Party's locations in Greenville and Spartanburg, South Carolina ("Big Air Greenville" and "Big Air Spartanburg," respectively).

(b) Assuming Party will offer the same prices at Big Air Anderson as are offered at Big Air Greenville and Big Air Spartanburg, including prices on daily specials, birthday packages, socks, etc.

3.2 Assigning Party.

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(a) Assigning Party will accept, at Big Air Greenville and Big Air Spartanburg, coupons, gift cards, passes, annual passes, etc. that originated from Big Air Anderson.

(b) Assigning Party will provide Assuming Party with access to Assigning Party's marketing director to provide content and management of marketing for Big Air Anderson. However, Assuming Party will still be responsible for purchasing its own paid advertisements for Big Air Anderson.

(c) Assigning Party will provide Assuming Party with access to Assigning Party's maintenance director to manage and direct the maintenance tasks for Big Air Anderson. Assuming Party will still be responsible for providing employees to perform most maintenance tasks and for purchasing replacement parts and material at Big Air Anderson.

4. Representations and Warranties.

4.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the State of South Carolina.

(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.

(f) It is the sole legal and beneficial owner of the all the rights to the Anderson Territory on the Effective Date, free and clear of any lien, security interest, charge or encumbrance, except for the rights of ©Big Air Franchising, LLC to the Anderson Territory.

(g) The Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement.

(h) It has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date.

4.2 Assuming Party's Representations and Warranties. Assuming Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of South Carolina.

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(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of Assuming Party, enforceable against it in accordance with its terms.

(f) It has or will enter into a separate franchise agreement with ©Big Air Franchising, LLC on or before the Effective Date.

5. Indemnification; Insurance.

5.1 Assuming Party Indemnification. To the fullest extent permitted by applicable law and subject to the terms and conditions set out in Section 5.2, Assuming Party (as "Indemnifying Party") shall indemnify, defend, and hold harmless Assigning Party and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney's fees, that are incurred by Indemnified Party (collectively, "Losses") relating to, arising out of, or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise ("Claim") or any direct Claim against Indemnifying Party alleging:

(a) A material breach or non-fulfillment of any material representation, warranty, or covenant under this Agreement by Indemnifying Party or its representatives;

(b) any negligent or more culpable act or omission of Indemnifying Party or any of its representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;

(c) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party or its representatives (including any reckless or willful misconduct); or

(d) any failure by Indemnifying Party to materially comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.

5.2 Exceptions and Limitations on Indemnification. Despite anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from Indemnified Party's:

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(a) Sole negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) Bad faith failure to materially comply with any of its material obligations set out in this Agreement.

5.3 Assuming Party's Insurance. During the Term Assuming Party shall, at its own expense, maintain and carry in full force and effect commercial general liability insurance in a sum no less than $1,000,000 per occurrence with financially sound and reputable insurers, and upon Assigning Party's request, shall provide Assigning Party with a certificate of insurance evidencing the insurance coverage specified in this Section.

6. Events of Default; Remedies.

6.1 Assuming Party shall be in default under this Agreement if Assuming Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, Assuming Party does not cure such breach within fourteen (14) days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within fourteen (140 days or is not dismissed or vacated within forty-five (45) days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(g) Has its franchise agreement with ©Big Air Franchising, LLC terminated.

6.2 In addition to any other remedy it may have at law or equity, Assigning Party may terminate this Agreement upon Assuming Party's default.

7. COVID Mandatory Shutdowns.

7.1 The parties acknowledge and agree that as of the effective date of this Agreement, the COVID-19 global pandemic ("COVID Pandemic") is impacting various industries. Considering the foregoing, Assuming Party will use best efforts to plan and execute its operations in a manner to minimize the impacts of the COVID-19 Pandemic on Big Air Anderson and its performance under this Agreement.

7.2 In the event of a mandatory shutdown imposed on Big Air Anderson by city, county, state, or federal governmental authorities due to the COVID-19 Pandemic, the monthly management

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fee provided in Section 2.1(c) will be prorated for a period of time equal to the length of the mandatory shutdown. No other performance of either Party under this Agreement will be excused.

8. Miscellaneous.

8.1 Relationship of Parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

8.2 Further Assurances. On the other party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

8.3 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties contained in this Agreement survive the expiration or earlier termination of this Agreement.

8.4 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at its address set out below (or to such other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to Assigning Party:	PO BOX 171592 SPARTANBURG, SC 29301 E-mail: dustin@bigairusa.com Attention: Dustin Pelletier
Notice to Assuming Party:	23 SANDUSKY LANE SIMSPONVILLE, SC 29680 E-mail: MohammahFarhan45@yahoo.com Attention: Mohammad Farhan

8.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" is deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, schedules and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The

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schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

8.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

8.7 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.8 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

8.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each party to this Agreement.

8.10 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of the party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(c) None of the following is a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission or course of dealing between the parties.

8.11 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

8.12 No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.13 Choice of Law. This Agreement and exhibits and schedules attached hereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina, without regard to the conflict of laws provisions thereof

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to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

8.14 Choice of Forum. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, and exhibits and schedules attached hereto, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud and statutory claims, in any forum other than in Greenville County, South Carolina and any appellate court from any thereof.

8.15 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS AND SCHEDULES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY ABOUT ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS OR SCHEDULES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.16 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BA HOLDINGS, INC.

By: _____ 2/18/21
Name: Dustin Pelletier
Title: President

ZAY N LIMO, LLC

By: _____ 2/18/21
Name: Mohammad Farhan
Title: Member

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Exhibit 2

GUARANTY

This GUARANTY (this "**Guaranty**") dated as of January 29, 2021, is made by SHARIF FARHAN, an individual who resides at 154 EASY GAP ROAD, ANDERSON, SC 29621 ("**Guarantor**"), in favor and for the benefit of BA HOLDINGS, INC., and its permitted assigns ("**Beneficiary**").

Reference is made to that certain Assignment and Assumption Agreement, dated January 29, 2021 (the "**Underlying Agreement**"), by and between ZAY N LIMO, LLC ("**Obligor**"), and Beneficiary. In consideration of the substantial direct and indirect benefits derived by Guarantor from the transactions under the Underlying Agreement, and in order to induce Beneficiary to enter into the Underlying Agreement and otherwise perform according to the Underlying Agreement, Guarantor, a principal of Obligor, hereby agrees as follows:

1. Guaranty. Guarantor absolutely, unconditionally and irrevocably guarantees to Beneficiary the full and punctual payment and performance of all present and future obligations, liabilities, covenants and agreements required to be observed and performed or paid or reimbursed by Obligor under or relating to the Underlying Agreement, plus all costs, expenses and fees (including reasonable attorney's fees and expenses) in any way relating to the enforcement or protection of Beneficiary's rights hereunder (collectively, the "**Obligations**").

2. Guaranty Absolute and Unconditional. Guarantor agrees that its Obligations under this Guaranty are irrevocable, continuing, absolute and unconditional and shall not be discharged or impaired or otherwise affected by, and Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

(a) Any illegality, invalidity or unenforceability of any Obligation or the Underlying Agreement or any related agreement or instrument, or any law, regulation, decree or order of any jurisdiction or any other event affecting any term of the Obligations.

(b) Any change in the time, place or manner of payment or performance of, or in any other term of the Obligations, or any rescission, waiver, release, assignment, amendment or other modification of the Underlying Agreement.

(c) Any taking, exchange, substitution, release, impairment, amendment, waiver, modification or non-perfection of any collateral or any other guaranty for the Obligations, or any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Obligations.

(d) Any default, failure or delay, wilful or otherwise, in the performance of the Obligations.

(e) Any change, restructuring or termination of the corporate structure, ownership or existence of Guarantor or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Obligor or its assets or any resulting restructuring, release or discharge of any Obligations.

(f) Any failure of Beneficiary to disclose to Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Obligor now or hereafter known to Beneficiary, Guarantor waiving any duty of Beneficiary to disclose such information.

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(g) The failure of any other guarantor or third party to execute or deliver this Guaranty or any other guaranty or agreement, or the release or reduction of liability of Guarantor or any other guarantor or surety with respect to the Obligations.

(h) Any delay or failure of or forbearance by Beneficiary in asserting any claim or demand or in exercising or enforcing any right or remedy, whether by action, inaction or omission, under the Underlying Agreement or otherwise.

(i) The existence of any claim, set-off, counterclaim, recoupment or other rights that Guarantor or Obligor may have against Beneficiary (other than a defense of payment or performance) whether in connection with the Obligations, the Underlying Agreement or any other transaction.

(j) Any other circumstance (including, without limitation, any statute of limitations), act, omission or manner of administering the Underlying Agreement or any existence of or reliance on any representation by Beneficiary that might vary the risk of Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, Guarantor.

3. Certain Waivers; Acknowledgments. Guarantor further acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Obligations.

(b) This Guaranty is a guarantee of payment and performance and not of collection. Beneficiary shall not be obligated to enforce or exhaust its remedies against Obligor or under the Underlying Agreement before proceeding to enforce this Guaranty.

(c) This Guaranty is a direct guaranty and independent of the obligations of Obligor under the Underlying Agreement. Beneficiary may resort to Guarantor for payment and performance of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Obligor or any other guarantors with respect to the Obligations. Beneficiary may, at Beneficiary's option, proceed against Guarantor and Obligor, jointly and severally, or against Guarantor only without having obtained a judgment against Obligor.

(d) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and this Guaranty and any requirement that Beneficiary protect, secure, perfect or insure any lien or any property subject thereto.

(e) Guarantor agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of Obligor.

4. Subrogation. Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under this Guaranty until all Obligations shall have been paid and discharged in full. Subject to the foregoing, upon payment and performance of all such Obligations, Guarantor shall be subrogated to the rights of Beneficiary against Obligor, and Beneficiary agrees to take such steps as Guarantor may reasonably request, at Guarantor's expense, to implement such subrogation.

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5. Representations and Warranties. To induce Beneficiary to enter into the Underlying Agreement, Guarantor represents and warrants that: (a) this Guaranty constitutes Guarantor's valid and legally binding agreement in accordance with its terms; (b) the execution, delivery and performance of this Guaranty will not violate any order, judgment or decree to which Guarantor or any of his assets may be subject; and (c) Guarantor is currently solvent and will not be rendered insolvent by providing this Guaranty.

6. Notices. All notices, requests, consents, demands and other communications hereunder (each, a "**Notice**") shall be in writing and delivered to the parties at the addresses set forth herein or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier, facsimile or e-mail or certified or registered mail (return receipt requested, postage prepaid). Except as otherwise provided in this Guaranty, a Notice is effective only (a) with written confirmation of delivery or transmission; (b) upon receipt of the receiving party, and (c) if the party giving the Notice has complied with the requirements of this section.

7. Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Guarantor may not, without the prior written consent of Beneficiary, assign any of its rights, powers or obligations hereunder. Beneficiary may assign this Guaranty and its rights hereunder without the consent of Guarantor. Any attempted assignment in violation of this section shall be null and void.

8. Governing Law; Service of Process. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REFERENCE TO ANY CHOICE OF LAW DOCTRINE. EACH PARTY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 6 HEREOF AND AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

9. Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE OBLIGATIONS HEREUNDER.

10. Cumulative Rights. Each right, remedy and power hereby granted to Beneficiary or allowed it by applicable law or other agreement shall be cumulative and not exclusive of any other and may be exercised by Beneficiary at any time or from time to time.

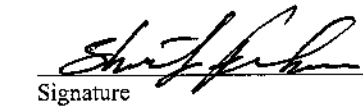
11. Severability. If any provision of this Guaranty is to any extent determined by final decision of a court of competent jurisdiction to be unenforceable, the remainder of this Guaranty shall not be affected thereby, and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

12. Entire Agreement; Amendments; Headings; Effectiveness. This Guaranty constitutes the sole and entire agreement of Guarantor and Obligor with respect to the subject matter hereof and supersedes all previous agreements or understandings, oral or written, between Guarantor and Obligor with respect to such subject matter. No amendment or waiver of any provision of this Guaranty shall be valid and binding unless it is in writing and signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against which the waiver is to be effective. Section headings are for convenience of reference only and shall not define, modify, expand or limit any of the terms of this Guaranty. Delivery of this Guaranty by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed original of this Guaranty.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

GUARANTOR:



Signature

[redacted]

Sworn to and subscribed before me this
_____day of _____, 20_____.

_____
Notary Public for SOUTH CAROLINA
My Commission Expires:

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GUARANTY

This GUARANTY (this "**Guaranty**") dated as of January 29, 2021, is made by MOHAMMAD FARHAN, an individual who resides at 23 SANDUSKY LANE, SIMPSONVILLE, SC 29680 ("**Guarantor**"), in favor and for the benefit of BA HOLDINGS, INC., and its permitted assigns ("**Beneficiary**").

Reference is made to that certain Assignment and Assumption Agreement, dated January 29, 2021 (the "**Underlying Agreement**"), by and between ZAY N LIMO, LLC ("**Obligor**"), and Beneficiary. In consideration of the substantial direct and indirect benefits derived by Guarantor from the transactions under the Underlying Agreement, and in order to induce Beneficiary to enter into the Underlying Agreement and otherwise perform according to the Underlying Agreement, Guarantor, a principal of Obligor, hereby agrees as follows:

1. Guaranty. Guarantor absolutely, unconditionally and irrevocably guarantees to Beneficiary the full and punctual payment and performance of all present and future obligations, liabilities, covenants and agreements required to be observed and performed or paid or reimbursed by Obligor under or relating to the Underlying Agreement, plus all costs, expenses and fees (including reasonable attorney's fees and expenses) in any way relating to the enforcement or protection of Beneficiary's rights hereunder (collectively, the "**Obligations**").

2. Guaranty Absolute and Unconditional. Guarantor agrees that its Obligations under this Guaranty are irrevocable, continuing, absolute and unconditional and shall not be discharged or impaired or otherwise affected by, and Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

(a) Any illegality, invalidity or unenforceability of any Obligation or the Underlying Agreement or any related agreement or instrument, or any law, regulation, decree or order of any jurisdiction or any other event affecting any term of the Obligations.

(b) Any change in the time, place or manner of payment or performance of, or in any other term of the Obligations, or any rescission, waiver, release, assignment, amendment or other modification of the Underlying Agreement.

(c) Any taking, exchange, substitution, release, impairment, amendment, waiver, modification or non-perfection of any collateral or any other guaranty for the Obligations, or any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Obligations.

(d) Any default, failure or delay, wilful or otherwise, in the performance of the Obligations.

(e) Any change, restructuring or termination of the corporate structure, ownership or existence of Guarantor or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Obligor or its assets or any resulting restructuring, release or discharge of any Obligations.

(f) Any failure of Beneficiary to disclose to Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Obligor now or hereafter known to Beneficiary, Guarantor waiving any duty of Beneficiary to disclose such information.

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(g) The failure of any other guarantor or third party to execute or deliver this Guaranty or any other guaranty or agreement, or the release or reduction of liability of Guarantor or any other guarantor or surety with respect to the Obligations.

(h) Any delay or failure of or forbearance by Beneficiary in asserting any claim or demand or in exercising or enforcing any right or remedy, whether by action, inaction or omission, under the Underlying Agreement or otherwise.

(i) The existence of any claim, set-off, counterclaim, recoupment or other rights that Guarantor or Obligor may have against Beneficiary (other than a defense of payment or performance) whether in connection with the Obligations, the Underlying Agreement or any other transaction.

(j) Any other circumstance (including, without limitation, any statute of limitations), act, omission or manner of administering the Underlying Agreement or any existence of or reliance on any representation by Beneficiary that might vary the risk of Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, Guarantor.

3. Certain Waivers; Acknowledgments. Guarantor further acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Obligations.

(b) This Guaranty is a guarantee of payment and performance and not of collection. Beneficiary shall not be obligated to enforce or exhaust its remedies against Obligor or under the Underlying Agreement before proceeding to enforce this Guaranty.

(c) This Guaranty is a direct guaranty and independent of the obligations of Obligor under the Underlying Agreement. Beneficiary may resort to Guarantor for payment and performance of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Obligor or any other guarantors with respect to the Obligations. Beneficiary may, at Beneficiary's option, proceed against Guarantor and Obligor, jointly and severally, or against Guarantor only without having obtained a judgment against Obligor.

(d) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and this Guaranty and any requirement that Beneficiary protect, secure, perfect or insure any lien or any property subject thereto.

(e) Guarantor agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of Obligor.

4. Subrogation. Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under this Guaranty until all Obligations shall have been paid and discharged in full. Subject to the foregoing, upon payment and performance of all such Obligations, Guarantor shall be subrogated to the rights of Beneficiary against Obligor, and Beneficiary agrees to take such steps as Guarantor may reasonably request, at Guarantor's expense, to implement such subrogation.

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6. Notices. All notices, requests, consents, demands and other communications hereunder (each, a "**Notice**") shall be in writing and delivered to the parties at the addresses set forth herein or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier, facsimile or e-mail or certified or registered mail (return receipt requested, postage prepaid). Except as otherwise provided in this Guaranty, a Notice is effective only (a) with written confirmation of delivery or transmission; (b) upon receipt of the receiving party, and (c) if the party giving the Notice has complied with the requirements of this section.

7. Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Guarantor may not, without the prior written consent of Beneficiary, assign any of its rights, powers or obligations hereunder. Beneficiary may assign this Guaranty and its rights hereunder without the consent of Guarantor. Any attempted assignment in violation of this section shall be null and void.

8. Governing Law; Service of Process. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REFERENCE TO ANY CHOICE OF LAW DOCTRINE. EACH PARTY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 6 HEREOF AND AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

9. Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE OBLIGATIONS HEREUNDER.

10. Cumulative Rights. Each right, remedy and power hereby granted to Beneficiary or allowed it by applicable law or other agreement shall be cumulative and not exclusive of any other and may be exercised by Beneficiary at any time or from time to time.

11. Severability. If any provision of this Guaranty is to any extent determined by final decision of a court of competent jurisdiction to be unenforceable, the remainder of this Guaranty shall not be affected thereby, and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

12. Entire Agreement; Amendments; Headings; Effectiveness. This Guaranty constitutes the sole and entire agreement of Guarantor and Obligor with respect to the subject matter hereof and supersedes all previous agreements or understandings, oral or written, between Guarantor and Obligor with respect to such subject matter. No amendment or waiver of any provision of this Guaranty shall be valid and binding unless it is in writing and signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against which the waiver is to be effective. Section headings are for convenience of reference only and shall not define, modify, expand or limit any of the terms of this Guaranty. Delivery of this Guaranty by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed original of this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

GUARANTOR:

Signature [redacted]

Sworn to and subscribed before me this
_____day of _____, 20_____.

_____
Notary Public for SOUTH CAROLINA
My Commission Expires:

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HELLMAN & YATES

ATTORNEYS AND COUNSELORS AT LAW

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CHARLESTON, SOUTH CAROLINA 29401
V 843 266-9099
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2023 MAY 11 AM 10:48
Paul Wickensimer GCC/CP/GC

May 11, 2023

VIA FEDERAL EXPRESS & E-MAIL

The Honorable Paul B. Wickensimer
Clerk of Court
Greenville County Circuit Court
305 E. North Street
Greenville County Courthouse
Greenville, South Carolina 29601
clerkofcourt@greenvillecounty.org

Re: **URGENT REQUEST TO REMOVE SOCIAL SECURITY NUMBERS**
BA Holdings, Inc. v. Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan
Civil Action No. 2023-CP-2302302
Greenville County Circuit Court
Filed May 9, 2023

Dear Mr. Wickensimer,

This law firm represents the defendants who have been sued in the above referenced action, namely Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan.

This is a request under Rule 41.2 (e), SCRCP, and S.C. Code Ann. § 30-2-330(B), for the Clerk of Court to remove our clients' social security numbers from the complaint prepared and filed against them by the Plaintiff on May 9, 2023.

More particularly, in violation of Rule 41.2 (a)(1) and (c), SCRCP, and S.C. Code Ann. § 30-2-330(A), the complaint includes our clients' social security numbers:

- on the last page of exhibit 1 to the complaint, which is incorrectly numbered as page 4, but is actually the 10th page of the document;
- and also on page 4 of exhibit 2 to the complaint;
- and also on the last page of exhibit 2 to the complaint, which is also incorrectly numbered as page 4, but is actually the 8th page of the document.

Thank you for your attention to this urgent matter.

Respectfully,

HELLMAN & YATES, PA

Jason S. Smith

cc: Brian A. Autry, Esq.
Ashley C. Thibault, Esq.
Kenison, Dudley & Crawford, LLC
1122 Barnwell Street, Suite B
Columbia, SC 29201
autry@conlaw.com
thibault@conlaw.com

Counsel for Plaintiff

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE 13th JUDICIAL CIRCUIT
	)	
BA HOLDINGS, INC.,	)	Case No. 2023-CP-2302302
	)	
Plaintiff,	)	
	)	**DEFENDANTS ZAY N LIMO, LLC, SHARIF FARHAN, AND MOHAMMAD FARHAN'S ANSWER TO THE COMPLAINT AND COUNTERCLAIMS**
v.	)	
	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN,	)	
	)	
Defendants,	)	
	)	

Defendants Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan respond to the Complaint as follows:

INTRODUCTION

This case involves a scheme to double-sell a new business, based on false and misleading representations and warranties, attended by disclosure and registration failures, all violating the South Carolina Business Opportunities Act, S.C. Code Ann. §§ 39-57-20 *et seq*., the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq*., and the Federal Trade Commission's rule for franchise and sub-franchise sellers, 16 CFR § 436, or business opportunity sellers, 16 CFR § 437. The counterclaims brought herein entitle Defendants to actual and consequential damages exceeding Five Million Dollars, together with statutory trebled damages and attorney's fees. In addition to Plaintiff, its principal, Dustin Pelletier, is individually responsible and a motion may be made to join him as an additional counterclaim defendant in this lawsuit. Other additional counterclaim defendants may be named after discovery.

ANSWER

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted, to the extent that Defendants submit to the jurisdiction and venue of this Court, and the remaining allegations therein are denied.

6. Paragraph 6 is denied.

7. Paragraph 7 is denied. Further, to fairly meet the substance of the allegations, the alleged agreement, attached as Exhibit 1 to the Complaint, is not true and correct, but is rather incomplete on its face because it lacks an exhibit and other documents referenced and incorporated for the terms thereof, but not included with Exhibit 1 to the Complaint; it is not a release or an allowance as described and characterized; it is not dated February 18, 2021; and it is not a legally valid or enforceable agreement as more fully set forth in the defenses and counterclaims.

8. Paragraph 8, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied.

9. Paragraph 9, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied.

10. Paragraph 10, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied, except that it is admitted that the guaranties attached as Exhibit 2 were signed by Sharif and Mohammad.

11. Paragraph 11, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied, except that it is admitted that the guaranties attached as Exhibit 2 were signed by Sharif and Mohammad.

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12. Paragraph 12, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied. Further, to fairly meet the substance of the allegations, Zay N Limo, LLC has made franchise fee and royalty payments to Big Air Franchising, LLC, which upon information and belief, have been shared with Plaintiff or its principal, Dustin Pelletier.

13. Paragraph 13, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied, except that it is admitted that Plaintiff made demands to Defendants for payments. Further, to fairly meet the substance of the allegations, Zay N Limo, LLC has made franchise fee and royalty payments to Big Air Franchising, LLC, which upon information and belief, have been shared with Plaintiff or its principal, Dustin Pelletier.

14. Paragraph 14, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied.

15. Paragraph 15, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied, except that it is admitted that Plaintiff sent a letter to Defendants demanding an audit dated April 8, 2023.

16. Paragraph 16, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied. Further, to fairly meet the substance of the allegations, Zay N Limo, LLC has provided financial information to Big Air Franchising, LLC, which upon information and belief, has been shared with Plaintiff or its principal, Dustin Pelletier.

17. Paragraph 17, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied, except that it is admitted that Plaintiff sent a letter to Defendants demanding payments and financial information dated April 11, 2023.

18. Paragraph 18 is admitted.

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19. Paragraph 19, which makes further allegations about the alleged agreement defined in Paragraph 7, is denied, except that it is admitted that Plaintiff sent a letter to Defendants demanding payments and financial information dated April 25, 2023.

20. Paragraph 20 is admitted.

21. Paragraph 21 requires no response and is otherwise denied.

22. Paragraph 22 is denied.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 requires no response and is otherwise denied.

27. Paragraph 27 is denied.

28. Paragraph 28 is denied.

29. Paragraph 29 is denied.

30. Paragraph 30 is denied.

31. Paragraph 31 is denied.

32. Paragraph 32 requires no response and is otherwise denied.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.

35. Paragraph 35 is denied.

36. Paragraph 36 is denied.

37. Paragraph 37 is denied.

38. The prayer for relief is denied.

DEFENSES

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39. The defenses set forth below are further supported by the factual allegations set forth in the counterclaims below, which are incorporated by reference as if set forth verbatim in these defenses.

40. The Complaint fails to state a cause of action for which relief can be granted.

41. Plaintiff violated the South Carolina Business Opportunities Act, S.C. Code Ann. §§ 39-57-20 *et seq*., the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq*., and the Federal Trade Commission's rule for franchise and sub-franchise sellers, 16 CFR § 436, or business opportunity sellers, 16 CFR § 437, by making false and misleading representations about rights it purported to own and sell, and by failing to comply with disclosure and registration requirements.

42. The alleged agreement, attached as Exhibit 1 to the Complaint, is incomplete on its face because it lacks an exhibit and other documents referenced and incorporated for the terms thereof, but not included with Exhibit 1 to the Complaint.

43. The alleged agreement, attached as Exhibit 1 to the Complaint, was induced by false and misleading representations.

44. The alleged agreement, attached as Exhibit 1 to the Complaint, includes false representations and warranties breached by Plaintiff.

45. The alleged agreement, attached as Exhibit 1 to the Complaint, is void.

46. The alleged agreement, attached as Exhibit 1 to the Complaint, is illusory.

47. The alleged agreement, attached as Exhibit 1 to the Complaint, lacks mutual and fair consideration.

48. The alleged agreement, attached as Exhibit 1 to the Complaint, lacked requisite consent and approval.

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49. Plaintiff has not performed the alleged agreement, attached as Exhibit 1 to the Complaint.

50. Plaintiff should be equitably estopped from enforcing the alleged agreement, attached as Exhibit 1 to the Complaint.

51. Plaintiff lacks clean hands to come to this Court to enforce the alleged agreement, attached as Exhibit 1 to the Complaint.

52. The alleged guaranties, attached as Exhibit 2 to the Complaint, fail because of the failures of the alleged agreement, attached as Exhibit 1 to the Complaint.

53. Plaintiff's alternative claim for unjust enrichment is inconsistent with the alleged agreement, attached as Exhibit 1 to the Complaint.

54. Plaintiff's alternative claim for unjust enrichment is barred as a matter of equity.

55. The Complaint fails to name a necessary party through which Plaintiff's alleged rights allegedly derive, namely, Big Air Franchising, LLC.

COUNTERCLAIMS

BACKGROUND

1. On or about July 14, 2020, Mohammad Farhan, together with his uncle and business partner, Shairf Farhan ("Mohammad" and "Sharif"), were exploring various franchise business opportunities, when Mohammad, who was leading their effort, came upon a website operated by a franchisor of trampoline park businesses, Big Air Franchising, LLC, www.bigairfranchising.com, and Mohammad submitted his contact information through an online inquiry form provided on the website.

2. Responding to Mohammad's online inquiry for Big Air Franchising, LLC, on July 17, 2020, Dustin Pelletier ("Dustin") – who acted as Big Air Franchising, LLC's sales

representative for the State of South Carolina; and who also operated one franchise trampoline park facility location in Greenville, South Carolina and one franchise trampoline park facility location in Spartanburg, South Carolina, using entities he owns, BA Greenville, LLC and BA Spartanburg, LLC, respectively; and who was also Plaintiff BA Holding, Inc.'s sole principal and shareholder, upon information and belief (hereinafter Dustin and Plaintiff BA Holding, Inc. are sometimes collectively referred to together as "Dustin/Inc.") – contacted Mohammad and began soliciting Mohammad and Sharif to purchase a franchise business opportunity from Big Air Franchising, LLC.

3. In the weeks and months that followed, Dustin/Inc. also began soliciting Mohammad and Sharif (and a new entity they ultimately formed for the purpose, Zay N Limo, LLC) to separately purchase a right, which Dustin represented to own himself, to locate and build a new franchise trampoline park facility in Anderson, South Carolina.

4. Believing and relying on Dustin/Inc.'s representations, Mohammad and Sharif (and Zay N Limo, LLC) were induced to proceed with both purported purchase transactions, which as contemplated, would result in not one, but two separate sets of fees and royalties (both of which would monetarily benefit Dustin, who would get all of the fees and royalties paid to Dustin/Inc., and who would share approximately half of the fees and royalties paid to Big Air Franchising, LLC, as Mohammad would later learn).

5. Dustin/Inc. orchestrated the preparation and execution of documents for both purported purchase transactions.

6. One purported purchase document, orchestrated by Dustin/Inc., with Big Air Franchising, LLC, was titled "Franchise Agreement." Mohammad's and Sharif's signatures appearing in the document are dated July 21, 2020, which date was less than 14 days after they

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had their first contact Big Air Franchising, LLC and Dustin/Inc. The document was altered at some point after the date of Mohammad's and Sharif's signatures, including the additions of Zay N Limo, LLC as the named franchisee, numerous zip codes defining a territory, and an effective date. The document is missing pages, including the operative signature page for the agreement itself. The signatures within the document only appear on exhibit pages. The document states that its effective date is February 11, 2021. Big Air Franchising, LLC's signatures, by its President, are dated February 26, 2021. Mohammad and Sharif were not provided a copy of the document as altered and compiled with all signatures until August 19, 2021. The payments set forth in the document include $60,000 in initial franchise fees and a 6% monthly royalty fee measured by gross sales.

7. The other purported purchase document, also orchestrated by Dustin/Inc., with BA Holdings, Inc., was titled "Assignment and Assumption Agreement." The document states that its effective date is January 29, 2021. The signatures are all dated February 18, 2021. The purported rights purchased and assigned, together with obligations assumed, are defined by a therein referenced and incorporated franchise agreement between BA Holdings, Inc. and Big Air Franchising, LLC, as well as a therein referenced exhibit of zip codes, neither of which was attached to the document, or included in Exhibit 1 to the Complaint. Mohammad and Sharif were not provided a copy of the document when it was signed. The payments set forth in the document include a 1% monthly royalty fee measured by gross sales, plus a 5% monthly royalty fee measured by net profits, plus a $5,000 monthly management fee.

8. Meanwhile, at Dustin/Inc.'s direction, Mohammad and Sharif, for Zay N Limo, LLC, wired $30,000 to Big Air Franchising, LLC on February 18, 2021, and an additional $30,000

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to Big Air Franchising, LLC on February 19, 2021 (upon information and belief, Dustin received approximately half of these funds, as Mohammad would later learn).

9. Still believing and relying on Dustin/Inc.'s representations and orchestration of both purported purchase transactions, Mohammad and Sharif, through their entity Zay N Limo, LLC, ultimately borrowed and invested more than Five Million Dollars to locate and build the franchise trampoline park facility in Anderson, South Carolina, more particularly, at 3523 Clemson Blvd, Anderson South Carolina 29625.

10. Beginning in or around the summer of 2022, Mohammad began to learn facts that revealed Dustin/Inc.'s scheme.

11. Mohammad was first tipped off by another franchisee and then learned from Dustin himself, that Dustin enjoyed a previously undisclosed arrangement with Big Air Franchising, LLC by which he would receive approximately half of the fees and royalties paid to Big Air Franchising, LLC under the Franchise Agreement, notwithstanding and in addition to the fees and royalties set forth under the purported Assignment and Assumption Agreement.

12. Mohammad also learned, from the leadership team of Big Air Franchising, LLC (including its President and others), that Dustin/Inc. did not own the rights to start a franchise trampoline park facility in Anderson, South Carolina that Dustin/Inc. purported to sell.

13. The leadership team of Big Air Franchising, LLC further represented to Mohammad that they were not previously aware of and did not authorize Dustin/Inc. to orchestrate the preparation and execution of the purported Assignment and Assumption Agreement.

14. The leadership team of Big Air Franchising, LLC nevertheless urged Mohammad to focus his time and resources on the upcoming grand opening of the franchise trampoline park facility in Anderson, South Carolina, and assured Mohammad that the purported Assignment and

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Assumption Agreement with Dustin/Inc. would thereafter be addressed by Big Air Franchising, LLC.

15. On March 11, 2023, the grand opening of the franchise trampoline park facility in Anderson, South Carolina occurred and was a success because of Mohammad and Sharif's investment of time and resources.

16. Thereafter, contrary to their assurances to Mohammad, the leadership team of Big Air Franchising, LLC advised and urged Mohammad to pay Dustin/Inc. up to Six Hundred Thousand Dollars to tear up the purported Assignment and Assumption Agreement and even attempted to help negotiate such a deal purporting to serve the role of a neutral mediator.

17. To further pressure Mohammad, the leadership team of Big Air Franchising, LLC reneged and conditionally suspended, unless and until Mohammad paid Dustin/Inc. to tear up the purported Assignment and Assumption Agreement, an unrelated offer they previously made to Mohammad, based on the successful grand opening, that Mohammad had already accepted, to be a developer of the State of Georgia for Big Air Franchising, LLC.

18. The leadership team of Big Air Franchising, LLC also urged Mohammad not to hire a lawyer.

19. Upon information and belief, Dustin/Inc. and the leadership team of Big Air Franchising, LLC combined, communicated, and cooperated for the purpose of attempting to coerce Mohammad to pay Dustin/Inc. to tear up the purported Assignment and Assumption Agreement.

20. Dustin/Inc. has not earned and is not entitled to any of the fees set forth in the purported Assignment and Assumption Agreement, including a 1% monthly royalty fee measured

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by gross sales, plus a 5% monthly royalty fee measured by net profits, plus a $5,000 monthly management fee.

21. On May 9, 2023, Dustin/Inc. initiated this litigation, by and through Dustin's entity, BA Holdings, Inc., the named Plaintiff, e-filing a complaint that improperly referenced and published Mohammad's and Sharif's social security numbers on the world wide web, in violation of Rule 41.2, SCRCP, and S.C. Code Ann. § 30-2-330(A). The damages resulting from this breach of duty are to be determined.

22. Exhibit 1 to the Complaint attaches the purported purchase document orchestrated by Dustin/Inc., titled Assignment and Assumption Agreement, but it does not include a therein referenced and incorporated franchise agreement between BA Holdings, Inc. and Big Air Franchising, LLC, as well as a therein referenced and incorporated exhibit of zip codes defining an Anderson territory.

23. On May 15, 2023, Plaintiff, through its counsel, produced two franchise agreements in response to the question from Defendants, through their counsel: "Will you please send me a copy of your client's franchise agreement that is referenced and defined in Exhibit 1 of the Complaint?"; and also produced a document in response to the question: "Can you also send over what your client alleges Exhibit A is as referenced in Exhibit 1 of the Complaint?" Defendants reserve all rights to further discovery as to the creation and authenticity of these documents produced by Plaintiff, notwithstanding further allegations herein about what appears in these documents produced by Plaintiff.

24. Neither franchise agreement produced by Plaintiff in response to the above question is actually with Plaintiff, BA Holdings, Inc.

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25. It appears, therefore, that there was never a franchise agreement between BA Holdings, Inc. and Big Air Franchising, LLC to begin with, contrary to the purported purchase document attached as Exhibit 1 to the Complaint.

26. One of the franchise agreements produced by Plaintiff is by and between BA Greenville, LLC, as franchisee, and Big Air Franchising, LLC, as franchisor, for a franchise business identified as #1703, which operates at 36 Park Woodruff Drive, Greenville, South Carolina 29607.

27. The other franchise agreement produced by Plaintiff is by and between Dustin himself, as franchisee, and Big Air Franchising, LLC, as franchisor, for a franchise business identified as #1501, which operates at 660 Spartan Blvd, Spartanburg, South Carolina, 29301.

28. Each of the franchise agreements produced by Plaintiff clearly states, in Section 2, that it is a license to operate "one" franchise business facility. To wit, the franchise agreements, respectively, only allow for the one existing facility that Dustin operates in Greenville, through his entity BA Greenville, LLC, as franchisee, and the one existing facility that Dustin operates in Spartanburg, by himself, as franchisee.

29. Neither franchise agreement produced by Plaintiff entitled or allowed Dustin/Inc. to open a second facility in Anderson, as he falsely represented to Mohammad and Sharif (and Zay N Limo, LLC) that he had the right to do, and intended to do, and would do, if they did not purchase that right from him.

30. Under both franchise agreements produced by Plaintiff, the rights and obligations of the franchisee are not divisible from the one operating facility to which they pertain, so any assignment and assumption of such rights and obligations, apart from the one operating facility to which they pertain, is illusory. (The only alternative interpretation is that Dustin and/or his entities

sold and assigned all rights and assets used to operate his one facility in Greenville and his one facility in Spartanburg to Zay N Limo, LLC).

31. Further, both franchise agreements produced by Plaintiff clearly state, in Section 15.4, that the rights and duties of the franchisee are "personal."

32. Further, both franchise agreements produced by Plaintiff clearly state, in Section 15.4, that the franchisee can make no sale of its rights without the franchisor's prior written approval and that any attempt to do so is "void."

33. Further, both franchise agreements produced by Plaintiff clearly state, in Section 15.4, that the franchisee can make no sale of its rights without the franchisor's prior written approval and that any attempt to do so is a "grounds for termination."

34. Further, both franchise agreements produced by Plaintiff clearly state, in Section 15.5, that no stockholder, member, or partner of a franchisee has any rights under the franchise agreement.

35. Further, both franchise agreements produced by Plaintiff clearly state, in Section 15.6, that the franchisee must present a written offer from a prospective buyer to purchase "all" of the franchisee's assets used to operate the one franchise business facility and provide the franchisor with a right of first refusal.

36. Further, both franchise agreements produced by Plaintiff clearly state, in Section 15.7, that no transfer or assignment "will be approved" "or be effective" unless and until numerous conditions are satisfied, as set forth in subsections (a) through (j), including but not limited to that the transferee must be purchasing "all" of the franchisee's assets used to operate the one franchise business facility.

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37. Further, both franchise agreements produced by Plaintiff clearly state, in Section 15.8, that even a transfer to an entity wholly owned and controlled by the franchisee, still requires the franchisor's prior written approval, and the satisfaction of several conditions, as set forth in subsections (a) through (g).

38. Based upon the franchise agreements produced by Plaintiff, it does not appear that there was ever an assignment from either of the franchisees named therein, Dustin and BA Greenville, LLC, respectively, to BA Holdings, Inc., let alone one that satisfied the requisite conditions and received the franchisor's prior written approval. And any stockholder, membership, or partnership interest that BA Holdings, LLC may purport or allege to have in or with Dustin or BA Greenville, LLC could not give BA Holdings, LLC any rights under the franchise agreements produced by Plaintiff.

39. Further, the requisite conditions were not satisfied and the franchisor did not provide its prior written approval to BA Holding, Inc.'s purported sale to Mohammad and Sharif's entity, Zay N Limo, LLC.

40. To the contrary, as set forth above, the leadership of Big Air Franchising, LLC informed Mohammad that Dustin/Inc. did not own the rights to start a franchise trampoline park facility in Anderson, South Carolina that he purported to sell and that Big Air Franchising, LLC did not approve or authorize his attempt to do so.

41. Further, Big Air Franchising, LLC has since represented that it was not involved in the negotiations between Dustin/Inc. and Mohammad and Sharif (and Zay N Limo, LLC) and that this dispute should be resolved between them.

42. The zip code document produced by Plaintiff, as the alleged exhibit referenced but missing in Exhibit 1 of the Complaint, titled Assignment and Assumption Agreement, appears to

be a perfect, digitized document, visibly different from the photocopied, physically printed, imperfect pages of Exhibit 1 of the Complaint, including the signature page compiled therewith.

43. Notwithstanding, many of the zip codes listed in that document produced by Plaintiff, which Plaintiff purported to sell, do not even appear in either of the franchise agreements produced by Plaintiff, including the following zip codes: 30577, 30553, 30520, 30521, 30662, 30634, 30635, 30538, 30557, 30553, 30662, 30516, and 30643.

44. According to the Franchise Agreement, orchestrated by Dustin/Inc., that includes Mohammad's and Sharif's signatures dated before the Assignment and Assumption Agreement, also orchestrated by Dustin/Inc., Big Air Franchising, LLC *directly* sold to Mohammad and Sharif's entity, Zay N Limo, LLC, the right to own, locate, build, and operate a new franchise trampoline park facility in Anderson, South Carolina, with references to all of the same zip codes that appear in the zip code document produced by Plaintiff, as the alleged exhibit referenced but missing in Exhibit 1 of the Complaint.

45. Accordingly, the representations and warranties by BA Holdings, Inc. set forth in the Assignment and Assumption Agreement were false and misleading and constitute breaches of that purported purchase contract at the outset, including:

a. Section 4.1(c), that "[i]t has the full right, corporate power, and authority to enter into this Agreement and perform its obligations hereunder.";

b. Section 4.1(f), that "[i]t is the sole legal and beneficial owner of the all the rights to the Anderson territory on the Effective Date, free and clear of any lien, security interest, charge, or encumbrance, except for the rights of Big Air Franchising, LLC to the Anderson Territory.";

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c. Section 4.1(g), that "the Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement."; and

d. Section 4.1(h), that "[i]t has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date."

46. During the course of the above-described events, on July 21, 2020, a 240-page franchise disclosure document was provided for Big Air Franchising, LLC, which makes no mention of BA Holdings, Inc. whatsoever; and does not disclose Dustin's arrangement to share approximately half of the fees and royalties paid to Big Air Franchising, LLC; and further states: "As of the date of this Franchise Disclosure Document, we had not negotiated any Multi-Unit Development Agreements."; and "As of the date of this Disclosure Document, we did not have any area developers."

47. No separate disclosure document of any kind was provided for Dustin, or any entity of his, including the plaintiff, BA Holdings, Inc.

48. Mohammad and Sharif (and Zay N Limo, LLC) now find themselves having borrowed from a bank and invested in excess of Five Million Dollars for a new business that Dustin/Inc. falsely and misleadingly induced them to double-purchase and have now devalued by disputing and clouding their marketable title, while making demands for payments and audits that would continue for ten years, detrimentally interfering with their relationship and other contractual and prospective opportunities with the franchisor, Big Air Franchising, LLC, and encumbering

them with this litigation, with the total amount of actual and consequential damages to be determined at trial.

COUNT I

VIOLATION OF SOUTH CAROLINA BUSINESS OPPORTUNITY ACT

S.C. CODE ANN. §§ 39-57-20, *et seq*.

49. The foregoing allegations are incorporated by reference as if set forth verbatim herein.

50. Pursuant to S.C. Code Ann. § 39-57-20, Dustin/Inc. purported to sell a business opportunity (including franchise rights, title, and interests, a sales and marketing program, and managerial services) to Mohammad and Sharif and their entity, Zay N Limo, LLC, for fees exceeding two hundred fifty dollars (1% royalty fee measured by gross sales, plus a 5% royalty fee measured by net profits, plus a $5,000 monthly management fee) that would enable Mohammad and Sharif, by and through Zay N Limo, LLC, to start a business to derive income exceeding said fees.

51. Pursuant to S.C. Code Ann. § 39-57-30, Dustin/Inc. failed to provide written disclosures containing the information required by subsections (1) through (10), at least 48 hours before Exhibit 1 to the Complaint was purportedly made effective and/or executed, or ever.

52. Pursuant to S.C. Code Ann. § 39-57-50, upon information and belief, Dustin/Inc. failed to register as sellers of a business opportunity and failed to file a written disclosure with the South Carolina Secretary of State.

53. Pursuant to S.C. Code Ann. § 39-57-55, upon information and belief, Dustin/Inc. failed to obtain or maintain a license to sell a business opportunity from the South Carolina Secretary of State.

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54. Pursuant to S.C. Code Ann. § 39-57-60, Dustin/Inc. should not have purported to sell a business opportunity in connection with the use trademarks owned by Big Air Franchising, LLC that they did not have the right to sell or license.

55. Pursuant to S.C. Code Ann. § 39-57-70, Dustin/Inc. failed to provide a copy of Exhibit 1 to the Complaint to Zay N Limo, LLC at the time it was signed, and Exhibit 1 to the Complaint fails to include the information required by subsections (b)(1) through (3).

56. Pursuant to S.C. Code Ann. § 39-57-80, for the above described violations of this chapter, false and misleading representations, and breaches of the purported purchase document, titled the Assignment and Assumption Agreement, Mohammad and Sharif and their entity, Zay N Limo, LLC, are entitled to bring this cause of action for damages, attorney's fees, and injunctive relief.

57. Pursuant to S.C. Code Ann. § 39-57-80, by law, the above violations of this chapter constitute an unfair trade practice under S.C. Code Ann. § 39-5-20.

COUNT II

VIOLATION OF SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

S.C. CODE ANN. §§ 39-5-10, *et seq*.

58. The foregoing allegations are incorporated by reference as if set forth verbatim herein.

59. The above violations of the South Carolina Business Opportunity Act, pursuant to S.C. Code Ann. § 39-57-80, constitute a violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-20.

60. Additionally, or in the alternative, Dustin/Inc., acting and functioning as franchise sellers, including as a sales representative of a franchisor and also simultaneously, but separately

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as an unauthorized sub-franchisor with respect to Defendants, engaged in violations of the Federal Franchise Rule, published by the Federal Trade Commission, 16 CFR § 436, which also constitute a violation of the South Carolina Unfair Trade Practices Act, under S.C. Code Ann. § 39-5-20 (b), by making false and misleading representations about rights they purported to own and sell, and by failing to comply with its registration and disclosure requirements.

61. Additionally, or in the alternative, Dustin/Inc., acting and functioning as business opportunity sellers with respect to Defendants, engaged in violations of the Federal Franchise Rule, published by the Federal Trade Commission, 16 CFR § 437, which also constitute a violation of the South Carolina Unfair Trade Practices Act, under S.C. Code Ann. § 39-5-20 (b), by making false and misleading representations about rights they purported to own and sell, and by failing to comply with its disclosure requirements.

62. Additionally, notwithstanding the South Carolina Business Opportunity Act and the Federal Trade Commission's rules for franchise sellers and business opportunity sellers, Dustin/Inc. have engaged in unfair and deceptive acts constituting unfair trade practices, by making false and misleading representations about rights they purported to own and sell.

63. These unfair trade practices affect the public interest and are capable of repetition, and further, upon information and belief, Dustin/Inc. have actually repeated this conduct by making similar attempts to sell rights they purported to own and sell to other prospective business buyers in South Carolina.

64. Dustin/Inc. willfully and knowingly engaged in these unfair trade practices.

65. Pursuant to S.C. Code Ann. § 39-5-140, Defendants are entitled to an award of three times their actual damages, plus reasonable attorney's fees and costs.

COUNT III

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BREACH OF CONTRACT

66. The foregoing allegations are incorporated by reference as if set forth verbatim herein.

67. To the extent that Exhibit 1 to the Complaint is a legally binding contract, as the Complaint alleges, BA Holdings, Inc. breached the same as more particularly set forth below.

68. BA Holdings, Inc. breached Exhibit 1 to the Complaint by falsely purporting to own rights, title, interest, duties, and obligations defined in the Recitals that could be sold and assigned to and assumed by Zay N Limo, LLC in Section 1.

69. BA Holdings, Inc. breached Exhibit 1 to the Complaint by making a false and misleading representation and warranty in Section 4.1(c), that "[i]t has the full right, corporate power, and authority to enter into this Agreement and perform its obligations hereunder."

70. BA Holdings, Inc. breached Exhibit 1 to the Complaint by making a false and misleading representation and warranty in Section 4.1(f), that "[i]t is the sole legal and beneficial owner of the all the rights to the Anderson territory on the Effective Date, free and clear of any lien, security interest, charge, or encumbrance, except for the rights of Big Air Franchising, LLC to the Anderson Territory."

71. BA Holdings, Inc. breached Exhibit 1 to the Complaint by making a false and misleading representation and warranty in Section 4.1(g), that "the Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement."

72. BA Holdings, Inc. breached Exhibit 1 to the Complaint by making a false and misleading representation and warranty in Section 4.1(h), that "[i]t has performed all of its

obligations under the Franchise Agreement that are required to be performed on or before the Effective Date."

73. Defendants are entitled to actual and consequential damages for these breaches of contract representations and warranties.

COUNT IV

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

74. The foregoing allegations are incorporated by reference as if set forth verbatim herein.

75. To the extent that Exhibit 1 to the Complaint is a legally binding contract as the Complaint alleges, BA Holdings, Inc. breached the same as more particularly set forth above.

76. These breaches were accompanied by fraudulent acts characterized by dishonesty, unfair dealing, and unlawful appropriation, including the making of false and misleading representations about rights Dustin/Inc. purported to own and sell, and the failure to comply with registration and disclosure requirements in accordance with the South Carolina Business Opportunities Act, S.C. Code Ann. §§ 39-57-20 *et seq*., the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq*., and the Federal Trade Commission's rule for franchise and sub-franchise sellers, 16 CFR § 436, or business opportunity sellers, 16 CFR § 437.

77. Defendants are entitled to actual and consequential damages for these breaches of contract representations and warranties, together with actual and consequential damages, as well as punitive damages and reasonable attorney's fees and costs.

COUNT V

DECLARATORY JUDGMENT

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78. The foregoing allegations are incorporated by reference as if set forth verbatim herein.

79. Declare that Plaintiff has no legal rights to any payments under the alleged contract attached as Exhibit 1 to the Complaint and the alleged related guaranties attached as Exhibit 2 to the Complaint; and that Zay N Limo, LLC is entitled to enjoy all of the rights granted to it in the Franchise Agreement with Big Air Franchising, LLC, without further interference or harassment from Dustin/Inc.; or in the alternative, that Dustin/Inc. sold and assigned all rights and assets used to operate the one facility in Greenville and the one facility in Spartanburg to Zay N Limo, LLC.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for a judgment dismissing Plaintiff's claims and granting Defendants relief on their claims against Plaintiff, including declaratory and injunctive relief as set forth herein, actual and consequential damages in an amount to be determined at trial, with such an award to be trebled by statute, plus reasonable attorney's fees and costs.

/Jason S. Smith/

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Charleston, South Carolina
June 8, 2023

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2023-CP-2302302 **PLAINTIFF'S REPLY TO DEFENDANTS' COUNTERCLAIMS**

TO: JASON S. SMITH, ESQUIRE – ATTORNEY FOR DEFENDANTS

Plaintiff, BA Holdings, Inc. ("Plaintiff"), by and through its undersigned attorneys, not waiving, but specifically reserving, its right to be heard on all SCRCP Rule 12 Motions, hereby replies to the Counterclaims of Defendants Zay N Limo, LLC ("Zay"), Sharif Farhan, and Mohammad Farhan (collectively, "Defendants"), and would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE
(Answering the Counterclaims)

1. Each and every allegation contained within Defendants' Counterclaims not hereinafter specifically admitted, qualified, or explained is denied.

2. Plaintiff denies all allegations contained in the "Introduction" paragraph of the Answer and Counterclaim.

3. Plaintiff is informed and believes that the allegations of Paragraph 1 of the Counterclaims are true, and therefore, admits the same.

4. Plaintiff admits the allegations of Paragraph 2 of the Counterclaims.

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5. As to Paragraph 3 of the Counterclaims, Plaintiff admits only that it met with Mohammad and Sharif Farhan regarding Plaintiff's release of the Anderson territory such that Defendants could operate a Big Air franchise in Anderson, South Carolina. Except as expressly admitted, Plaintiff denies the remaining allegations of Paragraph 3.

6. As to Paragraph 4 of the Counterclaims, Plaintiff admits only that (a) Zay entered into a Franchise Agreement with Big Air Franchising, LLC, and that agreement speaks for itself; (b) Zay entered into an Assignment and Assumption Agreement with Plaintiff, and that agreement speaks for itself; and (c) Mohammad Farhan and Sharif Farhan each provided a Guaranty to Plaintiff for the performance of the Assignment and Assumption Agreement by Zay, and those guaranties speak for themselves (collectively, all agreements referenced above are referred to as the "Agreements"). Plaintiff denies all allegations inconsistent with the express terms of the Agreements and denies the remaining allegations of Paragraph 4.

7. As to Paragraph 5 of the Counterclaims, Plaintiff admits only that Mr. Pelletier assisted in the preparation of the Assignment and Assumption Agreement and the Guaranty agreements. Except as expressly admitted, Plaintiff denies the remaining allegations of Paragraph 5.

8. As to Paragraph 6 of the Counterclaims, Plaintiff admits only that Defendants entered into the Franchise Agreement with Big Air Franchising, LLC, and that agreement speaks for itself. Plaintiff denies all allegations of Paragraph 6 inconsistent with the Franchise Agreement and denies the remaining allegations of Paragraph 6.

9. As to Paragraph 7 of the Counterclaims, Plaintiff admits only that Plaintiff entered into the Assignment and Assumption Agreement with Zay, and that agreement speaks for itself.

Plaintiff denies all allegations of Paragraph 7 inconsistent with the Assignment and Assumption Agreement and denies the remaining allegations of Paragraph 7.

10. As to Paragraph 8 of the Counterclaims, Plaintiff is informed and believes that Zay paid to Big Air Franchising, LLC the franchise fee required by the Franchise Agreement. Plaintiff's participation, if any, in the proceeds of the franchise fee paid to Big Air Franchising, LLC is governed by the Regional Director Agreement entered into by Plaintiff and Big Air Franchising, LLC, which speaks for itself. Plaintiff denies any allegations of Paragraph 8 inconsistent with the Franchise Agreement and the Regional Director Agreement and denies the remaining allegations of Paragraph 8.

11. As to Paragraph 9 of the Counterclaims, Plaintiff is informed and believes that Zay borrowed and invested certain funds into the operation of its Big Air facility in Anderson, SC. Plaintiff is without information or belief necessary to admit or deny the amount of such investment. Plaintiff denies the remaining allegations of Paragraph 9.

12. As to Paragraphs 10 through 14 of the Counterclaims, Plaintiff is informed and believes that Defendants engaged in discussions with Big Air Franchising, LLC and Mr. Pelletier regarding the Agreements and the operation of their Big Air franchise in Anderson, SC; therefore, Plaintiff admits only that such discussions occurred. Plaintiff denies that its regional director relationship with Big Air Franchising was not disclosed to Defendants. Defendants were informed that Plaintiff was the regional director for Big Air Franchising, LLC and that Plaintiff would receive compensation for the same. Plaintiff denies the remaining allegations of Paragraphs 10 through 14.

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13. Paragraph 15 does not contain any allegations against Plaintiff. To the extent it does or to the extent it alleges that the success of the grand opening of the Big Air franchise in Anderson, SC was only because of the investment of time and resources by Defendants, those allegations are denied.

14. As to Paragraphs 16 through 19, Plaintiff admits only that discussions have taken place between Defendants, Plaintiff, and Big Air Franchising regarding a resolution of the dispute that is the subject of this litigation. Plaintiff cannot speak for Big Air Franchising, LLC. Plaintiff denies the remaining allegations of Paragraphs 16 through 19.

15. Plaintiff denies the allegations of Paragraph 20 of the Counterclaims.

16. As to Paragraph 21 of the Counterclaims, Plaintiff admits that it filed a Complaint with exhibits that inadvertently contained social security numbers for Mohammad Farhn's and Sarif's. Except as expressly admitted, Plaintiff denies the remaining allegations of Paragraph 21 of the Counterclaims and denies that Defendants have any damages associated with the same.

17. As to Paragraph 22 of the Counterclaims, Plaintiff admits only that the Assignment and Assumption Agreement speaks for itself. Plaintiff denies any allegations inconsistent with the Assignment and Assumption Agreement and denies the remaining allegations of Paragraph 22.

18. As to Paragraph 23 of the Counterclaims, Plaintiff admits only that the referenced exhibits were sent to Defendants through counsel and those agreements speak for themselves. Plaintiff denies any allegations of Paragraph 23 inconsistent with the documents sent and the terms thereof.

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19. Plaintiff admits the allegations of Paragraphs 24 through 27 of the Counterclaims. Plaintiff is the sole and controlling member of BA Greenville, LLC, which is a franchisee of Big Air Franchising, LLC.

20. As to Paragraphs 28 through 37, Plaintiff admits only that (a) BA Greenville, LLC entered into a franchise agreement with Big Air Franchising, LLC, which gave BA Greenville, LLC exclusive rights to the Anderson territory now being operated by Defendants; (b) Plaintiff is the sole and controlling member of BA Greenville, LLC, and Plaintiff's name was inadvertently used as a party to the Assignment and Assumption Agreement, instead of BA Greenville, LLC; (c) BA Greenville, LLC's rights to the Anderson territory are separate and apart from any rights that Plaintiff has pursuant to its Regional Director Agreement with Big Air Franchising, LLC; (d) Defendants could not have operated in the Anderson territory without Plaintiff and BA Greenville, LLC agreeing to release the Anderson territory back to Big Air Franchising, LLC, and Defendants were aware of this fact; (e) Defendants were given the opportunity to open and operate in a different location in South Carolina that would not require release of the territory being held by another party; (f) the operation of Defendants' Big Air location in Anderson, SC took (and will take) business away from BA Greenville's location, a fact that was also known to Defendants; (g) the amounts agreed to be paid by Defendants pursuant to the Assignment and Assumption Agreement were to compensate BA Greenville, LLC (and Plaintiff, its sole member) for the release of the Anderson territory, the loss of a portion of its business to the Anderson location, and for management assistance in the operation of the Anderson location. Any allegations inconsistent with the above and inconsistent with all the agreements pertaining to this matter contained in Paragraphs 28 through 37 are denied.

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21. Plaintiff denies the allegations of Paragraphs 38 through 40 of the Counterclaims.

22. As to Paragraph 41 of the Counterclaims, Plaintiff admits only that Big Air Franchising, LLC did not participate in the negotiation and execution of the Assignment and Assumption Agreement. Plaintiff denies the remaining allegations of Paragraph 41.

23. As to Paragraphs 42 and 43 of the Counterclaims, Plaintiff admits only that the documents and agreements referenced therein speak for themselves and denies any allegations inconsistent with the same and any allegations that Plaintiff was without authority to enter into agreements with Defendants related to the Anderson territory. Except as otherwise admitted, Plaintiff denies the remaining allegations of Paragraphs 42 and 43.

24. As to Paragraph 44 of the Counterclaims, Plaintiff admits only that the Franchise Agreement between Defendants and Big Air Franchising, LLC speaks for itself. Plaintiff denies any allegations inconsistent with the Franchise Agreement and denies the remaining allegations of Paragraph 44.

25. As to Paragraph 45, Plaintiff admits only that the Assignment and Assumption Agreement speaks for itself and denies anything inconsistent with it. Plaintiff denies the remaining allegations of Paragraph 45, including all subparagraphs, and any allegations that Plaintiff breached the Assignment and Assumption Agreement.

26. As to Paragraph 46 of the Counterclaims, Plaintiff admits only that the Franchise Agreement between Big Air Franchising, LLC and Defendants speaks for itself. Plaintiff denies any allegations inconsistent with the Franchise Agreement and any allegations made against Plaintiff in Paragraph 46.

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27. As to Paragraph 47 of the Counterclaims, Plaintiff is unclear about the meaning of "separate disclosure document" and requests clarification of the same. Without clarification, Plaintiff denies the allegations of Paragraph 47.

28. To the extent that the allegations of Paragraph 48 of the Counterclaims are directed at Plaintiff, Plaintiff denies the same.

29. Paragraph 49 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 48, above, as if repeated verbatim.

30. To the extent that the allegations of Paragraphs 50 through 57 of the Counterclaims are directed at Plaintiff, Plaintiff denies the same.

31. Paragraph 58 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 57, above, as if repeated verbatim.

32. To the extent the allegations of Paragraphs 59 through 65 of the Counterclaims are directed at Plaintiff, Plaintiff denies the same.

33. Paragraph 66 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 65, above, as if repeated verbatim.

34. As to Paragraphs 67 through 73 of the Counterclaims, Plaintiff admits only that the proper party to the Assignment and Assumption Agreement should have been BA Greenville, LLC and that Plaintiff is the sole and controlling member of BA Greenville, LLC. Plaintiff denies the remaining allegations of Paragraphs 67 through 73.

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35. Paragraph 74 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 73, above, as if repeated verbatim.

36. Plaintiff denies the allegations of Paragraphs 75 through 77 of the Counterclaims.

37. Paragraph 78 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 77, above, as if repeated verbatim.

38. Plaintiff denies the allegations of Paragraph 79 of the Counterclaims.

39. Plaintiff denies the allegations contained in the "Prayer for Relief" and denies that Defendants are entitled to the relief requested.

FOR A SECOND DEFENSE
(Failure to State a Claim or Cause of Action)

40. Defendants fail to state a cause of action against Plaintiff and fails to state a claim upon which relief may be granted.

FOR A THIRD DEFENSE
(Laches, Estoppel, Waiver)

41. That all claims asserted against Plaintiff are barred by the equitable doctrines of laches, waiver, and/or estoppel.

FOR A THIRD DEFENSE
(Comparative Negligence)

42. Defendants' claims and damages, if any, are barred, or should be reduced, by Defendants' own contributory and comparative negligence and recklessness, which combined with, contributed to, and concurred with any alleged negligence on the part of the Plaintiff, if any (which is expressly denied).

FOR A FOURTH DEFENSE

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(Failure to Mitigate Damages)

43. Defendants had an obligation to mitigate its damages, if any, but failed to do so.

FOR A FIFTH DEFENSE
(Proximate Cause)

44. Even if Plaintiff is liable to Defendants on any of the causes of action alleged herein (which is expressly denied), Plaintiff alleges that Defendants' claims are barred due to the lack of proximate cause between Defendants' alleged damages and the alleged actions/inactions of Plaintiff.

FOR A SXTH DEFENSE
(Punitive Damages Unconstitutional)

45. Plaintiff would show that if the Defendants are making any claim for punitive damages, such claims violate the due process and equal protection laws of the United States Constitution and the Constitution of the State of South Carolina.

46. Punitive damages are inappropriate in this case, as a matter of law, and because Plaintiff did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages would be based.

47. Plaintiff would show that any award of punitive damages is subject to the limitations set forth in South Carolina Code § 15-32-530.

48. Plaintiff pleads the limitation on damage awards found in S.C. Code § 15-32-510 et seq. and requests bifurcation in accordance with those code sections.

FOR A SEVENTH DEFENSE
(Conditions Precedent)

49. To the extent Defendants allege Plaintiff has any obligation as to which full performance has not been rendered or excused, Defendants failed to satisfy all conditions

precedent to said obligations or duties, including conditions precedent under applicable South Carolina law. Therefore, Defendants' claims are barred.

FOR AN EIGHTH DEFENSE
(Reservation of Defenses)

50. Plaintiff reserves the right to assert any additional defenses throughout the course of the case as the defenses becomes known.

WHEREFORE, Plaintiff, BA Holdings, Inc., prays for the following relief:

1. Dismissal of Defendants' Counterclaims against Plaintiff in their entirety, with prejudice;

2. Judgment on all of Plaintiff's causes of action alleged in the Complaint;

3. That the Plaintiff's costs and attorney's fees be taxed against the Defendants; and

4. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Brian A. Autry

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August 7, 2023
Columbia, South Carolina

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ELECTRONICALLY FILED - 2023 Aug 14 11:59 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE 13th JUDICIAL CIRCUIT
	)	
BA HOLDINGS, INC.,	)	Case No. 2023-CP-2302302
	)	
Plaintiff,	)	
	)	**DEFENDANTS' NOTICE AND MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO ALL CLAIMS ASSERTED IN THE COMPLAINT BY PLAINTIFF BA HOLDINGS, INC.**
v.	)	
	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN,	)	
	)	
Defendants,	)	
	)	

PLEASE TAKE NOTICE that Defendants Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan hereby move for partial summary judgment as to all claims asserted in the Complaint by Plaintiff BA Holdings, Inc., pursuant to Rule 56, SCRCP. The motion may be heard by this Court in ten days or as soon thereafter as may be scheduled. The ground for the motion is that there is no genuine issue as to any material fact because Plaintiff BA Holdings, Inc.'s Complaint makes claims based on an alleged contract attached as Exhibit 1 thereto, entitled "Assignment and Assumption Agreement," with respect to which contract it has been admitted and cannot reasonably be disputed that Plaintiff BA Holdings, Inc. was not a proper party and did not own the franchise rights and obligations that it purported to sell thereunder without the franchisor's approval based on representations and warranties therein that were false. The motion will be further supported by a memorandum of law citing applicable authorities and admissions made by BA Holdings, Inc. in its pleadings and discovery responses and documents referenced and produced by BA Holdings, Inc. in connection therewith.

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Charleston, South Carolina
August 14, 2023

ELECTRONICALLY FILED - 2023 Sep 25 5:31 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2023-CP-2302302 **PLAINTIFF'S MOTION TO AMEND COMPLAINT**

Plaintiff, BA Holdings, Inc. ("Plaintiff"), by and through its undersigned counsel, hereby moves this Court for an Order granting leave to file an Amended Complaint in the above-captioned matter to add an additional Plaintiff, BA Greenville, LLC, in order to correct a technical naming error of Plaintiff when entering into the underlying agreements that are the subject of this action and to add allegations based on newly acquired information.

Plaintiff is the sole member of BA Greenville. The agreement that Plaintiff made with the Defendant Zay N Limo, LLC should have been made with BA Greenville rather than with Plaintiff. Therefore, Plaintiff moves to add BA Greenville, LLC as an additional Plaintiff to this action. Plaintiff has also acquired additional information since the filing of the Complaint that require amendment. Plaintiff's proposed Amended Complaint is attached hereto as **Exhibit A**.

Rule 15, SCRCP, provides that plaintiffs may amend a complaint with leave of the Court which "leave shall be freely given when justice so requires and does not prejudice any other party." A motion to amend under Rule 15 is addressed to the sound discretion of the trial judge, and the party opposing amendment has the burden of establishing that the motion should not be granted because of prejudice. *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004) (citing *Tanner v. Florence Cty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999)). "The

prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it." *Id.*

Plaintiff submits that given the fact that this case remains in the discovery phase without a mediation or trial date yet set, and the fact that Plaintiff timely seeks to add BA Greenville, LLC upon learning of the technical naming error of Plaintiff in the underlying agreement, there can be no disadvantage to Defendants that they would not have faced if BA Greenville had been present in the suit earlier.

This motion is also based upon all applicable statutory law, case law, common law, the record in this action, and any memorandum of law to be filed in support of this motion.

Plaintiff' s counsel unsuccessfully attempted in good faith to resolve the matter contained in this motion through communications with opposing counsel.

Plaintiff respectfully requests an Order granting leave to file the attached Amended Complaint.

s/Brian A. Autry
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September 25, 2023
Columbia, South Carolina

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ELECTRONICALLY FILED - 2023 Sep 25 5:31 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC~~.~~. and BA GREENVILLE, LLC, Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. **AMENDED COMPLAINT** (Non-Jury)

~~Plaintiff~~Plaintiffs, BA Holdings, Inc. ~~("Plaintiff"),~~and BA Greenville, LLC (together, "Plaintiffs"), by and through ~~its~~their undersigned attorneys, complaining of the Defendants Zay N Limo, LLC ("Zay"), Sharif Farhan ("Sharif"), and Mohammad Farhan ("Mohammad~~"),~~") (collectively, "Defendants"), ~~and~~ would respectfully show ~~unto~~the following to this Court ~~as follows~~:

JURISDICTION AND VENUE

1. ~~Plaintiff~~BA Holdings, Inc. ("BAH") is a corporation organized under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

2. BA Greenville, LLC ("BA Greenville") is a South Carolina limited liability company with its principal place of business in Greenville, South Carolina. BAH is the sole member of BA Greenville.

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~~2.~~3. Upon information and belief, Defendant Zay is a limited liability company organized under the laws of the State of South Carolina, with its principal place of business in Anderson County, South Carolina.

~~3.~~4. Upon information and belief, Defendant Sharif is a resident and citizen of Anderson County, South Carolina.

~~4.~~5. Upon information and belief, Defendant Mohammad is a resident and citizen of Greenville County, South Carolina.

~~5.~~6. Venue and jurisdiction are proper in this Court. All Defendants have agreed, in writing, to venue and jurisdiction in this Court.

~~6.~~7. ~~Plaintiff and~~ Defendants have voluntarily waived their rights to a jury trial in their ~~agreements with each other~~agreements that are the subject matter of this dispute.

GENERAL ALLEGATIONS

1. BA Greenville entered into a Franchise Agreement with Big Air Franchising, LLC ("BAF"), dated October 7, 2017 (the "BAG Franchise Agreement"). Pursuant to the BAG Franchise Agreement, BA Greenville was given exclusive rights to operate a Big Air trampoline business in Anderson County, South Carolina (the "Anderson Territory").

2. BAH became the Regional Developer for BAF for the State of South Carolina pursuant that certain Regional Director Agreement, dated April 1, 2018 (the "RD Agreement"). Pursuant to the RD Agreement, BAH is responsible for advertising, recruiting, screening, and reviewing prospects for Big Air trampoline business franchises within the State of South Carolina and receives a commission on the franchise fees paid by new franchisees. However, BAH does not have authority to sell BAF franchises.

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3. On July 14, 2020, Defendant Mohammad contacted BAF regarding a franchise opportunity through BAF's online inquiry process. BAF then provided Defendants with sales and disclosure requirements for a franchise opportunity. BAF also disclosed to Mohammad that BAH was the regional director for BAF.

4. Defendants were interested in opening a Big Air franchise in the Anderson Territory. BAH disclosed to Defendants that the Anderson Territory was not available without payment of an additional fee. This was because of BA Greenville's exclusive rights to the Anderson Territory. BAH recommended the Myrtle Beach, South Carolina territory to Defendants because it was not subject to an exclusivity agreement or other franchise agreement. Defendants chose, instead, to continue pursuing the Anderson Territory.

5. BAF could not have sold a Big Air franchise to Defendants in the Anderson Territory without the release of the Anderson Territory zip codes from BA Greenville back to BAF.

6. BA Greenville's business drew customers and clients from the Anderson Territory. A release of the Anderson Territory and a new Big Air location in Anderson, SC would take away business and revenue from BA Greenville. This fact was disclosed to Defendants by BAH.

7. After negotiations with Defendants, BAH agreed that the Anderson Territory would be released back to BAF so it could be assigned to Zay as part of its franchise agreement with BAF. BAH is in full and unfettered control of BA Greenville.

~~1.~~8. On February 18, 2021, ~~Plaintiff~~BAH entered into an Assignment and Assumption Agreement ("Assignment Agreement") with ~~Zay for Plaintiff to release the Anderson Territory to allow~~ Zay that purported to ~~enter into a~~assign the Anderson Territory to Zay in conjunction with

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Zay's franchise agreement with ~~Big Air Franchising, LLC in the Anderson Territory~~BAF. A true and correct copy of the ~~Agreement~~Assignment Agreement (redacted to protect personal information of the Defendants) is attached hereto as **Exhibit 1**.

9. The Assignment Agreement is in error in at least two ways: (a) BA Greenville should be the counterparty, not BAH; and (b) it should provide for the assignment of the Anderson Territory back to BAF instead of assigning it directly to Zay.

~~2.~~10. Pursuant to Section 2.1 of the Assignment Agreement, Zay ~~was~~is required to pay ~~Plaintiff~~to BA Greenville, on the tenth day of each month, a sum equal to (a) one percent of ~~the~~its monthly gross sales~~,~~; plus (b) a sum equal to five percent of ~~the~~its monthly net profits~~, and~~; plus (c) a monthly management fee of Five Thousand and 00/100 Dollars ($5,000.00) ("Payments").

~~3.~~11. Pursuant to Section 2.3 of the Assignment Agreement, late Payments bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Zay ~~will~~is also required to reimburse ~~Plaintiff~~BA Greenville for all reasonable costs incurred in collecting any late ~~payments~~Payments, including, without limitation, attorneys' fees.

~~4.~~12. In conjunction with the Assignment Agreement, Sharif and Mohammad each signed a ~~Guaranty Agreement ("Guaranty Agreements")~~personal guaranty stating that ~~Sharif and Mohammad~~they were personally liable for payment and performance of the Assignment Agreement~~. A true~~ (the "Guaranty Agreements"). True and correct ~~copy~~copies of the Guaranty Agreements (redacted to protect personal information of the Defendants) are attached hereto as **Exhibit 2**.

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~~5.~~13. Pursuant to Section 1 of the Guaranty Agreements, Sharif and Mohammad guaranteed ~~to Plaintiff~~ the full and punctual payment and performance of the Assignment Agreement, plus all costs, expenses, and fees, including reasonable attorney's fees and expenses, related to the enforcement of ~~Plaintiff's~~BA Greenville's rights.

~~6.~~14. Zay has not remitted any Payments ~~to Plaintiff~~ in accordance with the Assignment Agreement.

~~7.~~15. ~~Plaintiff~~Plaintiffs have made demands to Defendants to remit Payments, but no Payments ~~were~~have been made.

16. Pursuant to Section 2.4 of the Assignment Agreement, Zay is to provide financial information for an audit within three days of a request by ~~Plaintiff.~~BA Greenville.

17. In December 2022, Defendants contacted BAF and expressed concern that the Assignment Agreement was invalid and that they should not have to pay the amounts required by the Assignment Agreement. Neither Defendants nor BAF disclosed this concern to Plaintiffs prior to March 2023.

~~8.~~18. On April 8, 2023, ~~Plaintiff~~BAH sent written notice to Zay of its intent to examine and audit the books and records of Zay.

~~9.~~19. Zay has not provided its financial information ~~to Plaintiff~~ for an audit.

~~10.~~20. On April 11, 2023, ~~Plaintiff~~BAH sent Defendants a letter demanding Payments and financial disclosures under the Assignment Agreement.

~~11.~~21. Defendants did not respond to ~~Plaintiff's~~BAH's April 11, 2023 letter.

~~12.~~22. On April 25, 2023, ~~Plaintiff~~BAH sent Defendants a second letter demanding Payments and financial disclosures under the Assignment Agreement.

~~13.~~23. Defendants did not respond to Plaintiff's April 25, 2023 letter.

~~14.~~24. On August 14, 2023, BAH, in an attempt to correct the error identified in Paragraph 9(a), above, assigned its right, title, and interest in the Assignment Agreement to BA Greenville. A copy of that assignment is attached hereto as **Exhibit 3**.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Defendant Zay)

~~15.~~25. ~~Plaintiff realleges~~Plaintiffs reallege and ~~reasserts~~reassert the allegations of the preceding paragraphs as if set forth verbatim herein.

~~16.~~26. The Assignment Agreement ~~entered into by Plaintiff and Zay was~~is a binding contract with BA Greenville for ~~Plaintiff to~~(a) the release of the Anderson Territory to allow Zay to enter into a franchise agreement with ~~Big Air Franchising, LLC~~BAF in the Anderson Territory and (b) the performance by Plaintiffs of certain other services and obligations.

~~17.~~27. Zay breached the Assignment Agreement by failing to make Payments when due and failing to provide audit information upon request, as described above.

~~18.~~28. Pursuant to the terms of the Assignment Agreement, ~~Plaintiff~~BA Greenville is entitled to collect attorneys' fees and costs incurred to enforce the terms of the Assignment Agreement, including litigation costs.

~~19.~~29. ~~Plaintiff is~~Plaintiffs are entitled to judgment against Zay in the amounts to be determined at trial. ~~Plaintiff is~~Plaintiffs are further entitled to collect from Zay prejudgment interest, attorneys' fees, and costs associated with sending the pre-suit demands and the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment- Defendant Zay)

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~~20.~~30. ~~Plaintiff realleges~~Plaintiffs reallege and ~~reasserts~~reassert the allegations of the preceding paragraphs as if set forth verbatim herein.

~~21.~~31. In the alternative, and without relinquishing ~~Plaintiff's~~Plaintiffs' assertion that there is a valid contract, should the Court find that ~~there was no valid~~Assignment Agreement is either invalid or unenforceable, Zay has been unjustly enriched.

~~22.~~32. Plaintiff~~s~~ allowed Zay to operate the Big Air ~~Franchise~~franchise in the Anderson Territory for Zay's benefit, with the understanding that Zay would ~~compensate~~ have to pay ~~Plaintiff~~ for ~~use~~the release of the ~~Big Air Franchise.~~Anderson Territory.

~~23.~~33. Zay knew or should have known that by operating the Big Air ~~Franchise~~franchise in the Anderson Territory, Zay was required to make Payments ~~to Plaintiff.~~as provided in the Assignment Agreement.

34. Zay has been unjustly enriched by operating the Big Air ~~Franchise~~franchise in the Anderson Territory without ~~payment~~paying~~, and Plaintiff is~~ for the release of the Anderson Territory.

~~24.~~35. Plaintiffs are entitled to judgment fairly compensating ~~Plaintiff~~Plaintiffs for Zay's operation of the Big Air ~~Franchise~~franchise in the Anderson Territory in the amount to be determined at trial, together with interest, costs and such other relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Guaranty- Defendants Sharif and Mohammad)

~~25.~~36. ~~Plaintiff realleges~~Plaintiffs reallege and ~~reasserts~~reassert the allegations of the preceding paragraphs as if set forth verbatim herein.

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~~26.~~37. Defendants Sharif and Mohammad are personal guarantors of the Assignment Agreement pursuant to the Guaranty Agreements. See, Exhibit 2.

~~27.~~38. The Guaranty Agreements provide that Defendants Sharif and Mohammad are liable for ~~full payments to Plaintiff~~the Payments and indebtedness under the Assignment Agreement.

~~28.~~39. The Guaranty Agreements also provide that Defendants Sharif and Mohammad are liable to pay attorneys' fees and costs incurred ~~by Plaintiff~~ in enforcement of the Assignment Agreement and collection of amounts due and owing.

~~29.~~40. Defendants have not made Payments to ~~Plaintiff~~Plaintiffs on the outstanding balance due. By virtue of the Guaranty Agreements, Defendants Sharif and Mohammad are personally liable for the debt.

~~30.~~41. ~~Plaintiff is~~Plaintiffs are entitled to a judgment against Defendants Sharif and Mohammad in the amounts to be determined at trial, plus prejudgment interest, attorneys' fees, and the costs associated with sending the pre-suit demands and the costs of this action.

WHEREFORE, ~~Plaintiff~~Plaintiffs, BA Holdings, Inc~~., prays~~. and BA Greenville, LLC, pray this Court for the following relief:

A. For Judgment against Defendant Zay on ~~Plaintiff's~~Plaintiffs' first cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

B. In the alternative, for judgment against Defendant Zay on ~~Plaintiff's~~Plaintiffs' second cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

C. For judgment against Defendants Sharif and Mohammad on ~~Plaintiff's~~Plaintiffs' third cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest; and

D. Any such other relief as the Court deems just and proper.

s/ Brian A. Autry
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~~May 2~~September 25, 2023
Columbia, South Carolina

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Exhibit 1

FINAL FOR EXECUTION

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ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") dated as of January 29, 2021 ("Effective Date"), is entered into by and between BA HOLDINGS, INC., a South Carolina corporation ("Assigning Party") and ZAY N LIMO, LLC, a South Carolina limited liability company ("Assuming Party").

RECITALS

Assigning Party desires to assign to Assuming Party all its rights, including exclusive marketing rights, to the Anderson County, South Carolina territory (the "Anderson Territory") owned by Assigning Party pursuant to its franchise agreement with ©Big Air Franchising, LLC (the "Franchise Agreement"). The Anderson Territory is more fully described as zip codes. See, Exhibit A.

Sharif Farhan and Mohammad Farhan are the sole members of Assuming Party's limited liability company (each an "Owner" and, together, "Owners").

Assuming Party desires to accept such assignment of rights and delegation of obligations for the Anderson Territory.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Anderson Territory.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties and obligations related to the Anderson Territory on and after the Effective Date.

1.3 Term. The term of this Agreement is equal to the length of time that Assuming Party operates a Big Air franchise in Anderson County, South Carolina pursuant to a franchise agreement with ©Big Air Franchising, LLC (the "Term").

2. Consideration.

2.1 For the entire time Term, Assuming Party agrees to pay the following to Assigning Party as consideration for the assignment of the Anderson Territory:

(a) A sum equal to 1% of the monthly gross sales of Assuming Party. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Gross sales will be calculated for the monthly immediately preceding the payment date.

(b) A sum equal to 5% of the monthly net profits of Assuming Party. Net profits will be calculated by taking the gross revenue and subtracting expenses. Expenses include normal operating expenses and excludes Owner personal expenses, salaries of Owners greater

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than $45,000 in the aggregate, new major equipment expenses greater than $5,000 per purchase, and bonuses, if any. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Net profits will be calculated for the monthly immediately preceding the payment date.

(c) A monthly management fee of Five Thousand and 00/100 ($5,000.00). The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term.

2.2 All payments will be made by WIRE TRANSFER WITH BACKUP PAYMENT delivered to PO BOX 171592, SPARTANBURG, SC 29301.

2.3 All late payments shall bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Assuming Party will also reimburse Assigning Party for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Assigning Party does not waive by the exercise of any rights hereunder), Assigning Party shall be entitled to suspend any of its obligations hereunder if the Assuming Party fails to pay any amount when due hereunder and such failure continues for fourteen (14) days following written notice thereof.

2.4 Audit Rights.

(a) Within seven (7) days after the end of each month during the Term, Assuming Party will provide Assigning Party with an accounting of its operating costs, expenses, sales, revenues, and related items from the immediately preceding month, along with any other information related thereto and reasonably requested by Assigning Party.

(b) Assigning Party shall have the right to examine and audit the books and records of Assuming Party upon three (3) days' advance written notice. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

3. Continuing Obligations.

3.1 Assuming Party.

(a) Assuming Party will accept, at its Anderson location ("Big Air Anderson"), coupons, gift cards, passes, annual passes, etc. that originated from Assigning Party's locations in Greenville and Spartanburg, South Carolina ("Big Air Greenville" and "Big Air Spartanburg," respectively).

(b) Assuming Party will offer the same prices at Big Air Anderson as are offered at Big Air Greenville and Big Air Spartanburg, including prices on daily specials, birthday packages, socks, etc.

3.2 Assigning Party.

(a) Assigning Party will accept, at Big Air Greenville and Big Air Spartanburg, coupons, gift cards, passes, annual passes, etc. that originated from Big Air Anderson.

(b) Assigning Party will provide Assuming Party with access to Assigning Party's marketing director to provide content and management of marketing for Big Air Anderson. However, Assuming Party will still be responsible for purchasing its own paid advertisements for Big Air Anderson.

(c) Assigning Party will provide Assuming Party with access to Assigning Party's maintenance director to manage and direct the maintenance tasks for Big Air Anderson. Assuming Party will still be responsible for providing employees to perform most maintenance tasks and for purchasing replacement parts and material at Big Air Anderson.

4. Representations and Warranties.

4.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the State of South Carolina.

(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.

(f) It is the sole legal and beneficial owner of the all the rights to the Anderson Territory on the Effective Date, free and clear of any lien, security interest, charge or encumbrance, except for the rights of ©Big Air Franchising, LLC to the Anderson Territory.

(g) The Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement.

(h) It has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date.

4.2 Assuming Party's Representations and Warranties. Assuming Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of South Carolina.

(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of Assuming Party, enforceable against it in accordance with its terms.

(f) It has or will enter into a separate franchise agreement with ©Big Air Franchising, LLC on or before the Effective Date.

5. Indemnification; Insurance.

5.1 Assuming Party Indemnification. To the fullest extent permitted by applicable law and subject to the terms and conditions set out in Section 5.2, Assuming Party (as "Indemnifying Party") shall indemnify, defend, and hold harmless Assigning Party and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney's fees, that are incurred by Indemnified Party (collectively, "Losses") relating to, arising out of, or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise ("Claim") or any direct Claim against Indemnifying Party alleging:

(a) A material breach or non-fulfillment of any material representation, warranty, or covenant under this Agreement by Indemnifying Party or its representatives;

(b) any negligent or more culpable act or omission of Indemnifying Party or any of its representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;

(c) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party or its representatives (including any reckless or willful misconduct); or

(d) any failure by Indemnifying Party to materially comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.

5.2 Exceptions and Limitations on Indemnification. Despite anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from Indemnified Party's:

(a) Sole negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) Bad faith failure to materially comply with any of its material obligations set out in this Agreement.

5.3 Assuming Party's Insurance. During the Term Assuming Party shall, at its own expense, maintain and carry in full force and effect commercial general liability insurance in a sum no less than $1,000,000 per occurrence with financially sound and reputable insurers, and upon Assigning Party's request, shall provide Assigning Party with a certificate of insurance evidencing the insurance coverage specified in this Section.

6. Events of Default; Remedies.

6.1 Assuming Party shall be in default under this Agreement if Assuming Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, Assuming Party does not cure such breach within fourteen (14) days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within fourteen (140 days or is not dismissed or vacated within forty-five (45) days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(g) Has its franchise agreement with ©Big Air Franchising, LLC terminated.

6.2 In addition to any other remedy it may have at law or equity, Assigning Party may terminate this Agreement upon Assuming Party's default.

7. COVID Mandatory Shutdowns.

7.1 The parties acknowledge and agree that as of the effective date of this Agreement, the COVID-19 global pandemic ("COVID Pandemic") is impacting various industries. Considering the foregoing, Assuming Party will use best efforts to plan and execute its operations in a manner to minimize the impacts of the COVID-19 Pandemic on Big Air Anderson and its performance under this Agreement.

7.2 In the event of a mandatory shutdown imposed on Big Air Anderson by city, county, state, or federal governmental authorities due to the COVID-19 Pandemic, the monthly management

fee provided in Section 2.1(c) will be prorated for a period of time equal to the length of the mandatory shutdown. No other performance of either Party under this Agreement will be excused.

8. Miscellaneous.

8.1 Relationship of Parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

8.2 Further Assurances. On the other party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

8.3 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties contained in this Agreement survive the expiration or earlier termination of this Agreement.

8.4 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at its address set out below (or to such other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to Assigning Party:	PO BOX 171592 SPARTANBURG, SC 29301 E-mail: dustin@bigairusa.com Attention: Dustin Pelletier
Notice to Assuming Party:	23 SANDUSKY LANE SIMSPONVILLE, SC 29680 E-mail: MohammahFarhan45@yahoo.com Attention: Mohammad Farhan

8.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" is deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, schedules and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The

schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

8.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

8.7 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.8 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

8.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each party to this Agreement.

8.10 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of the party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(c) None of the following is a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission or course of dealing between the parties.

8.11 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

8.12 No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.13 Choice of Law. This Agreement and exhibits and schedules attached hereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina, without regard to the conflict of laws provisions thereof

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to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

8.14 Choice of Forum. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, and exhibits and schedules attached hereto, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud and statutory claims, in any forum other than in Greenville County, South Carolina and any appellate court from any thereof.

8.15 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS AND SCHEDULES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY ABOUT ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS OR SCHEDULES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.16 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BA HOLDINGS, INC.

By: _____ 2/18/21
Name: Dustin Pelletier
Title: President

ZAY N LIMO, LLC

By: _____ 2/18/21
Name: Mohammad Farhan
Title: Member

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Exhibit A: Anderson Zip Codes

In blue	up to dividing line
29672	29691
29693	29631
29678	29670
30577	29697
29643	29621
29625	29627
30553	29627
29626	29654
29624	29692
29684	29638
30520	29630
30521	29653
30662	29620
30634	29628
29655	
30635	
30538	
30557	
30553	
30662	
30516	
30643	



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Exhibit 2

GUARANTY

This GUARANTY (this "**Guaranty**") dated as of January 29, 2021, is made by SHARIF FARHAN, an individual who resides at 154 EASY GAP ROAD, ANDERSON, SC 29621 ("**Guarantor**"), in favor and for the benefit of BA HOLDINGS, INC., and its permitted assigns ("**Beneficiary**").

Reference is made to that certain Assignment and Assumption Agreement, dated January 29, 2021 (the "**Underlying Agreement**"), by and between ZAY N LIMO, LLC ("**Obligor**"), and Beneficiary. In consideration of the substantial direct and indirect benefits derived by Guarantor from the transactions under the Underlying Agreement, and in order to induce Beneficiary to enter into the Underlying Agreement and otherwise perform according to the Underlying Agreement, Guarantor, a principal of Obligor, hereby agrees as follows:

1. Guaranty. Guarantor absolutely, unconditionally and irrevocably guarantees to Beneficiary the full and punctual payment and performance of all present and future obligations, liabilities, covenants and agreements required to be observed and performed or paid or reimbursed by Obligor under or relating to the Underlying Agreement, plus all costs, expenses and fees (including reasonable attorney's fees and expenses) in any way relating to the enforcement or protection of Beneficiary's rights hereunder (collectively, the "**Obligations**").

2. Guaranty Absolute and Unconditional. Guarantor agrees that its Obligations under this Guaranty are irrevocable, continuing, absolute and unconditional and shall not be discharged or impaired or otherwise affected by, and Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

(a) Any illegality, invalidity or unenforceability of any Obligation or the Underlying Agreement or any related agreement or instrument, or any law, regulation, decree or order of any jurisdiction or any other event affecting any term of the Obligations.

(b) Any change in the time, place or manner of payment or performance of, or in any other term of the Obligations, or any rescission, waiver, release, assignment, amendment or other modification of the Underlying Agreement.

(c) Any taking, exchange, substitution, release, impairment, amendment, waiver, modification or non-perfection of any collateral or any other guaranty for the Obligations, or any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Obligations.

(d) Any default, failure or delay, wilful or otherwise, in the performance of the Obligations.

(e) Any change, restructuring or termination of the corporate structure, ownership or existence of Guarantor or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Obligor or its assets or any resulting restructuring, release or discharge of any Obligations.

(f) Any failure of Beneficiary to disclose to Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Obligor now or hereafter known to Beneficiary, Guarantor waiving any duty of Beneficiary to disclose such information.

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(g) The failure of any other guarantor or third party to execute or deliver this Guaranty or any other guaranty or agreement, or the release or reduction of liability of Guarantor or any other guarantor or surety with respect to the Obligations.

(h) Any delay or failure of or forbearance by Beneficiary in asserting any claim or demand or in exercising or enforcing any right or remedy, whether by action, inaction or omission, under the Underlying Agreement or otherwise.

(i) The existence of any claim, set-off, counterclaim, recoupment or other rights that Guarantor or Obligor may have against Beneficiary (other than a defense of payment or performance) whether in connection with the Obligations, the Underlying Agreement or any other transaction.

(j) Any other circumstance (including, without limitation, any statute of limitations), act, omission or manner of administering the Underlying Agreement or any existence of or reliance on any representation by Beneficiary that might vary the risk of Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, Guarantor.

3. Certain Waivers; Acknowledgments. Guarantor further acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Obligations.

(b) This Guaranty is a guarantee of payment and performance and not of collection. Beneficiary shall not be obligated to enforce or exhaust its remedies against Obligor or under the Underlying Agreement before proceeding to enforce this Guaranty.

(c) This Guaranty is a direct guaranty and independent of the obligations of Obligor under the Underlying Agreement. Beneficiary may resort to Guarantor for payment and performance of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Obligor or any other guarantors with respect to the Obligations. Beneficiary may, at Beneficiary's option, proceed against Guarantor and Obligor, jointly and severally, or against Guarantor only without having obtained a judgment against Obligor.

(d) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and this Guaranty and any requirement that Beneficiary protect, secure, perfect or insure any lien or any property subject thereto.

(e) Guarantor agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of Obligor.

4. Subrogation. Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under this Guaranty until all Obligations shall have been paid and discharged in full. Subject to the foregoing, upon payment and performance of all such Obligations, Guarantor shall be subrogated to the rights of Beneficiary against Obligor, and Beneficiary agrees to take such steps as Guarantor may reasonably request, at Guarantor's expense, to implement such subrogation.

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5. Representations and Warranties. To induce Beneficiary to enter into the Underlying Agreement, Guarantor represents and warrants that: (a) this Guaranty constitutes Guarantor's valid and legally binding agreement in accordance with its terms; (b) the execution, delivery and performance of this Guaranty will not violate any order, judgment or decree to which Guarantor or any of his assets may be subject; and (c) Guarantor is currently solvent and will not be rendered insolvent by providing this Guaranty.

6. Notices. All notices, requests, consents, demands and other communications hereunder (each, a "**Notice**") shall be in writing and delivered to the parties at the addresses set forth herein or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier, facsimile or e-mail or certified or registered mail (return receipt requested, postage prepaid). Except as otherwise provided in this Guaranty, a Notice is effective only (a) with written confirmation of delivery or transmission; (b) upon receipt of the receiving party, and (c) if the party giving the Notice has complied with the requirements of this section.

7. Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Guarantor may not, without the prior written consent of Beneficiary, assign any of its rights, powers or obligations hereunder. Beneficiary may assign this Guaranty and its rights hereunder without the consent of Guarantor. Any attempted assignment in violation of this section shall be null and void.

8. Governing Law; Service of Process. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REFERENCE TO ANY CHOICE OF LAW DOCTRINE. EACH PARTY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 6 HEREOF AND AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

9. Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE OBLIGATIONS HEREUNDER.

10. Cumulative Rights. Each right, remedy and power hereby granted to Beneficiary or allowed it by applicable law or other agreement shall be cumulative and not exclusive of any other and may be exercised by Beneficiary at any time or from time to time.

11. Severability. If any provision of this Guaranty is to any extent determined by final decision of a court of competent jurisdiction to be unenforceable, the remainder of this Guaranty shall not be affected thereby, and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

12. Entire Agreement; Amendments; Headings; Effectiveness. This Guaranty constitutes the sole and entire agreement of Guarantor and Obligor with respect to the subject matter hereof and supersedes all previous agreements or understandings, oral or written, between Guarantor and Obligor with respect to such subject matter. No amendment or waiver of any provision of this Guaranty shall be valid and binding unless it is in writing and signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against which the waiver is to be effective. Section headings are for convenience of reference only and shall not define, modify, expand or limit any of the terms of this Guaranty. Delivery of this Guaranty by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed original of this Guaranty.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

GUARANTOR:

Signature

[redacted]

Sworn to and subscribed before me this
_____day of _____, 20_____.

_____
Notary Public for SOUTH CAROLINA
My Commission Expires:

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GUARANTY

This GUARANTY (this "**Guaranty**") dated as of January 29, 2021, is made by MOHAMMAD FARHAN, an individual who resides at 23 SANDUSKY LANE, SIMPSONVILLE, SC 29680 ("**Guarantor**"), in favor and for the benefit of BA HOLDINGS, INC., and its permitted assigns ("**Beneficiary**").

Reference is made to that certain Assignment and Assumption Agreement, dated January 29, 2021 (the "**Underlying Agreement**"), by and between ZAY N LIMO, LLC ("**Obligor**"), and Beneficiary. In consideration of the substantial direct and indirect benefits derived by Guarantor from the transactions under the Underlying Agreement, and in order to induce Beneficiary to enter into the Underlying Agreement and otherwise perform according to the Underlying Agreement, Guarantor, a principal of Obligor, hereby agrees as follows:

1. Guaranty. Guarantor absolutely, unconditionally and irrevocably guarantees to Beneficiary the full and punctual payment and performance of all present and future obligations, liabilities, covenants and agreements required to be observed and performed or paid or reimbursed by Obligor under or relating to the Underlying Agreement, plus all costs, expenses and fees (including reasonable attorney's fees and expenses) in any way relating to the enforcement or protection of Beneficiary's rights hereunder (collectively, the "**Obligations**").

2. Guaranty Absolute and Unconditional. Guarantor agrees that its Obligations under this Guaranty are irrevocable, continuing, absolute and unconditional and shall not be discharged or impaired or otherwise affected by, and Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

(a) Any illegality, invalidity or unenforceability of any Obligation or the Underlying Agreement or any related agreement or instrument, or any law, regulation, decree or order of any jurisdiction or any other event affecting any term of the Obligations.

(b) Any change in the time, place or manner of payment or performance of, or in any other term of the Obligations, or any rescission, waiver, release, assignment, amendment or other modification of the Underlying Agreement.

(c) Any taking, exchange, substitution, release, impairment, amendment, waiver, modification or non-perfection of any collateral or any other guaranty for the Obligations, or any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Obligations.

(d) Any default, failure or delay, wilful or otherwise, in the performance of the Obligations.

(e) Any change, restructuring or termination of the corporate structure, ownership or existence of Guarantor or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Obligor or its assets or any resulting restructuring, release or discharge of any Obligations.

(f) Any failure of Beneficiary to disclose to Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Obligor now or hereafter known to Beneficiary, Guarantor waiving any duty of Beneficiary to disclose such information.

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(g) The failure of any other guarantor or third party to execute or deliver this Guaranty or any other guaranty or agreement, or the release or reduction of liability of Guarantor or any other guarantor or surety with respect to the Obligations.

(h) Any delay or failure of or forbearance by Beneficiary in asserting any claim or demand or in exercising or enforcing any right or remedy, whether by action, inaction or omission, under the Underlying Agreement or otherwise.

(i) The existence of any claim, set-off, counterclaim, recoupment or other rights that Guarantor or Obligor may have against Beneficiary (other than a defense of payment or performance) whether in connection with the Obligations, the Underlying Agreement or any other transaction.

(j) Any other circumstance (including, without limitation, any statute of limitations), act, omission or manner of administering the Underlying Agreement or any existence of or reliance on any representation by Beneficiary that might vary the risk of Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, Guarantor.

3. Certain Waivers; Acknowledgments. Guarantor further acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Obligations.

(b) This Guaranty is a guarantee of payment and performance and not of collection. Beneficiary shall not be obligated to enforce or exhaust its remedies against Obligor or under the Underlying Agreement before proceeding to enforce this Guaranty.

(c) This Guaranty is a direct guaranty and independent of the obligations of Obligor under the Underlying Agreement. Beneficiary may resort to Guarantor for payment and performance of the Obligations whether or not Beneficiary shall have resorted to any collateral therefor or shall have proceeded against Obligor or any other guarantors with respect to the Obligations. Beneficiary may, at Beneficiary's option, proceed against Guarantor and Obligor, jointly and severally, or against Guarantor only without having obtained a judgment against Obligor.

(d) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and this Guaranty and any requirement that Beneficiary protect, secure, perfect or insure any lien or any property subject thereto.

(e) Guarantor agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of Obligor.

4. Subrogation. Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under this Guaranty until all Obligations shall have been paid and discharged in full. Subject to the foregoing, upon payment and performance of all such Obligations, Guarantor shall be subrogated to the rights of Beneficiary against Obligor, and Beneficiary agrees to take such steps as Guarantor may reasonably request, at Guarantor's expense, to implement such subrogation.

5. Representations and Warranties. To induce Beneficiary to enter into the Underlying Agreement, Guarantor represents and warrants that: (a) this Guaranty constitutes Guarantor's valid and legally binding agreement in accordance with its terms; (b) the execution, delivery and performance of this Guaranty will not violate any order, judgment or decree to which Guarantor or any of his assets may be subject; and (c) Guarantor is currently solvent and will not be rendered insolvent by providing this Guaranty.

6. Notices. All notices, requests, consents, demands and other communications hereunder (each, a "**Notice**") shall be in writing and delivered to the parties at the addresses set forth herein or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier, facsimile or e-mail or certified or registered mail (return receipt requested, postage prepaid). Except as otherwise provided in this Guaranty, a Notice is effective only (a) with written confirmation of delivery or transmission; (b) upon receipt of the receiving party, and (c) if the party giving the Notice has complied with the requirements of this section.

7. Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Guarantor may not, without the prior written consent of Beneficiary, assign any of its rights, powers or obligations hereunder. Beneficiary may assign this Guaranty and its rights hereunder without the consent of Guarantor. Any attempted assignment in violation of this section shall be null and void.

8. Governing Law; Service of Process. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA, WITHOUT REFERENCE TO ANY CHOICE OF LAW DOCTRINE. EACH PARTY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 6 HEREOF AND AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

9. Waiver of Jury Trial. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE OBLIGATIONS HEREUNDER.

10. Cumulative Rights. Each right, remedy and power hereby granted to Beneficiary or allowed it by applicable law or other agreement shall be cumulative and not exclusive of any other and may be exercised by Beneficiary at any time or from time to time.

11. Severability. If any provision of this Guaranty is to any extent determined by final decision of a court of competent jurisdiction to be unenforceable, the remainder of this Guaranty shall not be affected thereby, and each provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

12. Entire Agreement; Amendments; Headings; Effectiveness. This Guaranty constitutes the sole and entire agreement of Guarantor and Obligor with respect to the subject matter hereof and supersedes all previous agreements or understandings, oral or written, between Guarantor and Obligor with respect to such subject matter. No amendment or waiver of any provision of this Guaranty shall be valid and binding unless it is in writing and signed, in the case of an amendment, by both parties, or in the case of a waiver, by the party against which the waiver is to be effective. Section headings are for convenience of reference only and shall not define, modify, expand or limit any of the terms of this Guaranty. Delivery of this Guaranty by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed original of this Guaranty.

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IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

GUARANTOR:

Signature [redacted]

Sworn to and subscribed before me this
_____day of _____, 20_____.

_____
Notary Public for SOUTH CAROLINA
My Commission Expires:

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EXHIBIT 3

ASSIGNMENT OF CONTRACT

THIS ASSIGNMENT OF CONTRACT (this "Assignment") is made and entered into as of August 14, 2023, by and between BA Holdings, Inc. ("Assignor") and BA Greenville, LLC ("Assignee").

RECITALS

1. Assignor is the sole member of Assignee and holds 100% of the outstanding membership interests in Assignee.

2. Assignee entered into that certain franchise agreement with Big Air Franchising, LLC, dated October 7, 2017 (the "Franchise Agreement")

3. Assignor entered into that certain Regional Director Agreement with Big Air Franchising, LLC, dated April 1, 2018 (the "RD Agreement").

4. Assignor entered into that certain Assignment and Assumption Agreement with Zay N Limo, LLC ("Zay N Limo"), dated January 29, 2021 (the "Territory Release Agreement"), pursuant to which Assignor intended to release certain rights of Assignee, including exclusive marketing rights, to the Anderson County, South Carolina territory conferred to Assignee by Big Air Franchising, LLC under the Franchise Agreement.

5. Assignor inadvertently included itself as the contracting party in the Territory Release Agreement. Assignor now desires to assign to Assignee all its right, title, and interest in and to the Territory Release Agreement (the "Assigned Interests").

6. Assignee desires to become the substitute counterparty to the Territory Release Agreement with Zay N Limo and to assume and perform all the debts, liabilities, and obligations of Assignor in respect of the Assigned Interests under the Territory Release Agreement, and the other agreements, documents and materials that govern the rights and obligations of Assignor under the Territory Release Agreement, from and after the date hereof (collectively, the "Assumed Obligations").

7. Assignor now wishes to transfer and assign, beneficially and of record, all the Assigned Interests to Assignee, and Assignee wishes accepts such assignment and assumes all the Assumed Obligations.

AGREEMENT

For the payment of One Hundred and 00/100 Dollars ($100.00) from Assignee to Assignor and other good and valid consideration, the receipt of which is acknowledged, the parties agree as follows:

Section 1. Assignment of Assigned Interests. Assignor hereby transfers and assigns, beneficially and of record, to Assignee, and Assignee hereby accepts the assignment of all the Assigned Interests as set forth in the Territory Release Agreement, together with all rights,

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powers, authority, duties, liabilities, and obligations appurtenant thereto and agrees to be bound by the Territory Release Agreement as the holder of the Assigned Interests.

Section 2. Assumption of Obligations. The Assignee hereby assumes the Assumed Obligations and agrees to pay, perform, and discharge such Assumed Obligations, whether known or unknown, absolute or contingent, determined or speculative or otherwise, from and after the date of execution of the effective date of the .

Section 3. Record and Beneficial Ownership. From and after the date hereof, Assignor shall cease to be a holder, beneficially and of record, of the Assigned Interests and, in its place and stead, Assignee shall be the holder, beneficially and of record, of the Assigned Interests. Assignor, from and after the date hereof, disclaims any and all interests in the Assigned Interests, whether of record or beneficially, and agrees and attests that all such interests are owned by Assignee.

Section 4. Representations and Warranties. Assignee hereby affirms that the representations and warranties set forth in the Territory Release Agreement are true and correct in all material respects as to Assignee on and as of the date hereof with the same effect as if made on the effective date of the Territory Release Agreement.

Section 6. Binding. This instrument shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina applicable to contracts made and to be wholly performed within such State, without reference to principles of conflicts of laws that would require the applicability of the laws of any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

BA HOLDINGS, INC.

Dustin Pelletier
President

BA GREENVILLE, LLC

Dustin Pelletier
Member

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2023-CP-23-02302 **AFFIDAVIT OF DUSTIN PELLETIER**

I, Dustin Pelletier, being first duly sworn, depose and state as follows:

1. I am the sole shareholder of BA Holdings, Inc., a South Carolina corporation ("BAH").

2. BAH is the sole member of BA Greenville, LLC, a South Carolina limited liability company ("BA Greenville").

3. BAH became the Regional Director for BAF for the State of South Carolina pursuant that certain Regional Director Agreement, dated April 1, 2018 (the "RD Agreement"). Pursuant to the RD Agreement, BAH is responsible for advertising, recruiting, screening, and reviewing prospects for Big Air trampoline business franchises within the State of South Carolina and receives a commission on the franchise fees paid by new franchisees.

4. 1. BA Greenville entered into a Franchise Agreement with Big Air, dated October 7, 2017 (the "BA Franchise Agreement"). Pursuant to the BA Franchise Agreement, BA Greenville became a franchisee of Big Air and was given exclusive rights to operate a Big Air trampoline business in Anderson County, South Carolina (the "Anderson Territory").

5. On July 14, 2020, Mohammad Farhan ("Mohammad") contacted Big Air regarding a franchise opportunity through Big Air's online inquiry process.

6. It is my understanding that Big Air provided Mohammad and his company, Zay N Limo, LLC ("Zay N Limo"), with the required sales and disclosure requirements for a franchise opportunity.

7. At this time, it was also disclosed to Mohammad that BAH was the Regional Director for Big Air and that I was the operative contact for BAH.

8. Big Air worked with Mohammad on the transaction to sell and assign a franchise territory to Zay N Limo.

9. BAH and BA Greenville do not have the authority to sell a Big Air franchise.

10. BAH and BA Greenville were not involved in the sales process of selling a Big Air franchise to Mohammad and Zay N Limo, LLC.

11. Mohammad and Zay N Limo were interested in opening a Big Air franchise in Anderson, South Carolina. At the time of their initial inquiry, BA Greenville had exclusive rights to own and operate a Big Air franchise in the Anderson Territory. BA Greenville had the ability to open a Big Air location in Anderson, as long as a new franchise agreement was signed for that new location.

12. Big Air could not have sold a Big Air franchise to Mohammad or Zay N Limo in the Anderson Territory without BA Greenville's release of the territory zip codes back to Big Air.

13. BA Greenville has the right to release certain zip codes back to Big Air, and these zip codes are then available for Big Air to assign to a different franchisee under a new franchise agreement.

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14. BAH and/or BA Greenville offered to Mohammad and/or Zay N Limo alternative territories that were not encumbered by an exclusivity. However, Mohammad and/or Zay N Limo insisted on the Anderson Territory.

15. BA Greenville's business drew customers and clients from the Anderson Territory. A release of the Anderson Territory and a new Big Air location in Anderson would take away business and revenue from BA Greenville. I disclosed this fact to Defendants.

16. I entered into negotiations with Zay N Limo and/or Mohammad for the release of the Anderson Territory zip codes back to Big Air. This transaction was separate and apart from any franchise fee Zay N Limo paid to Big Air, including any percentage of those that fee paid to BAH.

17. Zay N Limo agreed to pay for the release of the Anderson Territory back to Big Air.

18. Mohammad was provided with a list of the zip codes for the Anderson Territory prior to Zay N Limo executing a franchise agreement with Big Air. The zip code document was created by Big Air.

19. On February 11, 2021, Zay N Limo executed the franchise agreement with Big Air (the "Zay Franchise Agreement"). A copy of the Franchise Agreement is attached as Exhibit A.

20. As alleged in the Complaint in this matter, on February 18, 2021, BAH entered into an Assignment and Assumption Agreement ("Assignment Agreement") with Zay N limo that purported to assign the Anderson Territory to Zay N Limo and for BAH to provide certain management services and other consideration to Zay N Limo in exchange for payment of a

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management fee and a percentage of Zay N Limo's revenues from its operation in the Anderson Territory.

21. When drafting the Assignment Agreement, I made two mistakes: (a) I inadvertently included BAH as the counterparty when it should have been BA Greenville; and (b) the Assignment Agreement should have provided for release of the Anderson Territory back to BAF instead of assigning it directly to Zay N Limo.

22. BAH has since assigned the Assignment Agreement to BA Greenville to attempt to rectify my error. A copy of that assignment is attached as Exhibit B.

23. I informed Big Air that BAH and/or BA Greenville had the agreements in place with Mohammad and/or Zay N Limo to release the Anderson Territory to Zay N Limo.

24. BA Greenville properly amended its franchise agreement with Big Air to release the Anderson zip codes back to Big Air, which then allowed Big Air to reassign the Anderson zip codes to Zay N Limo.

25. I am competent to and will testify, declare, depose, or certify to the truth of any or all of the foregoing before any competent tribunal, officer, or person, and we will cooperate fully in the adjudication of this matter.

AFFIANT HAS NOTHING FURTHER TO SAY AT THIS TIME.

Dustin Pelletier

Subscribed and sworn to before me on this 5th day of October, 2023.

Notary Public for South Carolina

My Commission expires: 10/22/2024

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BIG AIR FRANCHISING, LLC

FRANCHISE AGREEMENT

Franchise #: 2110

Franchisee: Zay N Limo, LLC

Date: February 11, 2021

Territory: 29672, 29693, 29678, 30577, 29643, 29625, 30553, 29626, 29624, 29684, 30520, 30521, 30662, 30634, 29655, 30635, 30538, 30557, 30553, 30662, 30516, 30643, 29691, 29631, 29670, 29697, 29621, 29627, 29627, 29654, 29692, 29638, 29630, 29653, 29620, 29628

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ACKNOWLEDGMENT

Franchisee, and its shareholders, members, or partners, as applicable, jointly and severally acknowledge that they have carefully read this Agreement and all other related documents to be executed concurrently or in conjunction with the execution hereof, that they have obtained the advice of counsel in connection with entering into this Agreement, that they understand the nature of this Agreement, and that they intend to comply herewith and be bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the first date set forth above.

ACCEPTED on this 21 day of July, 2020

FRANCHISOR:

BIG AIR FRANCHISING, LLC

By: _____ N.F.

Its MEMBER President SF

FRANCHISEE:

ZAY N LIMO, LLC

By: _____

Its Member

_____ an Individual

Printed Name: MOHAMMAD FARHAN

Date: 7/21/20

_____ an Individual

Printed Name: _____

Date: _____

_____ an Individual

Printed Name: Shasif Farhan

Date: 7/21/20

_____ an Individual

Printed Name: _____

Date: _____

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ATTACHMENT D
TO FRANCHISE AGREEMENT

BY AND BETWEEN BIG AIR FRANCHISING, LLC
AND
ZAY N LIMO, LLC ("FRANCHISEE")

EFT AUTHORIZATION AGREEMENT
(DIRECT DEBITS)

The undersigned depositor ("**Depositor**") hereby authorizes BIG AIR FRANCHISING, LLC ("**Company**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**") to debit such account pursuant to Company's instructions.

Depository _____ Branch _____

Address _____ City, State, Zip Code _____

Bank Transit/ABA Number _____ Account Number _____

This authority is to remain in full force and effect until Depository has received joint written notification from Company and Depositor of the Depositor's termination of such authority in such time and in such manner as to afford Depository a reasonable opportunity on which to act. If an erroneous debit entry is initiated to Depositor's account, Depositor shall have the right to have the amount of such entry credited to such account by Depository, if (a) within fifteen (15) calendar days following the date on which Depository sent to Depositor a statement of account or a written notice pertaining to such entry or (b) forty-five (45) days after posting, whichever occurs first, Depositor shall have sent to Depository a written notice identifying such entry, stating that such entry was in error and requesting Depository to credit the amount thereof to such account. These rights are in addition to any rights Depositor may have under federal and state banking laws.

Mohammad Farhat

Depositor
By: _____
Title: Member
Date: 7/21/20

Sharif Farhan

Depository
By: Member Sharif Farhan
Title: Member
Date: 7/21/20

M.F.
SF

Kevin Odekirk

By: Kevin Odekirk
Title: President
Date: 2/26/21

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in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

ASSIGNEE:

BIG AIR FRANCHISING, LLC

By: _____

Its: _____

M.F.

SF

By: _____

Its: President

ASSIGNOR:

ZAY N LIMO, LLC

By: _____

Its: _____

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government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect.

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

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

COMPANY:

BIG AIR FRANCHISING , LLC

By: [signature] M.F.

Title: MEMBER

Date: 2/21/20

By: [signature] SF

Title: President

Date: 2/26/21

ASSOCIATE:

ZAY N LIMO, LLC

By: [signature]

Print Name: MOHAMMED [illegible]

Date: 2/21/20

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from franchise or non-franchised units, that no such results can be assured or estimated, and that actual results will vary from unit to unit.

You understand and agree to all of the foregoing and represent and warrant that all of the above statements are true, correct and complete.

PROSPECTIVE FRANCHISEE:

7/21/20
Date

Date

Date

Date

MARKETING REPRESENTATIVE:

7/21/20
Date

REVIEWED BY FRANCHISOR:

By:
Its: MEMBER
Date: 7/21/20

M.F.
S.F.

Marketing Representative:

Date

Reviewed By Franchisor:

By:

Its: President

Date: 2/26/21

ELECTRONICALLY FILED - 2023 Oct 10 9:35 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

Financial Contingency Amendment to Big Air Franchise Agreement

The undersigned parties agree to amend the standard Big Air Franchise Agreement as it relates to franchise fees in the following way:

Franchisee will pay Big Air Franchising the full $60,000 amount normally due upon the execution of the Franchise Agreement. If financing cannot be successfully obtained for any reason, Franchisee may request a refund of those monies, minus a $10,000 non-refundable portion, up until 365 days from the signing of the agreement.

In case of such request, Big Air Franchising will provide a return of monies within 30 days of that refund request.

Notwithstanding the execution of the above refund option, Franchisee will remain under the same non-compete clauses and non-disclosure agreements as Franchisees in force, and will be expected to abide by all contractual restrictions as per the initial Franchise Agreements.

MOHAMMAD FARHAN
Franchisee - printed

Franchisee Signature

7/21/20
Date

7/21/20
Date

Sherif Farhan
Big Air - printed

Big Air Signature

Kevin Odekirk

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BIG AIR FRANCHISING, LLC

FRANCHISE AGREEMENT

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Franchisee: Zay N Limo, LLC

Date: February 11, 2021

Territory: 29672, 29693, 29678, 30577, 29643, 29625, 30553, 29626, 29624, 29684, 30520, 30521, 30662, 30634, 29655, 30635, 30538, 30557, 30553, 30662, 30516, 30643, 29691, 29631, 29670, 29697, 29621, 29627, 29627, 29654, 29692, 29638, 29630, 29653, 29620, 29628

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ACKNOWLEDGMENT

Franchisee, and its shareholders, members, or partners, as applicable, jointly and severally acknowledge that they have carefully read this Agreement and all other related documents to be executed concurrently or in conjunction with the execution hereof, that they have obtained the advice of counsel in connection with entering into this Agreement, that they understand the nature of this Agreement, and that they intend to comply herewith and be bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the first date set forth above.

ACCEPTED on this 21 day of July, 2020

FRANCHISOR:

BIG AIR FRANCHISING, LLC

By: _____

Its MEMBER President

MF.
SF

FRANCHISEE:

ZAY N LIMO, LLC

By: _____

Its Member

_____
an Individual

Printed Name: MUHAMMAD FARHAN
Date: 7/21/20

_____
an Individual

Printed Name: _____
Date: _____

_____
an Individual

Printed Name: Shaaif Farhan
Date: 7/21/20

_____
an Individual

Printed Name: _____
Date: _____

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ATTACHMENT D
TO FRANCHISE AGREEMENT

BY AND BETWEEN BIG AIR FRANCHISING, LLC
AND
ZAY N LIMO, LLC ("FRANCHISEE")

EFT AUTHORIZATION AGREEMENT
(DIRECT DEBITS)

The undersigned depositor ("**Depositor**") hereby authorizes BIG AIR FRANCHISING, LLC ("**Company**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**") to debit such account pursuant to Company's instructions.

Depository _____ Branch _____

Address _____ City, State, Zip Code _____

Bank Transit/ABA Number _____ Account Number _____

This authority is to remain in full force and effect until Depository has received joint written notification from Company and Depositor of the Depositor's termination of such authority in such time and in such manner as to afford Depository a reasonable opportunity on which to act. If an erroneous debit entry is initiated to Depositor's account, Depositor shall have the right to have the amount of such entry credited to such account by Depository, if (a) within fifteen (15) calendar days following the date on which Depository sent to Depositor a statement of account or a written notice pertaining to such entry or (b) forty-five (45) days after posting, whichever occurs first, Depositor shall have sent to Depository a written notice identifying such entry, stating that such entry was in error and requesting Depository to credit the amount thereof to such account. These rights are in addition to any rights Depositor may have under federal and state banking laws.

Mohammad Farhad

Depositor
By: _____
Title: Member
Date: 7/21/20

Sharif Farhad

Depository
By: Member - Sharif Farhad
Title: Member
Date: 7/21/20

By: Kevin Odekirk
Title: President
Date: 2/26/21

MF.
SF

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in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

ASSIGNEE:

BIG AIR FRANCHISING, LLC

By: _____

Its: _____

By: _____ M.F. S.F.

Its: President

ASSIGNOR:

ZAY N LIMO, LLC

By: _____

Its: _____

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government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect.

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

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

COMPANY:

BIG AIR FRANCHISING , LLC

By: [signature]

Title: MEMBER

Date: 2/26/20

ASSOCIATE:

ZAY N LIMO, LLC

By: [signature]

Print Name: MOHAMMED ALAM

Date: 2/21/20

By: [signature] MF. SF

Title: President

Date: 2/26/21

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from franchise or non-franchised units, that no such results can be assured or estimated, and that actual results will vary from unit to unit.

You understand and agree to all of the foregoing and represent and warrant that all of the above statements are true, correct and complete.

PROSPECTIVE FRANCHISEE:

7/21/20
Date

Date

Date

Date

MARKETING REPRESENTATIVE:

7/21/20
Date

REVIEWED BY FRANCHISOR:

By:

Its: MEMBER

Date: 7/21/20

M.F.
SF

Marketing Representative:

Date

Reviewed By Franchisor:

By:

Its: President

Date: 2/26/21

ELECTRONICALLY FILED - 2023 Oct 10 9:35 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

Financial Contingency Amendment to Big Air Franchise Agreement

The undersigned parties agree to amend the standard Big Air Franchise Agreement as it relates to franchise fees in the following way:

Franchisee will pay Big Air Franchising the full $60,000 amount normally due upon the execution of the Franchise Agreement. If financing cannot be successfully obtained for any reason, Franchisee may request a refund of those monies, minus a $10,000 non-refundable portion, up until 365 days from the signing of the agreement.

In case of such request, Big Air Franchising will provide a return of monies within 30 days of that refund request.

Notwithstanding the execution of the above refund option, Franchisee will remain under the same non-compete clauses and non-disclosure agreements as Franchisees in force, and will be expected to abide by all contractual restrictions as per the initial Franchise Agreements.

MOHAMMAD FARHAN
Franchisee - printed

7/21/20
Date

Franchisee Signature

7/21/20
Date

Sharif Farhat
Big Air - printed

Kevin Odekirk

Big Air Signature

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ASSIGNMENT OF CONTRACT

THIS ASSIGNMENT OF CONTRACT (this "Assignment") is made and entered into as of August 14, 2023, by and between BA Holdings, Inc. ("Assignor") and BA Greenville, LLC ("Assignee").

RECITALS

1. Assignor is the sole member of Assignee and holds 100% of the outstanding membership interests in Assignee.

2. Assignee entered into that certain franchise agreement with Big Air Franchising, LLC, dated October 7, 2017 (the "Franchise Agreement")

3. Assignor entered into that certain Regional Director Agreement with Big Air Franchising, LLC, dated April 1, 2018 (the "RD Agreement").

4. Assignor entered into that certain Assignment and Assumption Agreement with Zay N Limo, LLC ("Zay N Limo"), dated January 29, 2021 (the "Territory Release Agreement"), pursuant to which Assignor intended to release certain rights of Assignee, including exclusive marketing rights, to the Anderson County, South Carolina territory conferred to Assignee by Big Air Franchising, LLC under the Franchise Agreement.

5. Assignor inadvertently included itself as the contracting party in the Territory Release Agreement. Assignor now desires to assign to Assignee all its right, title, and interest in and to the Territory Release Agreement (the "Assigned Interests").

6. Assignee desires to become the substitute counterparty to the Territory Release Agreement with Zay N Limo and to assume and perform all the debts, liabilities, and obligations of Assignor in respect of the Assigned Interests under the Territory Release Agreement, and the other agreements, documents and materials that govern the rights and obligations of Assignor under the Territory Release Agreement, from and after the date hereof (collectively, the "Assumed Obligations").

7. Assignor now wishes to transfer and assign, beneficially and of record, all the Assigned Interests to Assignee, and Assignee wishes accepts such assignment and assumes all the Assumed Obligations.

AGREEMENT

For the payment of One Hundred and 00/100 Dollars ($100.00) from Assignee to Assignor and other good and valid consideration, the receipt of which is acknowledged, the parties agree as follows:

Section 1. Assignment of Assigned Interests. Assignor hereby transfers and assigns, beneficially and of record, to Assignee, and Assignee hereby accepts the assignment of all the Assigned Interests as set forth in the Territory Release Agreement, together with all rights,

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powers, authority, duties, liabilities, and obligations appurtenant thereto and agrees to be bound by the Territory Release Agreement as the holder of the Assigned Interests.

Section 2. Assumption of Obligations. The Assignee hereby assumes the Assumed Obligations and agrees to pay, perform, and discharge such Assumed Obligations, whether known or unknown, absolute or contingent, determined or speculative or otherwise, from and after the date of execution of the effective date of the .

Section 3. Record and Beneficial Ownership. From and after the date hereof, Assignor shall cease to be a holder, beneficially and of record, of the Assigned Interests and, in its place and stead, Assignee shall be the holder, beneficially and of record, of the Assigned Interests. Assignor, from and after the date hereof, disclaims any and all interests in the Assigned Interests, whether of record or beneficially, and agrees and attests that all such interests are owned by Assignee.

Section 4. Representations and Warranties. Assignee hereby affirms that the representations and warranties set forth in the Territory Release Agreement are true and correct in all material respects as to Assignee on and as of the date hereof with the same effect as if made on the effective date of the Territory Release Agreement.

Section 6. Binding. This instrument shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina applicable to contracts made and to be wholly performed within such State, without reference to principles of conflicts of laws that would require the applicability of the laws of any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

BA HOLDINGS, INC.

Dustin Pelletier
President

BA GREENVILLE, LLC

Dustin Pelletier
Member

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE 13th JUDICIAL CIRCUIT
	)	
BA HOLDINGS, INC.,	)	Case No. 2023-CP-2302302
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN,	)	
	)	
Defendants,	)	
	)	

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF PARTIAL SUMMARY JUDGMENT AS TO THE COMPLAINT AND/OR THE FUTILE PROPOSED AMENDED COMPLAINT (AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THE FUTILE PROPOSED AMENDED COMPLAINT)

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Defendants Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan hereby submit this memorandum of law in support of their motion for partial summary judgment, pursuant to Rule 56, SCRCP, as to the complaint and/or the futile proposed amended complaint by Plaintiff BA Holdings, Inc. and its proposed new, second Plaintiff, BA Greenville, LLC; and in opposition to Plaintiff's motion, pursuant to Rule 15, SCRCP, for leave to file the futile proposed amended complaint.[1]

INTRODUCTION

This case is uniquely postured for partial summary judgment on the contractual claims asserted in the original complaint and/or the futile proposed amended complaint (whether leave is given or not). After threatening and filing this lawsuit, Plaintiff admitted that it has no case under the contract it drafted and entered into with Defendants and attached to the complaint (the "Contract"). Mid-litigation, Plaintiff drafted a new contractual document, without Defendants, trying to save its case. The new document is titled as an assignment, but in body and substance, it is an attempted unilateral amendment of the Contract. The new document is signed by one person, Dustin Pelletier, as the common owner of both Plaintiff and the new assignee. In the new document, Plaintiff approaches the Contract as if it could travel back in time, purporting to insert its new assignee as the substitute contracting party, and change the title and intent of the Contract, as well as the maker and effect of the representations and warranties therein. This tellingly desperate measure fails under the express provisions of the Contract itself and black letter law.

[1] Defendants' counterclaims, which are not germane to this motion for partial summary judgment, involve federal and state franchise, business opportunity, and unfair trade practice laws, based on false and misleading representations and warranties, attended by disclosure and registration failures, violating the South Carolina Business Opportunities Act, S.C. Code Ann. §§ 39-57-20 *et seq*., the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq*., and the Federal Trade Commission's rule for franchise and sub-franchise sellers, 16 CFR § 436, or business opportunity sellers, 16 CFR § 437.

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But even suspending black letter law, additionally dispositive, Plaintiff's new assignee would not have had the right to enter into the Contract with Defendants, to begin with, either. Plaintiff admitted this as well, together with producing controlling agreements that indisputably establish the same, as will be more fully set forth below.

As an introductory background, Plaintiff is a commissioned sales agent for a franchisor that sold Defendants the rights and duties to operate one new franchise business in Anderson. Plaintiff has received 50% of the initial franchise fees and monthly royalties that Defendants have paid the franchisor. Separately, the Contract that is the subject of this lawsuit arises from Plaintiff's attempt to double sell and charge Defendants extra fees and monthly royalties to operate their new franchise business in Anderson, without the right to do so. Plaintiff's new assignee of the Contract, another franchisee, which operates one franchise business in Greenville, likewise had no such rights from the franchisor to sell to Defendants. No matter what hat Dustin Pelletier wears, or entity he purports to be, or unilateral amendments he attempts to make, there is no case against Defendants under the Contract.

UNDISPUTED FACTS

I. THE CONTRACT AT ISSUE ATTACHED TO THE COMPLAINT

The Contract, which is at issue in this motion for partial summary judgment, entitled Assignment and Assumption Agreement, attached as Exhibit 1 to both the complaint and the proposed amended complaint) was entered into by and between, and executed by, Plaintiff BA Holdings, Inc. and Defendant Zay N Limo, LLC (with accompanying guaranties signed by the other Defendants Sharif Farhan and Mohammad Farhan):

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Exhibit 1

FINAL FOR EXECUTION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") dated as of January 29, 2021 ("Effective Date"), is entered into by and between BA HOLDINGS, INC., a South Carolina corporation ("Assigning Party") and ZAY N LIMO, LLC, a South Carolina limited liability company ("Assuming Party").

. . .

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BA HOLDINGS, INC.

By: 2/18/21
Name: Dustin Pelletier
Title: President

ZAY N LIMO, LLC

By: 2/18/21
Name: Mohammad Farhan
Title: Member

(Ex. 1, pp. 1, 9).

The Contract began with Plaintiff's claim to own and to have the right to sell franchise rights in Anderson, South Carolina, incorporating by reference Plaintiff's agreement with the franchisor, Big Air Franchising, LLC:

RECITALS

Assigning Party desires to assign to Assuming Party all its rights, including exclusive marketing rights, to the Anderson County, South Carolina territory (the "Anderson Territory") owned by Assigning Party pursuant to its franchise agreement with ©Big Air Franchising, LLC (the "Franchise Agreement"). The Anderson Territory is more fully described as zip codes. See, Exhibit A.

. . .

8.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes"

. . .

schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

(Ex. 1, p. 1).

The Contract purported to sell, assign, grant, convey, and transfer such franchise rights, title, duties, and obligations:

> 1. Assignment and Assumption.
>
> 1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Anderson Territory.
>
> 1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties and obligations related to the Anderson Territory on and after the Effective Date.

(Ex. 1, p. 1).

The Contract also included representations and warranties, *made by Plaintiff*, about its authority, as of the effective date of the Contract, to sell, assign, grant, convey, and transfer such franchise rights, title, duties, and obligations, and its full performance of and compliance with its agreement with the franchisor:

> 4. Representations and Warranties.
>
> 4.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:
>
> (a) It is duly organized, validly existing and in good standing under the laws of the State of South Carolina.
>
> (b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.
>
> (c) It has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder.
>
> (d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.
>
> (e) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.
>
> (f) It is the sole legal and beneficial owner of the all the rights to the Anderson Territory on the Effective Date, free and clear of any lien, security interest, charge or encumbrance, except for the rights of ©Big Air Franchising, LLC to the Anderson Territory.
>
> (g) The Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement.
>
> (h) It has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date.

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(Ex. 1, p. 3).

The Contract provided that its consideration involved the exchange of the purported assignment in return for (ten years) of monthly royalties and fees: 1% of monthly gross sales + 5% of monthly net profits + $5,000 per month:

> 2. Consideration.
>
> 2.1 For the entire time Term, Assuming Party agrees to pay the following to Assigning Party as consideration for the assignment of the Anderson Territory:
>
> (a) A sum equal to 1% of the monthly gross sales of Assuming Party. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Gross sales will be calculated for the monthly immediately preceding the payment date.
>
> (b) A sum equal to 5% of the monthly net profits of Assuming Party. Net profits will be calculated by taking the gross revenue and subtracting expenses. Expenses include normal operating expenses and excludes Owner personal expenses, salaries of Owners greater than $45,000 in the aggregate, new major equipment expenses greater than $5,000 per purchase, and bonuses, if any. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Net profits will be calculated for the monthly immediately preceding the payment date.
>
> (c) A monthly management fee of Five Thousand and 00/100 ($5,000.00). The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term.

(Ex. 1, pp. 1-2).

The Contract included an entire agreement clause (aka merger or integration), superseding all else:

> 8.8 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

(Ex. 1, p. 7).

The Contract also included an amendment clause, requiring a writing signed by each party to the Contract:

> 8.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each party to this Agreement.

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(Ex. 1, p. 7).

The Contract also included a no third-party beneficiaries clause, limiting the benefits of the Contract to its parties:

> 8.12 No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(Ex. 1, p. 7).

II. Plaintiff's Admissions And Its Newly Created Document Mid-Litigation

Since suing Defendants in this Court based on the Contract, Plaintiff has admitted it was not a proper party to the Contract (which it drafted) and Plaintiff adopted a new position, that BA Greenville, LLC, an entity that Plaintiff is the sole and controlling member of, should have entered into the Contract instead of Plaintiff:

> 34. As to Paragraphs 67 through 73 of the Counterclaims, Plaintiff admits only that the proper party to the Assignment and Assumption Agreement should have been BA Greenville, LLC and that Plaintiff is the sole and controlling member of BA Greenville, LLC. Plaintiff denies the remaining allegations of Paragraphs 67 through 73.

(Ex. 7, p. 7).

Plaintiff then purported to "clean up" the Contract by creating and executing a new document, without Defendants:

> Attached is a copy of an Assignment of Contract by which BA Holdings, Inc. assigned its interest in the Zay N Limo agreement to BA Greenville, LLC in order to clean up the error in that agreement. Pursuant to Rule 11, I am asking for Defendants' consent to allow us to amend our pleadings to address this issue and name BA Greenville, LLC as a plaintiff. Please let me know if Defendants will consent to the amendment.

(Plaintiff's E-mail dated August 16, 2023).

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Plaintiff's newly created document attempts to amend the Contract in the guise of an assignment:

ASSIGNMENT OF CONTRACT

THIS ASSIGNMENT OF CONTRACT (this "Assignment") is made and entered into as of August 14, 2023, by and between BA Holdings, Inc. ("Assignor") and BA Greenville, LLC ("Assignee").

(Ex. 2, p. 1).

Dustin Pelletier signed the newly created document for both the Plaintiff and the new assignee, which he commonly owns and controls:

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

BA HOLDINGS, INC.

Dustin Pelletier
President

BA GREENVILLE, LLC

Dustin Pelletier
Member

(Ex. 2, p. 2).

The newly created document attempts to rename the Contract, changing it from "Assignment and Assumption Agreement" to "Territory Release Agreement," and it likewise attempts to recharacterize the intent of the Contract, stating that Plaintiff "intended to release certain rights of Assignee" by entering into the Contract; whereas, in contrast, the word "release" appears nowhere in the Contract, which, as already shown, instead purports to sell franchise rights and title owned by Plaintiff and transfer and convey Plaintiff's franchise duties and obligations to Defendants:

4. Assignor entered into that certain Assignment and Assumption Agreement with Zay N Limo, LLC ("Zay N Limo"), dated January 29, 2021 (the "Territory Release Agreement"), pursuant to which Assignor intended to release certain rights of Assignee, including exclusive marketing rights, to the Anderson County, South Carolina territory conferred to Assignee by Big Air Franchising, LLC under the Franchise Agreement.

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(Ex. 2, p. 1).

The newly created document then purports to make the new assignee the "substitute counterparty" to the Contract and the party that in "effect" made the representations and warranties therein "as of" the time they were made:

> 5. Assignor inadvertently included itself as the contracting party in the Territory Release Agreement. Assignor now desires to assign to Assignee all its right, title, and interest in and to the Territory Release Agreement (the "Assigned Interests").
>
> 6. Assignee desires to become the substitute counterparty to the Territory Release Agreement with Zay N Limo and to assume and perform all the debts, liabilities, and obligations of Assignor in respect of the Assigned Interests under the Territory Release Agreement, and the other agreements, documents and materials that govern the rights and obligations of Assignor under the Territory Release Agreement, from and after the date hereof (collectively, the "Assumed Obligations").
>
> . . .
>
> Section 4. Representations and Warranties. Assignee hereby affirms that the representations and warranties set forth in the Territory Release Agreement are true and correct in all material respects as to Assignee on and as of the date hereof with the same effect as if made on the effective date of the Territory Release Agreement.

(Ex. 2, p. 2).

In its proposed redlined amended complaint, Plaintiff alleges that the Contract was "in error in *at least* two ways" (emphasis added), and that one of these errors is corrected by the newly created document, while Plaintiff curiously does not allege that the other error is corrected or that any of the other errors it alludes to are corrected:

> 9. The Assignment Agreement is in error in at least two ways: (a) BA Greenville should be the counterparty, not BAH; and (b) it should provide for the assignment of the Anderson Territory back to BAF instead of assigning it directly to Zay.
>
> . . .
>
> ~~14.~~24. On August 14, 2023, BAH, in an attempt to correct the error identified in Paragraph 9(a), above, assigned its right, title, and interest in the Assignment Agreement to BA Greenville. A copy of that assignment is attached hereto as **Exhibit 3**.

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(Ex. 8, p. 4).

The affidavit Plaintiff filed in opposition to this motion, by Dustin Pelletier, characterizes the same as being "mistakes" that "I made" and an "attempt to rectify my error":

> 21. When drafting the Assignment Agreement, I made two mistakes: (a) I inadvertently included BAH as the counterparty when it should have been BA Greenville; and (b) the Assignment Agreement should have provided for release of the Anderson Territory back to BAF instead of assigning it directly to Zay N Limo.
>
> 22. BAH has since assigned the Assignment Agreement to BA Greenville to attempt to rectify my error. A copy of that assignment is attached as Exhibit B.

(Affidavit of Dustin Pelletier).

III. Plaintiff's, And Its New Assignee's, Agreements With The Franchisor

During discovery, Plaintiff also produced the agreements between itself and the franchisor (incorporated by reference in the Contract) and between its new assignee of the Contract and the franchisor (which Plaintiff now contends should have been the agreement incorporated by reference in the Contract).

The agreement between Plaintiff and the franchisor authorized Plaintiff to act as a sales agent for the franchisor and entitled it to receive 50% of the franchise fees and royalties paid to the franchisor from the franchisor in the form of sales commissions:

> **REGIONAL DIRECTOR AGREEMENT**
>
> This Regional Director Agreement ("**Agreement**") is entered into and made effective as of the 1st day of April, 2018, by and between **Big Air Franchising, LLC**, a California limited liability company, with a principal place of business at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and BA Holding INC, located at P.O. Box 171592, Spartanburg, SC 29301 ("**Regional Director**").
>
> . . .

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5.2. Sales Service Commission Payments. The Sales Service Commission shall depend upon the source of the franchise lead. If the lead is generated solely and independently by Regional Director, then the Sales Services Commission shall be an amount equal to fifty percent (50%) of the Initial Franchise Fees paid to Franchisor. If the lead is generated by any other source, then Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. If a sales lead is generated solely and independently by Regional Director prior to Regional Director completing the Initial Regional Director Training Program and the Franchisee Training Program and/or complying with all other obligations required to be met prior to opening the RD Business, Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. Franchisor retains the sole right to determine the source of the lead, and Franchisor's determination shall be final. Regional Director will also be required to contribute to the Franchise Development Fund in accordance with Section 4.2. The Sales Service Commissions will be payable to Regional Director within twenty (20) days after the Franchise Sales Conditions have been fulfilled, provided that the Initial Franchise Fees have not been deposited into an escrow or impound account, in which case, the Sales Service Commission will be payable to Regional Director within ten (10) days after Franchisor has received funds out of escrow, from the impound account or received funds that were previously deferred. Regional Director shall not receive any Sales Service Commission for franchises sold on or before the date of this Agreement or for Big Air Trampoline Businesses owned and operated by Franchisor, its affiliates or designees ("**Company Businesses**") in the RD Development Area, if any.

. . .

5.4. Commission on Royalty Payments. Franchisor shall pay to Regional Director, within twenty (20) days of the end of the month, fifty percent (50%) of all royalty payments ("**Royalties**") actually received from each Franchisee in the RD Development Area during the previous month ("**Royalty Commission**"). Regional Director shall be entitled to receive Royalty Commissions each month unless Regional Director has failed to perform, in any material respect, the services described in Section 8 during the prior month including, but not limited to, the conducting of periodic inspections and the filing of written reports as required by Section 8.6.

(Ex. 3, pp. 3, 9-10) (Bates # BAH 000524, BAH000530- BAH000531).

Plaintiff concedes in its proposed redlined amended complaint that this agreement with the franchisor gave it no right to sell franchise rights:

2. BAH became the Regional Developer for BAF for the State of South Carolina pursuant that certain Regional Director Agreement, dated April 1, 2018 (the "RD Agreement"). Pursuant to the RD Agreement, BAH is responsible for advertising, recruiting, screening, and reviewing prospects for Big Air trampoline business franchises within the State of South Carolina and receives a commission on the franchise fees paid by new franchisees. However, BAH does not have authority to sell BAF franchises.

(Ex. 8, p. 2).

Plaintiff also produced an agreement between the franchisor and another franchisee, Plaintiff's new assignee of the Contract, BA Greenville, LLC:

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made this 7th day of October, 2017 day of, by and between **BIG AIR FRANCHISING, LLC**, a California limited liability company, located at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and **BA Greenville, LLC** located at 11 Ridgewood Drive, Greenville, SC 29615 ("**Franchisee**").

(Ex. 8, p. 3) (Bates # BAH 000063).

That agreement made it expressly clear that Plaintiff had no rights thereunder by reason of its membership interests in BA Greenville, LLC:

15.5 With and after each valid assignment of this Agreement pursuant to this Section 15, the assignee or assignees of Franchisee shall be deemed to be Franchisee under this Agreement and will be bound by and liable for all of Franchisee's existing and future obligations. No stockholder in any corporation, member in any limited liability company or partner in any partnership which becomes Franchisee shall have any rights under this Agreement by reason of his, her or its stock ownership, membership interest or partnership interest.

(Ex. 4, p. 41) (Bates # BAH 000101).

That agreement gave that franchisee the right, license, and duty to operate only "one" franchise business in a defined territory:

2. GRANT OF LICENSE.

2.1 Subject to all the terms and conditions of this Agreement, Franchisor hereby grants to Franchisee, and Franchisee accepts, for the term of this Agreement, the right and license ("**License**") to:

(a) Operate one Big Air Trampoline Business upon the terms and conditions of this Agreement in one territory described in **Attachment A** ("**Territory**");

. . .

DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

. . .

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(c) **"Big Air Trampoline Business"** - means the business operations conducted or to be conducted by Franchisee consisting of selling and providing an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related Products using Franchisor's System and in association with the Marks.

(Ex. 4, p. 4, 8) (Bates # BAH 000064, BAH 000068).

That franchisee has always operated its "one" franchise business in Greenville, specifically, at its trampoline recreation center located at 36 Park Woodruff Drive (meaning that it had no right to operate a second one in Anderson, 37 miles away, and could not sell such a right that it did not own):

19. Plaintiff admits the allegations of Paragraphs 24 through 27 of the Counterclaims. Plaintiff is the sole and controlling member of BA Greenville, LLC, which is a franchisee of Big Air Franchising, LLC.

(Ex. 7, p. 5).

26. One of the franchise agreements produced by Plaintiff is by and between BA Greenville, LLC, as franchisee, and Big Air Franchising, LLC, as franchisor, for a franchise business identified as #1703, which operates at 36 Park Woodruff Drive, Greenville, South Carolina 29607.

(Defendants' Counterclaims, p. 12).

Without expanding the franchisee's right, license, and duty to operate only "one" franchise business in the defined territory, shown above, the agreement also included a provision stating that the franchisor or its affiliate would not establish or license another franchise business in a defined buffer territory of zip codes surrounding the one operating franchise business:

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4. TERRITORY

4.1 During the Term and for so long as Franchisee is in compliance with all of its obligations hereunder, except as otherwise provided in this Agreement, and subject to Franchisor's reservation of rights as set forth in Section 4.2 and as provided in Section 4.4 **below**, neither Franchisor nor any Affiliate will establish or license another person or entity to establish a Big Air Trampoline Business using the Marks licensed to Franchisee within the Territory encompassed by the boundaries set forth in **Attachment A**, attached hereto and incorporated herein by reference. Except as otherwise specifically provided in this Agreement, this Agreement does not restrict Franchisor or its Affiliates and does not grant rights to Franchisee to pursue any of Franchisor's or its Affiliates other business concepts other than the Big Air Trampoline Business.

DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

(a) "**Agreement**" - means this agreement, attachments, and all instruments in amendment hereof.

(b) "**Affiliate**" - means any person or entity that controls, is controlled by, or is in common control with, Franchisor or Franchisee.

(Ex. 4, p. 10) (BAH 000070).[2]

The agreement strictly prohibited and deemed "void" any attempted assignment of the franchisee's rights and duties, without compliance with numerous terms and conditions and restrictions therein, and "prior written approval" from the franchisor:

15.4 Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee. Accordingly, this Agreement, Franchisee's rights and interests hereunder, the property and assets owned and used by Franchisee in connection with the Big Air Trampoline Business, and any shares, stock, membership or interest in any corporation, limited liability company, or other entity having an interest in the Big Air Trampoline Business, shall not be voluntarily or involuntarily, directly or indirectly sold, pledged, assigned, transferred, shared, subdivided, sub-franchised, encumbered or transferred in any way (including, without limitation, in the event of the death of Franchisee if Franchisee is an individual), in whole or in part, in any manner whatsoever without the prior written approval of Franchisor, which approval will not be unreasonably withheld or delayed, and compliance with all terms of this Section 15. Any unauthorized sale, assignment, transfer or other conveyance, by operation of law or otherwise, or any attempt to do so, shall be deemed void and grounds for termination of this Agreement by Franchisor.

[2] Also notable, the agreement made no mention of several of the zip codes referenced in the Contract: 30577, 30553, 30520, 30521, 30662, 30634, 30635, 30538, 30557, 30553, 30662, 30516, and 30643.

(Ex. 4, p. 41) (Bates # BAH 000101).

Note that several pages of conditions and restrictions on assignment are set forth in Section 15 of the agreement (which are not all quoted here due to length). (Ex. 4, pp. 40-45) (Bates # BAH 000100-000105).

For example, the proposed assignment could not effectively grant a subfranchise:

> 15.11 Franchisee shall not have the right to grant a subfranchise.

(Ex. 4, p. 45) (Bates #000105).

For another example, the franchisee was required to provide the franchisor with an exact copy of a purchase offer and give it a right of first refusal:

> 15.6 If Franchisee shall at anytime determine to sell, in whole or in part, the Big Air Trampoline Business, Franchisee shall obtain a bona fide, executed, written offer ("**Purchase Offer**") for the Big Air Trampoline Business together with all real or personal property, leasehold improvements and other assets used by Franchisee in its Big Air Trampoline Business from a responsible, arms' length, and fully disclosed purchaser and shall submit an exact copy of such Purchase Offer to Franchisor. Franchisor will have a right of first refusal to purchase the Big Air Trampoline Business as provided in Section 16.

(Ex. 4, p. 41) (Bates # BAH 000101).

Making matters simple for purposes of this motion, Plaintiff admitted that the franchisor did not even participate in the negotiation and execution of the Contract, let alone give its prior written approval to the Contract:

> 22. As to Paragraph 41 of the Counterclaims, Plaintiff admits only that Big Air Franchising, LLC did not participate in the negotiation and execution of the Assignment and Assumption Agreement. Plaintiff denies the remaining allegations of Paragraph 41.

(Ex. 7, p. 6).

IV. Plaintiff Did Not Timely Respond to Requests For Admissions

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Plaintiff has additionally admitted that it has provided no services of any kind or anything of value that it owns to earn the monthly fees it has demanded under the Contract, by not timely responding to certain requests for admissions, under Rule 36, SCRCP:

> 1. Admit that BA Holdings, Inc. did not actually provide any management services for which it has demanded a monthly management fee of $5,000 in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.
>
> 2. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.
>
> 3. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

(Ex. 5, pp. 1-16). (*Infra* Procedural History, pp. 19-20).

V. Defendants Have Paid For Their Franchise And Refuse To Pay Plaintiff Extra

As mentioned at the outset, it is undisputed that Defendants have paid the franchisor, which has shared 50% of the franchise fees and royalties with Plaintiff in the form of sales commissions, but Defendants refuse to pay anything extra to Plaintiff under the Contract, and that is the issue that is now before this Court:

> 8. As to Paragraph 6 of the Counterclaims, Plaintiff admits only that Defendants entered into the Franchise Agreement with Big Air Franchising, LLC, and that agreement speaks for itself. Plaintiff denies all allegations of Paragraph 6 inconsistent with the Franchise Agreement and denies the remaining allegations of Paragraph 6.
>
> . . .

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> 10. As to Paragraph 8 of the Counterclaims, Plaintiff is informed and believes that Zay paid to Big Air Franchising, LLC the franchise fee required by the Franchise Agreement. Plaintiff's participation, if any, in the proceeds of the franchise fee paid to Big Air Franchising, LLC is governed by the Regional Director Agreement entered into by Plaintiff and Big Air Franchising, LLC, which speaks for itself. Plaintiff denies any allegations of Paragraph 8 inconsistent with the Franchise Agreement and the Regional Director Agreement and denies the remaining allegations of Paragraph 8.

(Ex. 7, p. 2-3).

PROCEDURAL HISTORY

The Contract was executed nearly three years ago, on February 18, 2021.

Plaintiff started demanding fees and making threats under the Contract on April 8, 2023.

Plaintiff e-filed the summons and complaint (and unredacted exhibits)[3] on May 9, 2023 and Defendants accepted service of the same on May 12, 2023.

Together with the summons and complaint, Plaintiff served discovery requests on Defendants, namely, requests for admissions under Rule 36, SCRCP, to which Defendants timely responded (within 45 days, by rule) on June 23, 2023.

Plaintiff made an initial production of documents, responding to Defendants' informal requests for documents relating to the Contract, on May 15, 2023.

Defendants timely filed and served their answer and counterclaims on June 8, 2023, to which Plaintiff filed its reply on August 7, 2023.

Defendant Zay N Limo, LLC served its first set of discovery requests on Plaintiff on June 8, 2023, including requests for admissions, interrogatories, and requests for production. Plaintiff

[3] The complaint was e-filed with unredacted exhibits publishing Defendants' social security numbers on the world wide web. This was a breach of duty under Rule 41.2(a)(1) and (c), SCRCP, as well as S.C. Code Sec. § 30-2-330, and it was contrary to the affirmation of compliance that must be checked to log in to the Court's e-filing system for every filing.

made a request for a 30-day extension to respond to that discovery, to which Defendant Zay N Limo, LLC consented. Plaintiff then timely provided its responses to the requests for admissions on August 7, 2023; however, disregarding the already extended deadline, Plaintiff untimely provided its responses to the interrogatories and requests for production on August 11, 2023. Defendant Zay N Limo, LLC then provided a 5-page discovery deficiency letter to Plaintiff on August 24, 2023, particularly detailing the improper use of boilerplate objections to most (24) of the requests, and asking that those responses be cured with actual answers and a proper production of documents in compliance with the rules of discovery. Plaintiff responded on September 11, 2023, stating:

> Good morning. In response to the attached, we're not going to answer the discovery the way you want it answered. If you feel that the rules compel us to do what you've asked in your letter, then you can file a motion to compel. You have satisfied the Rule 11 requirement in regard to consultation.

Defendant Zay N Limo, LLC responded:

> Respectfully, I do not understand how your client can take that position on the discovery, but thank you for letting me know.

Plaintiff replied:

> There are many things about this entire matter that I do not understand, but I suppose we're going to get to the bottom of it through a great deal of time and expense.

(E-mails dated September 11, 2023).

Meanwhile, Defendant Mohammad Farhan served his first set of discovery requests on Plaintiff on August 3, 2023 (via e-mail and U.S. mail), including requests for admissions, interrogatories, and requests for production. (Ex. 5, p. 1). Plaintiff acknowledged receipt via e-mail, but then did not timely respond to those discovery requests within 30 days or request an

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extension and no extension was ever agreed to by Defendants. (Ex. 5, pp. 11-16). 61 days after those discovery requests were served, on October 3, 2023, Plaintiff made an untimely attempt to answer the requests for admissions, while making no attempt to respond to the corresponding interrogatories and requests for production. (Ex. 5, pp. 1-16).

This, in sum, reflects a pattern of disregard by Plaintiff for its discovery deadlines and obligations.

Defendants filed this motion for partial summary judgment on August 14, 2023. The motion was placed on the roster, two days later, on August 16, 2023, to be heard on October 10, 2023. In the months leading up to this hearing, in addition to disregarding its own aforementioned obligations to respond to discovery, Plaintiff delayed in propounding any further discovery itself (before recently suggesting to Defendants that the upcoming hearing should be continued to allow for further discovery, which Defendants expect Plaintiff to suggest to the Court as well).

Plaintiff filed its motion for leave to amend its complaint on September 25, 2023.

Plaintiff filed its affidavit opposing partial summary judgment, two business days before the hearing, on October 6, 2023.

This motion for partial summary judgment, as well as Plaintiff's motion for leave to amend the complaint, are both scheduled to be heard by the Court on October 10, 2023.

LEGAL STANDARD

Leave to Amend

Under Rule 15(a), SCRCP, "leave shall be freely given when justice so requires and does not prejudice any other party." "Although leave to amend should generally be 'freely given,'. . . it may be denied where the proposed amendment would be futile." *See Jennings v. Jennings*, 389

S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012).

Partial Summary Judgment

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

The legal standard on a motion for partial summary judgment is set forth in Rule 56, SCRCP.

In pertinent part, Rule 56 (c), SCRCP, provides:

> …The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law…

Construing this rule, just this year, the Court of Appeals held:

> We now clarify that the 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." 403 S.C. at 477, 744 S.E.2d at 166.

The Kitchen Planners, LLC v. Friedman, 2020-001669 (Ct. App. August 23, 2023).

Further, under Rule 56(e), SCRCP:

> …an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Rule 56 (g), SCRCP, prohibits the improper use of affidavits to avoid summary judgment and unnecessarily protract litigation:

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> Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 56 (d), SCRCP, in pertinent part, allows for partial summary judgment:

> If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

"Courts and commentators have stated that a partial summary judgment under Rule 56[] is an appropriate procedure whereby a court can narrow the scope of trial." *Limehouse v. Resolution Trust Corp.*, 862 F.Supp. 97 (D.S.C. 1994). "Chief among the functions of summary judgment are those of avoiding long and expensive litigation productive of nothing and curbing the danger that threat of such litigation will be used to harass or to coerce settlement." *Id*.

LEGAL ARGUMENTS AND AUTHORITIES

After threatening and filing this lawsuit, Plaintiff conceded it has no case, as set forth above. (*Supra* Undisputed Facts, p. 8). The crux of the issue before the Court now is whether Plaintiff's newly created document can really clean up the Contract and give Plaintiff's new assignee a claim to litigate further, under the proposed amended complaint. As a matter of law, the answer is no. The proposed amended complaint should be denied as futile; or summarily disposed of in any case if leave to file the same is freely given.

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The Contract's express provisions – that it is the sole and entire agreement between the parties superseding all else; that there are no third-party beneficiaries; and that it cannot be unilaterally amended (*Supra* Undisputed Facts, pp. 7-8) – are controlling under black letter contract law:

- Black's Law Dictionary 880 (9th ed.2009) (defining an integration clause, also termed a merger clause, as "[a] contractual provision stating that the contract represents the parties' complete and final agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract").

- "A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement." *Wilson v. Landstrom*, 315 S.E.2d 130, 281 S.C. 260 (Ct. App. 1983) (citing Williston On Contracts § 633 (3d ed. 1961) and other authority).

- "The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing." *Wilson*, 315 S.E.2d 130, 281 S.C. 260 (citing *Armour Fertilizer Works v. Hyman*, 120 S.C. 375, 113 S.E. 330 (1922); *M'Dowall v. Beckly*, 9 S.C.L. (2 Mill) 265 (1818)).

- "[W]hen the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term to the agreement, even when the writing is silent as to the particular term sought to be established." *Davis v. Kb Home of South Carolina Inc.*, 394 S.C. 116, 713 S.E.2d 799 (S.C. App. 2011), *aff'd in part, vacated in part*, 429 S.C. 634, 842 S.E.2d 653 (2014) (citing *U.S. Leasing Corp.*, 294 S.C. at 318, 364 S.E.2d at 205; *Blackwell v. Faucett*, 117 S.C. 60, 65, 108 S.E. 295, 296 (1921) (noting if the writing on its face appears to express the whole agreement, parol evidence cannot be admitted to add another term thereto)).

- "The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009).

- "The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994).

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Without Defendants' agreement, Plaintiff simply cannot unilaterally amend the sole and entire agreement between it and Defendants in the middle of this litigation. (*Supra* Undisputed Facts, pp. 8-11).

More particularly, Plaintiff cannot rename the Contract, changing it from "Assignment and Assumption Agreement" to "Territory Release Agreement," or recharacterize the intent of the Contract, stating that Plaintiff "intended to release certain rights of Assignee" by entering into the Contract; whereas, in contrast, the word "release" appears nowhere in the Contract, which, as shown, instead purports to sell franchise rights and title owned by Plaintiff and convey and transfer Plaintiff's franchise duties and obligations to Defendants. (*Supra* Undisputed Facts, p. 9).

Likewise, Plaintiff cannot time-travel to make its new assignee the "substitute counterparty" to the Contract and the party that in "effect" made the representations and warranties therein "as of" the date they were made by Plaintiff. (*Supra* Undisputed Facts, p. 10). It is common sense and fundamental law that the assignee steps into the assignor's shoes as of the time of the assignment and cannot change who entered into the agreement in the first place, and who made representations and warranties therein and what was their meaning and effect when made. *See Singletary v. Aetna Cas. & Sur. Co.*, 447 S.E.2d 869, 316 S.C. 199 (Ct. App. 1994) ("An assignee of a chose in action can claim no higher rights than his assignor had *at the time* of the assignment.") (emphasis added).

Also, as a matter of the black letter contract law cited above, Plaintiff is expressly barred by the Contract from advancing any arguments based on parol evidence to try to controvert, rewrite, or add to the Contract. Plaintiff's newly created document and proposed amended complaint both try to do exactly that. (*Supra* Undisputed Facts, pp. 8-11). And so does the affidavit that Plaintiff filed in opposition to this motion, by Dustin Pelletier (which, moreover,

includes affirmations that are at odds with the agreements produced by Plaintiff that speak for themselves, among other affirmations that are not true and accurate).[4]

Notwithstanding, assuming *arguendo* that none of the above black letter contract law applies here, Plaintiff's new assignee would not have had the right to enter into the Contract with Defendants, to begin with, either. In sum, the two agreements with the franchisor produced by Plaintiff indisputably establish that neither Plaintiff, nor its new assignee, were in the position to double sell and charge extra fees to Defendants for the rights and duties to open a new franchise business in Anderson. Plaintiff only had the right to receive sales commissions equal to 50% of all franchise fees and royalties paid by Defendants to the franchisor (which it admittedly received). (*Supra* Undisputed Facts, pp. 11-12). Plaintiff's new assignee of the Contract only had the right, license, and duty to operate the "one," already existing franchise business in Greenville; and numerous conditions and restrictions prohibited and rendered "void" any attempted assignment of the same without the franchisor's "prior written approval" (which it admittedly did not receive). (*Supra* Undisputed Facts, pp. 13-16).

Notably, any issue that Plaintiff raises about BA Greenville, LLC amending its franchise agreement with Big Air Franchising, LLC is between them (not Defendants) and involves that franchise agreement (not the Contract at issue).

[4] Though not germane to this motion, to be sure, all evidence (including the e-mails and other communications between the parties) will support Defendants' counterclaims, involving federal and state franchise, business opportunity, and unfair trade practice laws, based on false and misleading representations and warranties, attended by disclosure and registration failures, violating the South Carolina Business Opportunities Act, S.C. Code Ann. §§ 39-57-20 *et seq*., the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq*., and the Federal Trade Commission's rule for franchise and sub-franchise sellers, 16 CFR § 436, or business opportunity sellers, 16 CFR § 437. (*Supra* note 1).

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Lastly, by not timely responding to certain requests for admissions, under Rule 36, SCRCP, Plaintiff has admitted that it has provided nothing of value to earn the monthly fees it has demanded under the Contract. (*Supra* Undisputed Facts, p. 17, Procedural History, pp. 19-20). *See* Rule 36, SCRCP ("The *matter is admitted* unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney...") (emphasis added); *Nexstar Media Grp., Inc. v. Davis Roofing Grp.*, LLC, 431 S.C. 593, 848 S.E.2d 597 (Ct. App. 2020) ("This court has affirmed the seriousness of the ramifications for a failure to respond to requests in a timely matter."); *Moore, Matter of*, 494 S.E.2d 804, 329 S.C. 294 (1997) ("Because of this failure to reply, the Request for Admissions were deemed admitted.").

CONCLUSION

This motion for partial summary judgment should be granted based on Plaintiff's own pleadings, admissions, agreements, and the four corners of the Contract and the documents incorporated by reference therein, as set forth above. Plaintiff alluded to the "great deal of time and expense" that it seems disposed to cause Defendants to waste in this litigation that it instigated. (*Supra* Procedural History, p. 19). But Plaintiff does not have a case against Defendants, and neither does its mid-litigation new assignee of the Contract. Wherefore, respectfully, partial summary judgment should be issued in favor of Defendants on Plaintiff's complaint, and Plaintiff's futile motion to amend should be denied, or alternatively if the amendment is allowed, partial summary judgment should be issued in favor of Defendants on Plaintiffs' complaint, as amended.

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Attorney for Defendants

Charleston, South Carolina
October 9, 2023

Exhibit 1

FINAL FOR EXECUTION

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ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") dated as of January 29, 2021 ("Effective Date"), is entered into by and between BA HOLDINGS, INC., a South Carolina corporation ("Assigning Party") and ZAY N LIMO, LLC, a South Carolina limited liability company ("Assuming Party").

RECITALS

Assigning Party desires to assign to Assuming Party all its rights, including exclusive marketing rights, to the Anderson County, South Carolina territory (the "Anderson Territory") owned by Assigning Party pursuant to its franchise agreement with ©Big Air Franchising, LLC (the "Franchise Agreement"). The Anderson Territory is more fully described as zip codes. See, Exhibit A.

Sharif Farhan and Mohammad Farhan are the sole members of Assuming Party's limited liability company (each an "Owner" and, together, "Owners").

Assuming Party desires to accept such assignment of rights and delegation of obligations for the Anderson Territory.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Anderson Territory.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties and obligations related to the Anderson Territory on and after the Effective Date.

1.3 Term. The term of this Agreement is equal to the length of time that Assuming Party operates a Big Air franchise in Anderson County, South Carolina pursuant to a franchise agreement with ©Big Air Franchising, LLC (the "Term").

2. Consideration.

2.1 For the entire time Term, Assuming Party agrees to pay the following to Assigning Party as consideration for the assignment of the Anderson Territory:

(a) A sum equal to 1% of the monthly gross sales of Assuming Party. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Gross sales will be calculated for the monthly immediately preceding the payment date.

(b) A sum equal to 5% of the monthly net profits of Assuming Party. Net profits will be calculated by taking the gross revenue and subtracting expenses. Expenses include normal operating expenses and excludes Owner personal expenses, salaries of Owners greater

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than $45,000 in the aggregate, new major equipment expenses greater than $5,000 per purchase, and bonuses, if any. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Net profits will be calculated for the monthly immediately preceding the payment date.

(c) A monthly management fee of Five Thousand and 00/100 ($5,000.00). The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term.

2.2 All payments will be made by WIRE TRANSFER WITH BACKUP PAYMENT delivered to PO BOX 171592, SPARTANBURG, SC 29301.

2.3 All late payments shall bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Assuming Party will also reimburse Assigning Party for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Assigning Party does not waive by the exercise of any rights hereunder), Assigning Party shall be entitled to suspend any of its obligations hereunder if the Assuming Party fails to pay any amount when due hereunder and such failure continues for fourteen (14) days following written notice thereof.

2.4 Audit Rights.

(a) Within seven (7) days after the end of each month during the Term, Assuming Party will provide Assigning Party with an accounting of its operating costs, expenses, sales, revenues, and related items from the immediately preceding month, along with any other information related thereto and reasonably requested by Assigning Party.

(b) Assigning Party shall have the right to examine and audit the books and records of Assuming Party upon three (3) days' advance written notice. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

3. Continuing Obligations.

3.1 Assuming Party.

(a) Assuming Party will accept, at its Anderson location ("Big Air Anderson"), coupons, gift cards, passes, annual passes, etc. that originated from Assigning Party's locations in Greenville and Spartanburg, South Carolina ("Big Air Greenville" and "Big Air Spartanburg," respectively).

(b) Assuming Party will offer the same prices at Big Air Anderson as are offered at Big Air Greenville and Big Air Spartanburg, including prices on daily specials, birthday packages, socks, etc.

3.2 Assigning Party.

(a) Assigning Party will accept, at Big Air Greenville and Big Air Spartanburg, coupons, gift cards, passes, annual passes, etc. that originated from Big Air Anderson.

(b) Assigning Party will provide Assuming Party with access to Assigning Party's marketing director to provide content and management of marketing for Big Air Anderson. However, Assuming Party will still be responsible for purchasing its own paid advertisements for Big Air Anderson.

(c) Assigning Party will provide Assuming Party with access to Assigning Party's maintenance director to manage and direct the maintenance tasks for Big Air Anderson. Assuming Party will still be responsible for providing employees to perform most maintenance tasks and for purchasing replacement parts and material at Big Air Anderson.

4. Representations and Warranties.

4.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the State of South Carolina.

(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.

(f) It is the sole legal and beneficial owner of the all the rights to the Anderson Territory on the Effective Date, free and clear of any lien, security interest, charge or encumbrance, except for the rights of ©Big Air Franchising, LLC to the Anderson Territory.

(g) The Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement.

(h) It has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date.

4.2 Assuming Party's Representations and Warranties. Assuming Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of South Carolina.

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(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of Assuming Party, enforceable against it in accordance with its terms.

(f) It has or will enter into a separate franchise agreement with ©Big Air Franchising, LLC on or before the Effective Date.

5. Indemnification; Insurance.

5.1 Assuming Party Indemnification. To the fullest extent permitted by applicable law and subject to the terms and conditions set out in Section 5.2, Assuming Party (as "Indemnifying Party") shall indemnify, defend, and hold harmless Assigning Party and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney's fees, that are incurred by Indemnified Party (collectively, "Losses") relating to, arising out of, or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise ("Claim") or any direct Claim against Indemnifying Party alleging:

(a) A material breach or non-fulfillment of any material representation, warranty, or covenant under this Agreement by Indemnifying Party or its representatives;

(b) any negligent or more culpable act or omission of Indemnifying Party or any of its representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;

(c) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party or its representatives (including any reckless or willful misconduct); or

(d) any failure by Indemnifying Party to materially comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.

5.2 Exceptions and Limitations on Indemnification. Despite anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from Indemnified Party's:

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(a) Sole negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) Bad faith failure to materially comply with any of its material obligations set out in this Agreement.

5.3 Assuming Party's Insurance. During the Term Assuming Party shall, at its own expense, maintain and carry in full force and effect commercial general liability insurance in a sum no less than $1,000,000 per occurrence with financially sound and reputable insurers, and upon Assigning Party's request, shall provide Assigning Party with a certificate of insurance evidencing the insurance coverage specified in this Section.

6. Events of Default; Remedies.

6.1 Assuming Party shall be in default under this Agreement if Assuming Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, Assuming Party does not cure such breach within fourteen (14) days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within fourteen (140 days or is not dismissed or vacated within forty-five (45) days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(g) Has its franchise agreement with ©Big Air Franchising, LLC terminated.

6.2 In addition to any other remedy it may have at law or equity, Assigning Party may terminate this Agreement upon Assuming Party's default.

7. COVID Mandatory Shutdowns.

7.1 The parties acknowledge and agree that as of the effective date of this Agreement, the COVID-19 global pandemic ("COVID Pandemic") is impacting various industries. Considering the foregoing, Assuming Party will use best efforts to plan and execute its operations in a manner to minimize the impacts of the COVID-19 Pandemic on Big Air Anderson and its performance under this Agreement.

7.2 In the event of a mandatory shutdown imposed on Big Air Anderson by city, county, state, or federal governmental authorities due to the COVID-19 Pandemic, the monthly management

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fee provided in Section 2.1(c) will be prorated for a period of time equal to the length of the mandatory shutdown. No other performance of either Party under this Agreement will be excused.

8. Miscellaneous.

8.1 Relationship of Parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

8.2 Further Assurances. On the other party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

8.3 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties contained in this Agreement survive the expiration or earlier termination of this Agreement.

8.4 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at its address set out below (or to such other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to Assigning Party:	PO BOX 171592 SPARTANBURG, SC 29301 E-mail: dustin@bigairusa.com Attention: Dustin Pelletier
Notice to Assuming Party:	23 SANDUSKY LANE SIMSPONVILLE, SC 29680 E-mail: MohammahFarhan45@yahoo.com Attention: Mohammad Farhan

8.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" is deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, schedules and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The

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schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

8.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

8.7 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.8 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

8.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each party to this Agreement.

8.10 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of the party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(c) None of the following is a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission or course of dealing between the parties.

8.11 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

8.12 No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.13 Choice of Law. This Agreement and exhibits and schedules attached hereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina, without regard to the conflict of laws provisions thereof

to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

8.14 Choice of Forum. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, and exhibits and schedules attached hereto, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud and statutory claims, in any forum other than in Greenville County, South Carolina and any appellate court from any thereof.

8.15 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS AND SCHEDULES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY ABOUT ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS OR SCHEDULES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.16 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BA HOLDINGS, INC.

By: _____ 2/18/21
Name: Dustin Pelletier
Title: President

ZAY N LIMO, LLC

By: _____ 2/18/21
Name: Mohammad Farhan
Title: Member

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Exhibit 2

EXHIBIT 3

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ASSIGNMENT OF CONTRACT

THIS ASSIGNMENT OF CONTRACT (this "Assignment") is made and entered into as of August 14, 2023, by and between BA Holdings, Inc. ("Assignor") and BA Greenville, LLC ("Assignee").

RECITALS

1. Assignor is the sole member of Assignee and holds 100% of the outstanding membership interests in Assignee.

2. Assignee entered into that certain franchise agreement with Big Air Franchising, LLC, dated October 7, 2017 (the "Franchise Agreement")

3. Assignor entered into that certain Regional Director Agreement with Big Air Franchising, LLC, dated April 1, 2018 (the "RD Agreement").

4. Assignor entered into that certain Assignment and Assumption Agreement with Zay N Limo, LLC ("Zay N Limo"), dated January 29, 2021 (the "Territory Release Agreement"), pursuant to which Assignor intended to release certain rights of Assignee, including exclusive marketing rights, to the Anderson County, South Carolina territory conferred to Assignee by Big Air Franchising, LLC under the Franchise Agreement.

5. Assignor inadvertently included itself as the contracting party in the Territory Release Agreement. Assignor now desires to assign to Assignee all its right, title, and interest in and to the Territory Release Agreement (the "Assigned Interests").

6. Assignee desires to become the substitute counterparty to the Territory Release Agreement with Zay N Limo and to assume and perform all the debts, liabilities, and obligations of Assignor in respect of the Assigned Interests under the Territory Release Agreement, and the other agreements, documents and materials that govern the rights and obligations of Assignor under the Territory Release Agreement, from and after the date hereof (collectively, the "Assumed Obligations").

7. Assignor now wishes to transfer and assign, beneficially and of record, all the Assigned Interests to Assignee, and Assignee wishes accepts such assignment and assumes all the Assumed Obligations.

AGREEMENT

For the payment of One Hundred and 00/100 Dollars ($100.00) from Assignee to Assignor and other good and valid consideration, the receipt of which is acknowledged, the parties agree as follows:

Section 1. Assignment of Assigned Interests. Assignor hereby transfers and assigns, beneficially and of record, to Assignee, and Assignee hereby accepts the assignment of all the Assigned Interests as set forth in the Territory Release Agreement, together with all rights,

powers, authority, duties, liabilities, and obligations appurtenant thereto and agrees to be bound by the Territory Release Agreement as the holder of the Assigned Interests.

Section 2. Assumption of Obligations. The Assignee hereby assumes the Assumed Obligations and agrees to pay, perform, and discharge such Assumed Obligations, whether known or unknown, absolute or contingent, determined or speculative or otherwise, from and after the date of execution of the effective date of the .

Section 3. Record and Beneficial Ownership. From and after the date hereof, Assignor shall cease to be a holder, beneficially and of record, of the Assigned Interests and, in its place and stead, Assignee shall be the holder, beneficially and of record, of the Assigned Interests. Assignor, from and after the date hereof, disclaims any and all interests in the Assigned Interests, whether of record or beneficially, and agrees and attests that all such interests are owned by Assignee.

Section 4. Representations and Warranties. Assignee hereby affirms that the representations and warranties set forth in the Territory Release Agreement are true and correct in all material respects as to Assignee on and as of the date hereof with the same effect as if made on the effective date of the Territory Release Agreement.

Section 6. Binding. This instrument shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina applicable to contracts made and to be wholly performed within such State, without reference to principles of conflicts of laws that would require the applicability of the laws of any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

BA HOLDINGS, INC.

Dustin Pelletier
President

BA GREENVILLE, LLC

Dustin Pelletier
Member

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Exhibit 3

BIG AIR FRANCHISING, LLC

REGIONAL DIRECTOR AGREEMENT

BA HOLDINGS INC
Regional Director

April 1, 2018
Date

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EXHIBITS:

Attachment I	Rider to Regional Director Agreement
Attachment I-A	Calculation Of Initial Regional Director Fee
Attachment II	Statement of Ownership
Attachment III	Guaranty & Assumption of Regional Director's Obligations
Attachment IV	Collateral Assignment of Telephone Numbers, Telephone Listings and Internet Addresses
Attachment V	Non-Disclosure and Non-Competition Agreement
Attachment VI	Form Acknowledgement of Termination and Release Agreement

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REGIONAL DIRECTOR AGREEMENT

This Regional Director Agreement ("**Agreement**") is entered into and made effective as of the 1st day of April, 2018, by and between **Big Air Franchising, LLC,** a California limited liability company, with a principal place of business at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and BA Holding INC, located at P.O. Box 171592, Spartanburg, SC 29301 ("**Regional Director**").

WHEREAS, Franchisor has developed a system using the trademark "BIG AIR TRAMPOLINE PARK and LOGO™" and related trade names and trademarks ("**Marks**") for the operation of a business offering an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related products ("**Big Air Trampoline Business**"); and

WHEREAS, the franchise is operated under a business format per a unique system, including our valuable know-how, information, trade secrets, training methods, Operations Manual, standards, designs, methods of trademark usage, copyrights, sources and specifications, confidential electronic and other communications, methods of Internet usage, marketing programs, and research and development connected with the operation and promotion of Big Air Trampoline Businesses ("**System**"); and

WHEREAS, Franchisor has also developed a system for Regional Directors to market and provide site selection and support services to franchisees operating Big Air Trampoline Businesses ("**RD System**"). The RD System includes proprietary operating and marketing procedures, business format, specifications for equipment and supplies, procedures, confidential information and trade secrets;

WHEREAS, Regional Director desires to act as a special agent to Franchisor within a certain geographic area, enabling Regional Director to market franchises for the operation of a Big Air Trampoline Business for Franchisor and to develop, support and provide services to Big Air Trampoline Businesses within such geographical area, under the terms and conditions contained in this Agreement ("**RD Business**"); and

WHEREAS, Franchisor is willing to grant Regional Director the right to serve as a regional director, enabling Regional Director to market franchises for, and to provide site selection and support services to franchisees operating Big Air Trampoline Businesses within a certain geographical area, under terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein contained, and the acts to be performed by the respective parties, the parties hereto agree as follows:

1. DEFINITIONS

1.1. Assignment. "**Assignment**" shall mean an assignment or other transfer to a Franchisee of all of Regional Director's rights, title and interest in and to a Prime Lease.

1.2. Authorized Third-Party Product. "**Authorized Third-Party Product**" means any product authorized by Franchisor to be sold by a Big Air Trampoline Business that is not proprietary to or trademarked by Franchisor or an affiliate of Franchisor.

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

1.4. Commissions. "**Commissions**" means all payments of any kind due to Regional Director under the terms of this Agreement.

1.5. Development Quota. "**Development Quota**" means the development quota described in Attachment I.

1.6. Effective Date. "**Effective Date**" shall be the date this Agreement is executed by Franchisor as evidenced by dating and signing by an officer of Franchisor, regardless of the date first written above.

1.7. Franchise Agreement. "**Franchise Agreement**" means the forms of agreement (including, without limitation, franchise agreement and any exhibits, riders, collateral assignments of lease or sublease, and personal guarantees used in connection therewith) used by Franchisor from time to time in the granting of franchises for the ownership and operation of Big Air Trampoline Businesses. Regional Director acknowledges that Regional Director will use Franchisor's then-current form of Franchise Agreement and that Franchisor may, from time to time, modify or amend, in any respect, the form of Franchise Agreement and related agreements, including, without limitation, modifying fees, customarily used in granting Big Air Trampoline Business franchises.

1.8. Franchisee. "**Franchisee**" means any person, corporation, partnership or other entity who has entered into a Franchise Agreement with Franchisor to operate a Big Air Trampoline Business in the RD Development Area.

1.9. Initial Franchise Fee. "**Initial Franchise Fee**" means that amount paid by a Franchisee to purchase the rights to operate a Big Air Trampoline Business, as more specifically identified in ITEM 5 of Franchisor's Store Disclosure Document. The Initial Franchise Fee does not include any amounts paid by Franchisee to Franchisor for equipment, inventory, or other expense items.

1.10. Prime Lease and Premises. "**Prime Lease**" shall mean a lease of commercial space ("**Premises**") entered into by Regional Director, as tenant, for Premises located within the RD Development Area.

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1.11. Products. "**Products**" means products related to the Services, including birthday cakes and favors, other food items, and Big Air Trampoline branded apparel to be worn by customers.

1.12. RD Manual. "**RD Manual**" means the regional director manual, technical bulletins or other written materials containing uniform procedures for the operation of an RD Business and the standards and specifications for franchise sales and promotional materials and the System.

1.13. RD Development Area. "**RD Development Area**" is the geographical area described in the attached Attachment I.

1.14. Sales Quarter. "**Sales Quarter**" means each calendar quarter during the Initial Term of this Agreement as set out in Attachment I.

1.15. Services. The "**Services**" include providing indoor activities for families, children, teens and young adults including birthday parties and other celebrations, open play sessions, and other activities for children as required by Franchisor.

1.16. System. "**System**" means the Big Air Trampoline Business System and the RD System.

1.17. Sublease. "**Sublease**" shall mean a lease entered into between Regional Director, as sublessor, and a Franchisee as subtenant, for all or any portion of the Premises leased pursuant to a Prime Lease.

2. SCOPE OF APPOINTMENT

2.1. Appointment of Regional Director/Scope of Operations. Franchisor appoints Regional Director, and Regional Director agrees to perform its obligations, as a special agent of Franchisor in accordance with the terms and conditions of this Agreement, and only within the RD Development Area, to: (1) solicit prospective Franchisees located in the RD Development Area for Big Air Trampoline Businesses ("**Sales Services**"), as described in Section 8.3; (2) perform certain site acquisition and development services described in Section 8.4 ("**Site Services**"); and (3) to render sales and marketing support and other services ("**Support Services**") to Big Air Trampoline Businesses located within the RD Development Area, as those services are described in Section 8.5. Franchisor may, in its sole discretion, grant Regional Director the nonexclusive right to serve as landlord or sublessor to Franchisees in the RD Development Area. In the event that Regional Director requests such right and Franchisor consents, this Agreement shall govern the terms and conditions of such grant.

2.2. Rights and Limitations to RD Development Area. During this Agreement's Initial Term and any Interim Period (as such terms are defined in Section 15.5), Franchisor will not establish and license any other regional director to act as special agent to perform Sales Services or to thereafter render Site Services or Support Services to Franchisees within the RD Development Area; provided, however, that Franchisor shall retain such rights in the RD Development Area as described in Section 2.3.

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2.3. Reservation of Rights to Franchisor. Regional Director acknowledges that the rights granted hereunder are nonexclusive and Franchisor (on behalf of itself, its affiliates and designees), retains the right (without compensation or obligation whatsoever to Regional Director unless specifically set forth herein):

(a) To use, and to license others to use, the Marks and System for the operation of other RD Businesses at any location outside of the RD Development Area, wherever located;

(b) To solicit prospective Franchisees and to grant other persons franchises to operate Big Air Trampoline Businesses at such locations, within and outside of the RD Development Area, and on such terms and conditions as Franchisor deems appropriate and to own and operate such Big Air Trampoline Businesses within the RD Development Area (subject to its obligation to compensate Regional Director, as set forth in Section 5.2);

(c) Subject to Section 2.5, to use and license the use of alternative proprietary marks or methods in connection with the operation of businesses featuring trampolines, foam pits, rock climbing walls, clothes and other accessories bearing the Marks and related services at any location, which businesses may be the same as, or similar to, or different from Big Air Trampoline Businesses;

(d) To use the Marks and System in connection with some or all of the same Products and Services offered by Big Air Trampoline Businesses, other Services and Products, promotional and marketing efforts or related items, including the Internet, at any location (subject to its obligation to compensate Regional Director, as set forth in Section 5.6) which businesses may be the same as, similar to, or different from Big Air Trampoline Businesses. Franchisor exclusively reserves the Internet as a channel of distribution and Regional Director may not independently market on the Internet, conduct e-commerce, or engage in social networking using the Marks without Franchisor's advanced written consent;

(e) To acquire, merge with, or be acquired by any other business, including a business that competes with Big Air Trampoline Businesses or the RD Business; and

(f) To implement multi-area marketing programs which allow Franchisor or others (including designated third-party distributors) to market Products to customers anywhere ("**National Accounts**"). Franchisor also reserves the right to issue mandatory policies to coordinate such multi-area marketing programs.

3. FRANCHISE SALES PROCEDURES

3.1. Development Quota. Regional Director agrees to comply with the development quota set forth in **Attachment I** to this Agreement ("**Development Quota**") with respect to each sales quarter ("**Sales Quarter**"). The determination as to whether Regional Director has met the Development Quota for any Sales Quarter under this Agreement shall be based on the total number of Big Air Trampoline Businesses purchased and paid for by Franchisees within the RD Development Area by the end of a Sales Quarter. Regional Director agrees that, during the Initial Term of this Agreement and any Interim Period, Regional Director will at all times faithfully,

honestly, and diligently perform its obligations hereunder and will continuously exert its best efforts to promote and enhance the development and operation of Big Air Trampoline Businesses within the RD Development Area.

3.2. Franchise Registration and Disclosure. Neither Regional Director, nor any employee or representative of Regional Director, shall solicit prospective Franchisees of Big Air Trampoline Businesses until Franchisor has registered its current Uniform Franchise Disclosure Document for Big Air Trampoline Businesses ("**Store Disclosure Document**") in applicable jurisdictions in the RD Development Area and has provided Regional Director with the requisite documents, or at any time when Franchisor notifies Regional Director that its registration is not then in effect or its documents are not then in compliance with applicable law. If at any time during this Agreement, Franchisor shall, for more than ninety (90) days, fail to register a current Store Disclosure Document for the RD Development Area, then the Development Quota shall be suspended until the Store Disclosure Document is properly registered. If Regional Director's activities pursuant to this Agreement require the preparation, amendment, registration or filing of information or any disclosure or other documents, all requisite Disclosure Documents, ancillary documents and registration applications shall be prepared and filed by Franchisor or its designee, and registration secured before Regional Director may solicit prospective Franchisees of Big Air Trampoline Businesses in the RD Development Area. Regional Director will reimburse Franchisor within twenty (20) days for the cost for certain business exemption filing expenses and registration expenses. Regional Director shall at its expense:

(a) Prepare and forward to Franchisor verified financial statements of Regional Director in such form and for such periods as shall be designated by Franchisor, including audited financial statements if necessary and appropriate to comply with applicable federal or state disclosure, filing or other legal requirements;

(b) Promptly provide all information reasonably required by Franchisor to prepare all requisite Disclosure Documents and ancillary documents for the offering of franchises throughout the RD Development Area; and

(c) Execute all documents required by Franchisor for the purpose of registering Regional Director and Franchisor to offer franchises throughout the RD Development Area.

Regional Director agrees to review all information pertaining to Regional Director prepared to comply with legal requirements for selling franchises in the RD Development Area and verify its accuracy if so requested by Franchisor. Regional Director acknowledges that Franchisor, its affiliates or its assignees, shall not be liable to Regional Director for any errors, omissions or delays that may occur in the preparation or filing of such materials.

Regional Director further acknowledges and agrees that Regional Director may be deemed to be a "subfranchisor" under the laws of some states and, as a result, may be required to prepare, maintain, and register its own franchise disclosure document. In such event, Regional Director agrees that it will use Franchisor's franchise disclosure document as the basis for Regional Director's franchise disclosure document and will prepare and maintain such franchise disclosure document at Regional Director's sole cost and expense. Franchisor shall at all time have the right to approve the form and content of Regional Director's franchise disclosure document, and

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Regional Director shall make any changes or updates required by Franchisor within five business days of receiving notice from Franchisor.

3.3. Advertising, Recruiting and Screening. Regional Director shall be responsible for advertising for, recruiting, screening and reviewing prospects for Big Air Trampoline Business franchises within the RD Development Area. Regional Director shall provide prospective Franchisees with written information, approved by Franchisor, regarding a Big Air Trampoline Business franchise, or via the telephone, face-to-face meetings or by visiting other Big Air Trampoline Businesses within the RD Development Area. Regional Director shall submit a qualified applicant ("**Applicant**") for a Big Air Trampoline Business franchise to Franchisor for approval. Regional Director further agrees that all Applicants submitted to Franchisor by Regional Director, if an individual, or the Manager of the Applicant, if the Applicant is not an individual, shall be individuals who are of good character, have adequate financial resources and meet Franchisor's criteria for Franchisees or Managers of Franchisees. ("**Manager**" is defined in Section 12.4 of the Franchise Agreement). An application for a Big Air Trampoline Business franchise received by Regional Director shall be submitted to Franchisor with all information with respect to the Applicant, the Manager of the Applicant, if applicable, the Applicant's proposed franchise location, if known, and all other information customarily required by Franchisor concerning Applicants, including such financial statements and other information as Franchisor may reasonably require. Regional Director shall assist the Applicant in the preparation of such financial reports and other information. Franchisor shall have the right to revise the information required to be submitted by Regional Director by updating the RD Manual from time to time.

3.4. Franchisor's Approval of Prospective Franchisees. By delivery of written notice to Regional Director, Franchisor shall approve or disapprove Applicants to become Franchisees. Franchisor agrees to exert reasonable efforts to deliver such notification to Regional Director within ten (10) business days after the later of: (a) receipt by Franchisor of a complete application, financial statement and other materials regarding the Applicant requested by Franchisor; or (b) the personal interview of Applicant by Franchisor, if any. Franchisor shall determine whether the Applicant possesses sufficient financial and managerial capability and has satisfied the other criteria then utilized by Franchisor in the granting of franchises. Franchisor may refuse to grant a franchise to an Applicant for any reason or no reason at all in Franchisor's sole discretion. The grant of the franchise shall be affected only upon and after the full execution of the then-current Franchise Agreement by Franchisor and the Applicant.

4. PAYMENTS TO FRANCHISOR

4.1. Initial Regional Director Fee. The initial regional director fee ("**Initial Regional Director Fee**") shall be payable to Franchisor by Regional Director in consideration of Regional Director's appointment as exclusive Regional Director within the RD Development Area and shall be calculated by multiplying the number of people living in the RD Development Area, as determined by Franchisor in Franchisor's sole discretion, by $.05 and rounding to the nearest ten-thousand-dollar increment. The Initial Regional Director Fee is set forth in the attached **Attachment I**. Initial Regional Director Fee is payable upon execution of this Agreement. The Initial Regional Director Fee is fully earned by Franchisor upon receipt and is nonrefundable once paid. Regional Director acknowledges that the Initial Regional Director Fee does not include payment of any Initial Franchise Fees for individual Big Air Trampoline Businesses.

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4.2. Franchise Development Fund. Regional Director shall contribute to a franchise development fund ("**Franchise Development Fund**"). The Franchise Development Fund contribution will be collected as a flat fee, which is initially set at one thousand five hundred dollars ($1,500.00), per franchise sale made by Regional Director and will be paid at the time Franchisor receives the Initial Franchise Fee, and shall be deposited into the Franchise Development Fund directly by Franchisor. This contribution will be used by Franchisor for one or more regional or national marketing campaigns to attract prospective franchisees

5. COMMISSIONS PAYABLE TO REGIONAL DIRECTOR

5.1. Sales Service Commissions and Conditions of Payment. During the Initial Term of this Agreement and any Interim Period, Regional Director shall be paid a commission, as set forth in this Section, based on a percentage of Initial Franchise Fees paid by each Franchisee for the purchase of a franchise for a Big Air Trampoline Business to be located within the RD Development Area ("**Sales Service Commissions**"). Payment is conditioned upon the satisfactory fulfillment of the following conditions ("**Franchise Sales Conditions**"):

(a) Franchisee executes a Franchise Agreement with Franchisor and an Initial Franchise Fee has been paid in full and actually received by Franchisor. Franchisor shall not be deemed to have received any fees that have been deferred as a condition of registration in a state, or paid into escrow or a state-imposed impound account, if applicable, until such fees have actually been remitted to Franchisor;

(b) The sale for which the Initial Franchise Fee has been paid is not a resale of any existing Big Air Trampoline Business, or any interest therein;

(c) The original franchise inquiry was the direct result of Regional Director's marketing and promotional efforts in the Regional Director Area and the lead did not originate from a third-party broker or from the direct marketing or promotional efforts of Franchisor; and

(d) Regional Director has complied with all of its other obligations under this Agreement with respect to such sale and verified the same to Franchisor, in writing, in a form prescribed by Franchisor.

5.2. Sales Service Commission Payments. The Sales Service Commission shall depend upon the source of the franchise lead. If the lead is generated solely and independently by Regional Director, then the Sales Services Commission shall be an amount equal to fifty percent (50%) of the Initial Franchise Fees paid to Franchisor. If the lead is generated by any other source, then Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. If a sales lead is generated solely and independently by Regional Director prior to Regional Director completing the Initial Regional Director Training Program and the Franchisee Training Program and/or complying with all other obligations required to be met prior to opening the RD Business, Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. Franchisor retains the sole right to determine the source of the

lead, and Franchisor's determination shall be final. Regional Director will also be required to contribute to the Franchise Development Fund in accordance with Section 4.2. The Sales Service Commissions will be payable to Regional Director within twenty (20) days after the Franchise Sales Conditions have been fulfilled, provided that the Initial Franchise Fees have not been deposited into an escrow or impound account, in which case, the Sales Service Commission will be payable to Regional Director within ten (10) days after Franchisor has received funds out of escrow, from the impound account or received funds that were previously deferred. Regional Director shall not receive any Sales Service Commission for franchises sold on or before the date of this Agreement or for Big Air Trampoline Businesses owned and operated by Franchisor, its affiliates or designees ("**Company Businesses**") in the RD Development Area, if any.

5.3. Commissions on Transfers of Franchises. If, during the Initial Term of the Agreement or any Interim Period, an open and operating Big Air Trampoline Business located within the RD Development Area or an interest therein is resold to a different Franchisee and the sale results in the execution of a Franchise Agreement and the payment of a Transfer Fee (as defined in the Franchise Agreement), then Regional Director will be paid a commission in an amount equal to fifty percent (50%) of the Transfer Fee paid and actually received by Franchisor, payable within twenty (20) days after the completion of the transfer, provided that Franchisor shall not be deemed to have received any Transfer Fee paid into escrow, if applicable, until such Transfer Fee has actually been remitted to Franchisor. Franchisor reserves the right to waive some or all of the Transfer Fee due for any particular transfer in Franchisor's sole discretion, and Regional Director shall not be entitled to receive any commission on any portion of a Transfer Fee waived by Franchisor.

5.4. Commission on Royalty Payments. Franchisor shall pay to Regional Director, within twenty (20) days of the end of the month, fifty percent (50%) of all royalty payments ("**Royalties**") actually received from each Franchisee in the RD Development Area during the previous month ("**Royalty Commission**"). Regional Director shall be entitled to receive Royalty Commissions each month unless Regional Director has failed to perform, in any material respect, the services described in Section 8 during the prior month including, but not limited to, the conducting of periodic inspections and the filing of written reports as required by Section 8.6.

5.5. Commissions on Product. Franchisor shall pay to Regional Director, within twenty (20) days of the end of each month, an amount that shall be calculated as set forth in the attached **Attachment I** for Products ("**Product Commissions**"). Regional Director shall be entitled to receive Product Commissions unless Regional Director has failed to perform, in any material respect, the services described in Section 8 during the prior month including, but not limited to, the conducting of periodic inspections and the filing of written reports as required by Section 8.6. Regional Director shall be entitled to receive Product Commissions only on Product sales made by Franchisees in the RD Development Area.

5.6. No Commissions Before Training and Opening the RD Business. Regional Director shall not be entitled to share in or receive any commissions described in this Section 5 prior to the time Regional Director has completed the RD Initial Training Program, the Franchisee Training Program, opens the RD Business and commences full performance of the services set forth in Section 8.

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Exhibit 4

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BIG AIR FRANCHISING, LLC

EXHIBIT B

FRANCHISE AGREEMENT

Franchise #: 1703

Franchisee: BA Greenville, LLC

Date: October 7, 2017

Territory: 29658, 29693, 29691, 29686, 29675, 29696, 29643, 29676, 29679, 29672, 29678, 29665, 29689, 29685, 29633, 29632, 29682, 29631, 29634, 29630, 29656, 29667, 29625, 29626, 29677, 29684, 29670, 29671, 29657, 29622, 29623, 29659, 29655, 29635, 29624, 29628, 29621, 29641, 29640, 29642, 29697, 29661, 29683, 29673, 29617, 29627, 29611, 29613, 29669, 29620, 29639, 29690, 29614, 29654, 29692, 29370, 29601, 29638 ,29644, 29384, 29616, 29607, 29351, 29602, 29687, 29647, 29360, 29603, 29662, 29648, 29325, 29604, 29680, 29606, 29615, 29646, 29608, 29650, 29610, 29612, 29695, 29645, 29609, 29651, 29605, 29652, 29332, 29688, 29653, 29636, 29681, 29649

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ATTACHMENTS:

A. Territory, Initial Franchise Fee, and Training Fee
B. Guaranty and Assumption of Franchisee's Obligations
C. Statement of Ownership
D. EFT Authorization
E. Collateral Assignment of Telephone Numbers, Telephone Listings and Internet Addresses

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FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made this 7th day of October, 2017 day of, by and between **BIG AIR FRANCHISING, LLC**, a California limited liability company, located at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and **BA Greenville, LLC** located at 11 Ridgewood Drive, Greenville, SC 29615 ("**Franchisee**").

RECITALS

WHEREAS, Franchisor has developed a comprehensive system for the operation of a business offering an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related Products ("**Big Air Trampoline Business**").

WHEREAS, the Big Air Trampoline Businesses are operated under a business format per a unique system with high standards of service, including valuable know-how, information, Trade Secrets, Confidential Information, training methods, standards, designs, methods of trademark usage, copyrights, sources and specifications, confidential electronic and other communications, methods of Internet usage, and research and development ("**System**").

WHEREAS, the distinguishing characteristics of the System include the trademark "BIG AIR TRAMPOLINE PARK and LOGO™" and other trademarks and trade names, confidential operating procedures, confidential Operations Manual, standards and specifications for equipment, services and products, methods of service, management and marketing programs and sales techniques and strategies. All of these distinguishing characteristics may be changed, improved, and further developed by Franchisor from time to time. They are Franchisor's Confidential Information and Trade Secrets and are designated by and identified with the Marks described in this Agreement.

WHEREAS, Franchisor continues to use, develop and control the use of the Marks in order to identify for the public the source of services and products marketed under the System, and which represent the System's high standards of quality, service and customer satisfaction.

WHEREAS, Franchisee acknowledges the benefits to be derived from being identified with the System, and also recognizes the value of the Marks and the continued uniformity of image to Franchisee, Franchisor, and other franchisees of Franchisor.

WHEREAS, Franchisee acknowledges the importance to the System of Franchisor's high and uniform standards of quality, service and customer satisfaction, and further recognizes the necessity of opening and operating a Big Air Trampoline Business in conformity with the System.

WHEREAS, Franchisee recognizes that in order to enhance the value of the System and goodwill associated with it, this Agreement places detailed obligations on Franchisee, including strict adherence to Franchisor's reasonable present and future requirements regarding the types of products sold, services offered, advertising used, operational techniques, marketing and sales strategies and related matters.

WHEREAS, Franchisee is aware of the foregoing and is desirous of obtaining the right to use the System and in association therewith, the right to use the Marks, and wishes to be assisted, trained, and franchised to operate a Big Air Trampoline Business pursuant to the provisions and within the Territory specified in this Agreement, subject to the terms and conditions contained in this Agreement.

The parties therefore agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

(a) "**Agreement**" - means this agreement, attachments, and all instruments in amendment hereof.

(b) "**Affiliate**" - means any person or entity that controls, is controlled by, or is in common control with, Franchisor or Franchisee.

(c) "**Big Air Trampoline Business**" - means the business operations conducted or to be conducted by Franchisee consisting of selling and providing an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related Products using Franchisor's System and in association with the Marks.

(d) "**Big Air Trampoline Facility**" means the retail store front, commercial or industrial facility, or other approved location from which Franchisee sells Products and provides Services in connection with the Big Air Trampoline Business.

(e) "**Confidential Information**" - means all knowledge, know-how, standards, methods and procedures related to the establishment and operation of the System and includes all records pertaining to customers, suppliers, and other service providers of, and/or related in any way to, Franchisee's Big Air Trampoline Business including, without limitation, all databases (whether in print, electronic or other form), all names, addresses, phone numbers, e-mail addresses, customer purchase records, manuals, promotional and marketing materials, marketing strategies and any other data which Franchisor designates as confidential.

(f) "**Construction Oversight Services**" – means all services provided by Franchisor relating to the review and approval of construction plans for the Big Air Trampoline Facility and prior to the date Franchisee is authorized to open the Big Air Trampoline Facility for business. The Construction Oversight Services are more fully defined in the Operations Manual and may be modified periodically by Franchisor in Franchisor's sole discretion.

(g) "**Convention Fee**" means the fee Franchisee pays Franchisor to attend conferences, meetings, seminars and/or workshops.

(h) "**Franchisor's System**" or "**System**" - means the standards, systems, concepts, identifications, methods, and procedures developed or used by Franchisor, or which may hereafter be developed or used by Franchisor, for the sales and marketing of Franchisor's Services and Products.

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(i) "**Franchise**" - shall mean the business operations conducted or to be conducted using Franchisor's System and in association therewith the Marks.

(j) "**Gross Revenues**" - means the total of all receipts derived from all sales of products and services at your Big Air Trampoline Business, including sales made away from your Big Air Trampoline Facility, insurance claims for lost profits to the extent a claim is paid by the insurer, and all other products and services sold or performed by or for you or your Big Air Trampoline Business or by means of the business conducted under this Agreement, whether the receipts are evidenced by cash, credit, checks, gift certificates, scrip, coupons, services, property or other means of exchange. Gross Revenues do not include:

(i) the amount of any tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount of any such tax is shown separately and in fact paid by Franchisee to the appropriate governmental authority; and

(ii) all customer refunds, valid discounts and coupons, and credits made by the Big Air Trampoline Business (exclusions will not include any reductions for credit card user fees, returned checks or reserves for bad credit or doubtful accounts).

Gross Revenues shall be deemed received by Franchisee at the time the Services or Products from which they were derived are delivered or rendered or at the time the relevant sale takes place, whichever occurs first, regardless of whether final payment (e.g., collection on a customer's personal check) actually has been received by Franchisee. Gross Revenues consisting of property, Products or Services shall be valued at the retail prices applicable and in effect at the time that they are received.

(k) "**Lease**" - means any agreement (whether oral or written) under which the right to occupy a Big Air Trampoline Facility has been obtained, and any amendment made thereto from time to time, including without limitation, any offer to lease, license or lease agreement. Franchisee acknowledges and agrees that before any Lease will be accepted by Franchisor, the Lease must incorporate the terms of the Lease Addendum attached to this Agreement as **Attachment F**.

(l) "**Marks**" - shall mean the trademarks "BIG AIR TRAMPOLINE PARK and LOGO™" to the extent of Franchisor's rights to same, together with such other trade names, trademarks, symbols, logos, distinctive names, service marks, certification marks, logo designs, insignia or otherwise which may be designated by Franchisor from time to time as part of the System for use by Franchisees, and not thereafter withdrawn.

(m) "**Operations Manual**" - means, but is not limited to, collectively, all directives, books, pamphlets, bulletins, memoranda, order forms, packing slips, invoices, letters, e-mail, Internet or intranet data, or other publications, documents, software programs, video tapes, transmittances or communications, in whatever form (including electronic form) prepared by or on behalf of Franchisor for use by franchisees generally or for Franchisee in particular, setting forth information, advice and standards, requirements, marketing information and procedures,

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operating procedures, instructions or policies relating to the operation of the Big Air Trampoline Business or the operation of franchises, as same may be added to, deleted or otherwise amended by Franchisor from time to time. The form and content of the Operations Manual maintained by Franchisor shall prevail in the event of any dispute regarding the form of or content of the Operations Manual between Franchisor and Franchisee.

(n) "**Products**" - means all supplies, material, equipment, and ancillary items sold, leased, prepared or otherwise dealt with in connection with the Big Air Trampoline Business and associated with the Marks.

(o) "**Site Selection Assistance**" – means all services provided by Franchisor relating to the selection and authorization of Franchisee's Big Air Trampoline Facility. Franchisor's Site Selection Assistance is more fully defined in the Operations Manual, and Franchisor has the right to modify the site selection services offered by Franchisor periodically in Franchisor's discretion.

(p) "**Services**" - means the sale and provision of indoor trampoline recreation and party center services featuring trampolines, foam pits, rock climbing walls and other elements, conducted or otherwise dealt with in connection with the Big Air Trampoline Business and associated with the Marks.

(q) "**Trade Secret(s)**" shall mean information, including any formula, pattern, compilation, program, device, method, training technique or process related to the System that both derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1. COVENANTS, REPRESENTATIONS, AND WARRANTIES OF FRANCHISEE

Franchisee covenants, represents and warrants as follows and acknowledges that Franchisor is relying upon such covenants, representations and warranties in making its decision to enter into this Agreement.

1.1 Franchisee acknowledges that it has received, has had ample time to read, and has read this Agreement, and all related agreements with Franchisor. Franchisee acknowledges that Franchisor has advised it to obtain independent legal and accounting advice with respect to this Agreement and the transactions arising out of this Agreement. Franchisee further acknowledges that it has had an adequate opportunity to be advised by legal, accounting and other professional advisors of its own choosing regarding all pertinent aspects of the Big Air Trampoline Business, Franchisor and this Agreement.

1.2 Franchisee has, or has made firm arrangements to acquire funds to commence, open and operate the Big Air Trampoline Business and it is financially and otherwise able to accept the risks attendant upon entering into this Agreement.

1.3 All statements made by Franchisee in writing in connection with its application for this franchise were, to the best of its knowledge, true when made and continue to be true as of the date of this Agreement.

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1.4 There are no material financial obligations of Franchisee, whether actual or contingent, which are outstanding as of the date of this Agreement other than those disclosed to Franchisor by Franchisee in writing.

1.5 Franchisee is not a party to nor subject to any court or administrative order or action of any governmental authority which would limit or interfere in any way with the performance by Franchisee of its obligation hereunder.

1.6 Franchisee is not a party to any litigation or legal proceedings other than those which have been disclosed to Franchisor by Franchisee in writing.

1.7 Franchisee represents that it is not a party to nor subject to agreements that might conflict with the terms of this Agreement and agrees not to enter into any conflicting agreements during the Term or any Successor Terms.

1.8 Franchisee agrees and acknowledges that it has not been induced to enter into this Agreement in reliance upon, nor as a result of, any statements, representations, warranties, conditions, covenants, promises or inducements, whatsoever, whether oral or written, and whether directly related to the contents hereof or collateral thereto, made by Franchisor, its officers, directors, agents, employees or contractors except as provided herein. Franchisee acknowledges that the Franchise has been granted in reliance upon the information supplied to Franchisor in Franchisee's application for a Franchise.

1.9 Franchisee and its owners agree to comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its owners certify, represent, and warrant that none of their property or interests is subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its owners are not otherwise in violation of any of the Anti-Terrorism Laws.

(a) Franchisee and its owners certify that none of them, their respective employees, or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (which can be accessed at *http://www.treasury.gov/offices/enforcement/ofac/legal/eo/13224.pdf*). Franchisee agrees not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex.

(b) Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee, its owners, their employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.

(c) Franchisee is solely responsible for ascertaining what actions it must take to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that its indemnification responsibilities set forth in this Agreement pertain to its obligations under this Section 1.9.

(d) Any misrepresentation under this Section or any violation of the Anti-Terrorism Laws by Franchisee, its owners, agents, its employees shall constitute

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grounds for immediate termination of this Agreement and any other agreement Franchisee has entered with Franchisor or any of Franchisor's affiliates.

(e) "**Anti-Terrorism Laws**" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control and any government agency outside the U.S.) addressing or in any way relating to terrorist acts and/or acts of war.

2. GRANT OF LICENSE.

2.1 Subject to all the terms and conditions of this Agreement, Franchisor hereby grants to Franchisee, and Franchisee accepts, for the term of this Agreement, the right and license ("**License**") to:

(a) Operate one Big Air Trampoline Business upon the terms and conditions of this Agreement in one territory described in **Attachment A** ("**Territory**");

(b) Use the Marks and the System; and

(c) Offer and market ONLY Franchisor's approved Services and Products, unless Franchisor approves in writing (such approval to be in Franchisor's sole and absolute discretion) Franchisee's request to offer and market complementary and non-competing services or products.

2.2 The License does not include the right to sell Products to any vendor who would in turn sell to consumers.

2.3 Franchisee recognizes that variations and additions to the System may be required from time to time in order to preserve and/or enhance the System. Therefore, Franchisor expressly reserves the right to add to, subtract from, revise, modify or change from time to time the System or any part thereof, and Franchisee agrees to promptly accept and comply with any such addition, subtraction, revision, modification or change and to make such reasonable expenditures as may be necessary to comply pursuant to Section 8.

2.4 Franchisee recognizes that the rights that are granted to Franchisee are for the specific Territory, defined in Section 4.1 below and no other, and cannot be transferred to an alternate Territory, without the prior written approval of Franchisor, which approval may be granted or withheld in Franchisor's sole discretion.

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3. TERM OF THE AGREEMENT AND LICENSE

3.1 This Agreement and the License granted shall become effective on the date this Agreement is executed by Franchisor and shall continue until midnight on the day before the tenth anniversary of the date the Big Air Trampoline Facility opened for business ("**Term**"), subject, however, to termination in accordance with the provisions of this Agreement. When the initial Term expires, Franchisee shall have the option at Franchisor's sole and absolute discretion to extend Franchisee's rights to operate the Big Air Trampoline Business for one additional term ("**Successor Term**") of 10 years. Franchisee must pay the Successor Franchise Fee set forth in Section 3.4(b) and otherwise comply with the requirements set forth in this Section 3.

3.2 Franchisor may refuse to renew this Agreement and License if Franchisee has:

(a) Failed to remedy any breach of this Agreement specified by Franchisor in a written notice to Franchisee as per Sections 17.1, 17.2 or 17.3; or

(b) Committed and received notice of two or more breaches of this Agreement in the 24 months prior to the end of the Term, even if such breaches were timely remedied; or

(c) Franchisee has failed to give Franchisor a written notice of intent to renew no less than six months or more than nine months prior to expiration of the Term; or

(d) Franchisee is not current in payment obligations to Franchisor or to Franchisee's Lessor, suppliers, or trade creditors.

3.3 If Franchisee opts to extend its rights to operate the Big Air Trampoline Business at the end of the Term, and Franchisor consents to such extension, Franchisee shall execute a new Franchise Agreement ("**Successor Franchise Agreement**") and all other agreements in the form then being used by Franchisor in granting new franchises. Franchisor reserves the right to change any term(s) of the Franchise Agreement form to be signed by Franchisee at the time Franchisee extends its rights to operate the Big Air Trampoline Business (except as specified below). There shall not, however, be another Initial Franchise Fee charged at the time Franchisee signs the Successor Franchise Agreement. IN FRANCHISOR'S SOLE DESCRETION, FRANCHISEE MAY BE DEEMED TO HAVE IRREVOCABLY DECLINED TO EXTEND ITS RIGHTS TO OPERATE THE FRANCHISE (AND ITS OPTION SHALL THEREUPON TERMINATE) IF IT FAILS TO EXECUTE AND RETURN TO FRANCHISOR THE SUCCESSOR FRANCHISE AGREEMENT AND OTHER DOCUMENTS REQUIRED BY FRANCHISOR WITHIN 30 DAYS AFTER THEIR DELIVERY TO FRANCHISEE, OR FAILS TO COMPLY IN ANY OTHER WAY WITH THE PROVISIONS OF THIS SECTION 3.

3.4 As additional conditions to renewal, in Franchisor's sole discretion, Franchisee may be required to:

(a) Execute a general release of all claims Franchisee may have against Franchisor, its officers, directors, members, shareholders, agents, Affiliates, and employees, whether in their corporate and/or individual capacities. This release shall

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include all claims arising under any federal, state, or local law, rule, or ordinance arising out of or concerning this Agreement (to the fullest extent permitted by law) and shall be in a form satisfactory to Franchisor. Franchisee's failure or refusal to sign such a release in the form presented by Franchisor shall be deemed to be a rejection by Franchisee of its option to extend its rights to operate the Big Air Trampoline Business;

(b) Pay the successor franchise fee ("**Successor Franchise Fee**") of 25% of the then-current Initial Franchise Fee, which is due and payable to Franchisor at the time of signing the renewal Franchise Agreement;

(c) Upgrade the computer system used in operations of the Big Air Trampoline Business to Franchisor's current standards;

(d) Comply with all other provisions contained in the Operations Manual, as modified periodically by Franchisor in Franchisor's sole discretion;

(g) Provide proof of current licenses, insurance and permits.

3.5 If Franchisee does not sign a new Franchise Agreement prior to the expiration of this Agreement and continues to accept the benefits of this Agreement after the expiration of this Agreement, then at the option of Franchisor, this Agreement may be treated either as (i) expired as of the date of expiration with Franchisee then operating without a franchise to do so and in violation of Franchisor's rights; or (ii) continued on a month-to-month basis ("**Interim Period**") until one party provides the other with written notice of such party's intent to terminate the Interim Period, in which case the Interim Period will terminate 30 days after receipt of the notice to terminate the Interim Period. In the latter case, all obligations of Franchisee shall remain in full force and effect during the Interim Period as if this Agreement had not expired, and all obligations and restrictions imposed on Franchisee upon expiration of this Agreement shall be deemed to take effect upon termination of the Interim Period.

4. TERRITORY

4.1 During the Term and for so long as Franchisee is in compliance with all of its obligations hereunder, except as otherwise provided in this Agreement, and subject to Franchisor's reservation of rights as set forth in Section 4.2 and as provided in Section 4.4 **below**, neither Franchisor nor any Affiliate will establish or license another person or entity to establish a Big Air Trampoline Business using the Marks licensed to Franchisee within the Territory encompassed by the boundaries set forth in **Attachment A**, attached hereto and incorporated herein by reference. Except as otherwise specifically provided in this Agreement, this Agreement does not restrict Franchisor or its Affiliates and does not grant rights to Franchisee to pursue any of Franchisor's or its Affiliates other business concepts other than the Big Air Trampoline Business.

4.2 Franchisee acknowledges that the Franchise granted hereunder is non-exclusive and that Franchisor and its Affiliates retain the exclusive right, among others:

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(a) to use, franchise and/or license others to use, the Marks and System for the operation of Big Air Trampoline Businesses at any location other than in the Territory, regardless of proximity to the Territory;

(b) to offer the Services or Products, or grant others the right to offer the Services or Products, whether using the System and /or Marks or other trademarks or service marks, through alternative channels of distribution, including without limitation, television, catalog sales, wholesalers, retail outlets or other distribution outlets (other than Big Air Trampoline Businesses), or by Internet commerce (e-commerce), mail order or otherwise, whether inside or outside the Territory;

(c) to use, license and/or franchise the use of trademarks or service marks other than the Marks, whether in alternative channels of distribution or at any location including the Territory, in association with operations that are similar to or different than the Big Air Trampoline Business;

(d) to use, license and/or franchise the Marks and the System in connection with the provision of other services and products or in alternative channels of distribution such as those described in 4.2(b), at any location including the Territory;

(e) to any websites utilizing a domain name incorporating one or more of the words "**Big**", "**Air**", "**Trampoline**", and/or "**Park**" or similar derivatives thereof. Franchisor retains the sole right to market on the Internet and use the Marks on the Internet, including all use of websites, domain names, URL's, directory addresses, metatags, linking, advertising, and co-branding and other arrangements. Franchisee may not independently market on the Internet, or use any domain name, address, locator, link, metatag, or search technique, with words or symbols similar to the Marks or otherwise establish any presence on the Internet without Franchisor's prior written approval. Franchisor intends that any Franchisee website be accessed only through Franchisor's home page. Franchisee will provide Franchisor with content for Franchisor's Internet marketing, and will sign Internet and intranet usage agreements, if any. Franchisor retains the right to approve any linking or other use of its website;

(f) to acquire businesses that are the same as or similar to the Big Air Trampoline Business and operate such businesses regardless of where such businesses are located, including inside the Territory and to be acquired by any third party which operates businesses that are the same as or similar to the Big Air Trampoline Business regardless of where such businesses are located, including inside the Territory;

(g) to acquire and convert to the System any businesses offering services and products related to operating indoor recreation centers for children, families, teens and young adults including such businesses operated by competitors or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned and whether located inside or outside of the Territory; and

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(h) to implement multi-area marketing programs which may allow Franchisor or others to solicit or sell customers anywhere. Franchisor reserves the right to issue mandatory policies to coordinate such multi-area marketing programs.

4.3 Franchisee may be granted, at Franchisor's sole discretion, express permission to market to and solicit customers in an unsold territory adjacent to Franchisee's Territory ("**Adjacent Territory**"); provided that Franchisee agrees that when the Adjacent Territory is granted to another franchisee by Franchisor, Franchisee will, upon receipt of written notice from Franchisor, cease all its sales and service efforts within the Adjacent Territory and return all customer and prospect lists to Franchisor within 10 days of such notice. Franchisee shall pay the Royalty Fee, National and Promotions Fees, and Individual Advertising Expense for sales made to all customers coming from an Adjacent Territory.

4.4 Notwithstanding Franchisor's exclusive right to sell Products and Services on the Internet in accordance with Section 4.2(b), if Franchisor sells Products or Services that Franchisee is required to sell and provide pursuant to this Agreement using the Marks to a customer located in Franchisee's Territory, Franchisor or its supplier or distributor, in Franchisor's sole discretion, may provide Franchisee with a credit against future Royalty Fees or National Marketing and Promotions Fees due to Franchisor in an amount to be determined by Franchisor, in its sole discretion.

4.5 Franchisor will use commercially reasonable efforts to grant only one license to a franchisee per 250,000 people (or incremental portion thereof) residing in a designated geographical location ("**Population Limit**"). Franchisor will use the most recent population information available in the U.S. Census Data, or other population statistical sources of Franchisor's choosing to determine populations. Franchisor reserves the right to change, modify, or delete the Population Limit in its sole discretion. Franchisee acknowledges that in most cases, Franchisee's Territory will not exceed a radius of 50 miles surrounding Franchisee's Big Air Trampoline Facility. Franchisor reserves the right to establish the boundaries of the Territory using zip codes, geographical elements or a straight radius line in Franchisor's sole discretion. Franchisee acknowledges that it has not and will not rely on this Section 4.5 for any purposes. Franchisee acknowledges and agrees that once the Territory has been established, it will not be changed regardless of any increase or decrease of the population in the Territory.

5. FEES.

5.1 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state or municipal taxes, as a non-recurring initial franchise fee ("**Initial Franchise Fee**") to Franchisor upon the execution of this Agreement. The Initial Franchise Fee shall be paid by means of cashier's check, money order or wire transfer. The Initial Franchise Fee shall be deemed to have been fully earned by Franchisor when paid. The Initial Franchise Fee is non-refundable once paid.

5.2 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state and municipal taxes as a non-recurring and non-refundable training fee ("**Training Fee**") to Franchisor upon execution of this Agreement. The Training Fee shall be paid by means of cashier's check, money order or wire transfer. The Training Fee entitles

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Franchisee to receive the initial training for Franchisee or its Designated Manager and two additional people. If Franchisee elects to have additional attendees, Franchisee will pay Franchisor its then current fee for each additional person to attend the initial training ("**Initial Training for Additional Person(s)**")

5.3 Franchisee shall pay to Franchisor a royalty fee ("**Royalty Fee**") equal to 6% of Gross Revenue for such month or partial month.

5.4 The Royalty Fee shall be payable to Franchisor on or before the 10th day of each month for the preceding calendar month and shall be payable through the entire Term of this Agreement; provided, however, that Franchisor reserves the right to require that Royalties be paid as often as weekly upon advanced written notice to Franchisee. Franchisee shall pay the Royalty Fee monthly or in such other frequency as Franchisor may in its sole discretion require upon written notice to Franchisee by Franchisor. Franchisee shall not subordinate to any other obligation its obligation to pay the Royalty Fee or any other fee or charge due Franchisor or any Affiliate of Franchisor under this Agreement. Each Royalty Fee payment will be accompanied by a report as set forth in Section 5.4(a).

(a) Each Royalty Fee payment shall be, without exception, accompanied by a statement of the previous month's Gross Revenues on a form approved and provided to Franchisee by Franchisor. **Each failure to include a fully completed statement of the previous month's Gross Revenues with the Royalty Fees payable to Franchisor when due shall constitute a material breach of this Agreement.**

(b) Franchisor reserves the right to require Franchisee to remit fees and other amounts due to Franchisor hereunder via electronic funds transfer ("**EFT**") or other similar means utilizing a Franchisor approved computer system or otherwise. The EFT Authorization is attached to the Franchise Agreement as **Attachment D.** If Franchisor notifies Franchisee to use such payment method, Franchisee agrees to comply with procedures specified by Franchisor and/or perform such acts and deliver and execute such documents, including authorization for direct debits from Franchisee's business bank operating account, as may be necessary to assist in or accomplish payment by such method. Under this procedure Franchisee shall authorize Franchisor to initiate debit entries and/or credit correction entries to a designated checking or savings account for payments of fees and other amounts payable to Franchisor and any interest charged due thereon. Franchisee shall make funds available to Franchisor for withdrawal by electronic transfer no later than the due date for payment therefore. If Franchisee has not timely reported the Gross Revenues to Franchisor for any reporting period, then Franchisor shall be authorized, at Franchisor's option, to debit Franchisee's account in an amount equal to (a) the fees transferred from Franchisee's account for the last reporting period for which a report of the Gross Revenues was provided to Franchisor as required hereunder; or (b) the amount due based on information retrieved from Franchisor approved computer system.

6. ACCOUNTING, RECORDS, AUDITS AND LATE PAYMENT CHARGES

6.1 Franchisee shall keep such complete records of its Big Air Trampoline Business as a prudent and careful businessperson would normally keep. Franchisee must use the

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accounting system and the pre-formatted template required by Franchisor, if any. Franchisee shall keep its financial books and records as Franchisor may from time to time direct in the Operations Manual or otherwise, including retention of all invoices, order forms, payroll records, cash register tapes, check records, bank deposit receipts, sales tax records, refunds, cash disbursements, journals and general ledgers. Franchisee shall advise Franchisor of the location of all original documents and shall not destroy any records without the written consent of Franchisor.

6.2 Franchisee shall prepare on a current basis, complete and accurate records concerning all financial, marketing and other operating aspects of the Big Air Trampoline Business conducted under this Agreement. Franchisee shall maintain an accounting system which accurately reflects all operational aspects of the Big Air Trampoline Business including uniform reports as may be required by Franchisor. Franchisee's records shall include tax returns, daily reports, statements of Gross Revenues (to be prepared each month for the preceding month), profit and loss statements (to be prepared at least quarterly by an independent Certified Public Accountant), and balance sheets (to be prepared at least annually by an independent Certified Public Accountant).

6.3 Franchisee shall also submit to Franchisor current financial statements and other reports as Franchisor may reasonably request to evaluate or compile research and performance data on any operational aspect of the Big Air Trampoline Business. Franchisee shall submit Individual Advertising Expense statements to Franchisor once each quarter, in Franchisor's sole discretion, beginning July 1 of each year. On or before April 15 of each year, Franchisee shall provide Franchisor with a copy of its federal tax return for the previous tax year.

6.4 The records required under this Section 6 pertain only to Franchisee's operation of the Big Air Trampoline Business. Franchisor has no right to inspect, audit or copy the records of any unrelated business activity Franchisee may have. Franchisee shall keep the books and records of the Big Air Trampoline Business separate from the records of any unrelated business activity or personal activity.

6.5 From the date Franchisee and Franchisor sign this Agreement until three years after the end of the Term of this Agreement, including any Successor Terms, Franchisor or Franchisor's authorized agent shall have the right to request, receive, inspect and audit any of the records referred to above wherever they may be located. Franchisor agrees to do inspections and audits at reasonable times. Franchisee agrees to keep all records and reports for seven years from the date such records are created. Should any inspection or audit disclose a deficiency in the payment of any Royalty Fee, National Marketing and Promotions Fee (as defined in Section 11.4) or other amounts required to be paid under this Agreement, Franchisee shall immediately pay the deficiency to Franchisor, without prejudice to any other remedy of Franchisor under this Agreement. In addition, if Franchisee (1) fails to furnish required reports or supporting records on a timely basis for two or more consecutive reporting periods, (2) fails to have the books and records available for an audit after receiving reasonable, advanced notice from Franchisor, (3) otherwise fails to cooperate with Franchisor's requested audit, or (4) the deficiency for any audit period discloses a deficiency in the amount of any Royalty Fee, National Marketing and Promotions Fee or other amounts due by 2% or more, Franchisee will also immediately pay to Franchisor the entire cost of the inspection or audit including travel, lodging, meals, salaries and

other expenses of the inspecting or auditing personnel. For the purposes of this Section 6.5, an audit period will be each fiscal year. Should the audit disclose an overpayment of any Royalty Fees, National Marketing and Promotions Fees, or other amounts due, Franchisor shall credit the amount of the overpayment to Franchisee's payments of Royalty Fees, and National Marketing and Promotions Fees next falling due.

6.6 If Franchisee's records and procedures are insufficient to permit a proper determination of Gross Revenues, Franchisor shall have the right to either require Franchisee to deliver to Franchisee an estimate, made by Franchisor, of Gross Revenues for the period under consideration and Franchisee shall immediately pay to Franchisor any amount shown thereby to be owing on account of the Royalty Fee, National Marketing and Promotions Fee and other sums due on account of any understatement. Any such estimate shall be final and binding upon Franchisee.

6.7 To encourage prompt payment and to cover the costs and expenses involved in handling and processing late payments Franchisee shall also pay, upon demand, a late interest charge equal to the lesser of (i) 1.5% per month; or (ii) the highest legal rate permitted by applicable law, whichever is lower, on all payments due to Franchisor during the period of time said payments are due and unpaid. Each failure to pay Royalty Fees, National Marketing and Promotions Fees, and other amounts payable to Franchisor when due shall constitute a material breach of this Agreement. Franchisee acknowledges that this Section 6.7 shall not constitute Franchisor's agreement to accept such payments after same are due or a commitment by Franchisor to extend credit to, or otherwise finance Franchisee's operation of the Big Air Trampoline Business. Further, Franchisee acknowledges that failure to pay all such amounts when due shall, notwithstanding the provisions of this Section 6.7, constitute grounds for termination of this Agreement, as provided in this Agreement.

6.8 Any report of Franchisor's auditor rendered from time to time pursuant to this Section 6, shall be final and binding upon all of the parties hereto.

6.9 Franchisee hereby authorizes Franchisor to make reasonable inquiries of Franchisee's bank, suppliers and trade creditors concerning the Big Air Trampoline Business and hereby directs such persons and companies to provide to Franchisor such information and copies of documents pertaining to the Big Air Trampoline Business as Franchisor may request.

6.10 Franchisee acknowledges and agrees that Franchisor owns all business records ("**Business Records**") with respect to customers and other service professionals of, and/or related to, the Big Air Trampoline Business including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, telephone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other Business Records created and maintained by Franchisee. Franchisee further acknowledges and agrees that, at all times during and after the termination, expiration or cancellation of this Agreement, Franchisor may access such Business Records, and may utilize, transfer, or analyze such Business Records as Franchisor determines to be in the best interest of the System, in Franchisor's sole discretion.

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6.11 To encourage prompt delivery of all Business Records, Certificates of Insurance, Gross Revenue statements and any other documentation or record that may be requested by Franchisor under this Agreement, Franchisee shall pay, upon demand, a late report fee in the amount of $250.00 per record or document requested if Franchisee fails to deliver such record or document when due.

6.12 If Franchisee pays the Royalty Fee or any other sums due to Franchisor under this Agreement with a check returned for non-sufficient funds more than one time in any calendar year, in addition to all other remedies which may be available, Franchisor shall have the right to require that Royalty Fee payments and any other sums due to Franchisor under this Agreement be made by certified or cashier's checks. If Franchisee fails to pay the Royalty Fee or any other sums due to Franchisor under this Agreement by the due date two times during the Term or any Successor Terms, in addition to all other remedies which may be available, Franchisor reserves the right to require, in its sole discretion, that Franchisee pay the Royalty Fee or any other sums due to Franchisor under this Agreement weekly.

6.13 Franchisee agrees that, during the Term and for three years after the expiration and termination of this Agreement, Franchisee shall supply to Franchisor Franchisee's home address and telephone number.

7. SERVICES AND ASSISTANCE

7.1 The Initial Franchise Fee and Royalty Fee are paid for the License, which includes the use of the Marks, the System and the use of Franchisor's Trade Secrets and Confidential Information provided pursuant to this Agreement and for certain services rendered by Franchisor.

7.2 Franchisor shall offer Franchisee initial and continuing services, as Franchisor deems necessary or advisable in furthering Franchisee's Big Air Trampoline Business and the business of the System as a whole and in connection with protecting the Marks and goodwill of Franchisor. Failure by Franchisor to provide any particular service, either initial or continuing, shall not excuse Franchisee from any of its obligations under this Agreement.

7.3 Currently, initial services provided by Franchisor (or its designee) prior to Franchisee opening the Big Air Trampoline Business shall include:

(a) Designating Franchisee's Territory as stipulated in Section 4 and in **Attachment A**.

(b) Furnishing Franchisee with specifications and required supplier information for all initial and replacement equipment, tools, inventory, computer system and supplies required for the operation of Franchisee's Big Air Trampoline Business as stipulated in Section 9.

(c) Furnishing Franchisee with Site Selection Assistance during the time Franchisee searches for a location for the Big Air Trampoline Facility.

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(d) Authorizing in writing Franchisee's proposed Big Air Trampoline Facility in accordance with Section 7.4.

(e) Furnishing Franchisee with Construction Oversight Services during the construction of the Big Air Trampoline Facility.

(f) Approximately 90 days prior to the Projected Opening Date set forth on **Attachment A** or Franchisee's receipt of all required licenses, permits, and certifications, which ever comes later, provide Franchisee, or if Franchisee is an entity, a person designated to manage the Big Air Trampoline Business ("**Designated Business Manager**") and two additional person, without extra charge, with an initial training program. The initial training program shall be for seven calendar days in Laguna Hills, California (or other location designated by Franchisor). The training program may include a discussion of the System, techniques, procedures, methods of training and operation, advertising, sales techniques, promotional ideas, marketing plans, customer relations, patron safety, instructions on quality standards and practical experience in the operation of a Big Air Trampoline Business. You must pay for airfare, lodging, meals, ground transportation, salaries and benefits and any other personal expenses for yourself and additional attendees which are incurred to attend training.

(g) Loaning Franchisee during the Term (including any Successor Terms) one copy of Franchisor's confidential Operations Manual containing mandatory and suggested specifications, standards, operating procedures and rules prescribed from time to time by Franchisor as further stipulated in this Section 7, and containing information relative to other obligations of Franchisee hereunder. Specifications, standards and operating procedures prescribed from time to time by Franchisor in the Operations Manual or otherwise communicated to Franchisee in writing shall constitute provisions of this Agreement as if fully set forth herein. Franchisee shall operate the Big Air Trampoline Business strictly in accordance with the Operations Manual. Failure to comply with the standards set forth in the Operations Manual shall constitute a material breach of this Agreement. Franchisor reserves the right to provide the Operations Manual and updates to the Operations Manual in electronic form or other form determined by Franchisor. Franchisor shall have the right to add to, delete, and otherwise modify, the Operations Manual from time to time to reflect changes in authorized Products and Services, business image or the operation of the Big Air Trampoline Business; provided, however, no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Some of the revisions to the Operations Manual may include changes with respect to: (i) sales and marketing strategies; (ii) equipment and supplies; (iii) accounting and reporting systems and forms; (iv) insurance requirements; (v) operating procedures; (vi) Services; (vii) Products; (viii) Construction Oversight Services; and (ix) Site Selection Assistance.

(i) Franchisee covenants to accept, implement and adopt any such modifications at its own cost, except as provided in Section 8.7 of this Agreement. Franchisee shall keep its Operations Manual with replacement pages and insertions as instructed by Franchisor.

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(ii) Franchisee hereby acknowledges that the Operations Manual is loaned to Franchisee and shall at all times remain the sole and exclusive property of Franchisor, and upon termination of this Agreement for any reason whatsoever, Franchisee shall forthwith return the Operations Manual together with all copies of any portion of the Operations Manual which Franchisee may have made, to Franchisor. If Franchisee looses or destroys any printed Operations Manual, Franchisor may charge a Lost Operations Manual Fee in the amount of $500.

(h) Providing Franchisee with a set of letterhead, business cards, and other start-up materials determined by Franchisor each at no charge. Additional copies of letterhead, business cards and other start-up materials after the initial inventory may be provided at Franchisee's expense.

(i) Franchisor will provide pre-opening and grand opening assistance for a minimum of seven calendar days during the first week of operations of Franchisee's Big Air Trampoline Business. If Franchisee desires additional opening or additional on-site assistance, Franchisor may charge Franchisee a reasonable fee for such services ("**Additional On-Site Assistance**"), and Franchisee shall reimburse Franchisor for the additional food, lodging, and transportation expenses incurred by Franchisor during the additional time period.

7.4 Franchisee is solely responsible for locating a site using the services from which to operate the Big Air Trampoline Facility and negotiating a Lease for the property. Franchisor may require Franchisee use its designated real estate services supplier. As part of the Site Selection Assistance, Franchisor or its designee will provide assistance to Franchisee in analyzing a location and in negotiating the business terms of a Lease. Franchisor (or its designee) will analyze a location by examining population density, census data, demographic and income characteristics, proximity of the proposed location to other Big Air Trampoline Businesses, or any other criteria as set forth in Section 8.3(b) or the Operations Manual. The Big Air Trampoline Facility site is subject to Franchisor's written authorization, which may be granted or denied in Franchisor's sole discretion. Franchisee agrees that the location of the Big Air Trampoline Facility is a factor in the potential success of the Big Air Trampoline Business and Franchisor may reject any location in its sole discretion. However, Franchisee agrees that Franchisor's assistance in no way constitutes a representation or warranty with respect to the success or viability of the property or the Lease. Franchisee acknowledges that Franchisor's authorization of the Big Air Trampoline Facility site indicates only that Franchisor believes that the site falls within acceptable criteria established by Franchisor as of the approval date. Once Franchisee's Big Air Trampoline Facility is open for business, Franchisee may only relocate the Big Air Trampoline Facility by complying with Franchisor's relocation procedures as set forth in the Operations Manual.

7.5 Currently, the services provided by Franchisor (or its designee) to Franchisee after Franchisee opens the Big Air Trampoline Business are as follows:

(a) Making a representative reasonably available to speak with Franchisee on the telephone during normal business hours, as Franchisor determines is necessary, to discuss Franchisee's operational issues and support needs.

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(b) Franchisor may hold periodic meetings to discuss sales techniques, new Product and Service developments, bookkeeping, training, accounting, inventory control, Big Air Trampoline Facility safety and maintenance issues, performance standards, advertising programs, merchandising procedures and other topics. Franchisee must pay a Convention Fee, if any, and all its travel and living expenses to attend. These meetings are held in Laguna Hills, California or at a location chosen by Franchisor in Franchisor's discretion and, except as set forth in Section 7.5(c), Franchisee's attendance is strongly encouraged but not required for these periodic meetings.

(c) Franchisor may also hold an annual conference to discuss sales techniques, new Services and Products, training techniques, bookkeeping, accounting, performance standards, advertising programs, merchandising procedures and other topics. Franchisee must pay the Convention Fee, if any, and all personal travel and living expenses and must attend these annual conferences which are held in Laguna Hills, California or at a location chosen by Franchisor.

(d) Informing Franchisee of mandatory specifications, standards and procedures for the operations of the Big Air Trampoline Business.

(e) Researching new Products, Services, and methods of doing business, from time to time, and providing Franchisee with information concerning developments of this research. If Franchisee requests that Franchisor add a specific element or product to the System, Franchisor may charge a product research fee.

(f) Maintaining the National Marketing and Promotions Fund and using these funds to develop promotional and advertising programs and public relations coverage for Big Air Trampoline Businesses.

(g) Providing marketing plans and advertising materials to Franchisee in the form of an arts graphics package included in the Operations Manual and Franchisee Portal and as further stipulated in Section 11.

(h) A representative of Franchisor may, in its sole discretion, provide additional assistance. There may be additional charges for this additional assistance. If Franchisor provides additional assistance, Franchisor and Franchisee must agree in advance on the charges for the visit and the length of the visit.

(i) Establishing and managing one or more Local Advertising Cooperatives in accordance with Section 11, if any.

7.6 If Franchisee believes Franchisor has failed to adequately provide pre-opening services to Franchisee as provided in this Agreement in Sections 7.3 and 7.5, Franchisee shall notify Franchisor in writing within 30 days following the opening of the Big Air Trampoline Business. Absent the timely provision of such notice to Franchisor, Franchisee shall be deemed to conclusively acknowledge that all pre-opening and opening services required to be provided by Franchisor were sufficient and satisfactory in Franchisee's judgment.

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7.7 Franchisor is not obligated to perform services set forth in this Agreement to Franchisee's particular level of satisfaction, but as a function of Franchisor's experience, knowledge and judgment. Franchisor does not represent or warrant that any other services will be provided to Franchisee, other than as set forth in this Agreement. To the extent any other services, or any specific level or quality of service is expected, Franchisee must obtain a commitment to provide such service or level of service in writing signed by an authorized officer of Franchisor, otherwise Franchisee acknowledges and agrees that Franchisor shall not be obligated to provide any other services or specific level or quality of services.

8. FRANCHISEE'S DUTIES, OBLIGATIONS AND OPERATING STANDARDS

8.1 Franchisee shall, consistent with the terms of this Agreement, diligently develop the Big Air Trampoline Business and use its best efforts to market and promote the required Services and Products.

8.2 Subject to the terms of this Agreement, Franchisee shall open the Big Air Trampoline Facility for business on or before the projected opening date ("**Projected Opening Date**") set forth on **Attachment A**, but in no event more than 12 months from the effective date of this Agreement, unless Franchisee obtains Franchisor's express written permission to extend the Projected Opening Date, which permission may be granted or denied in Franchisor's sole discretion.

8.3 Franchisee shall complete the construction of Franchisee's Big Air Trampoline Facility, and shall maintain the Big Air Trampoline Facility, in accordance with the following requirements:

(a) Franchisee shall, at Franchisee's sole cost and expense, complete the interior build-out and install all equipment, furniture, fixtures, and security cameras as specified by Franchisor in the Operations Manual, and required by this Agreement.

(b) Franchisee may purchase or lease the required real property and improvements from any source upon terms approved by Franchisor in writing. Franchisee must obtain Franchisor's approval regarding location of the Big Air Trampoline Facility within 180 days of the execution of this Agreement. If Franchisee does not obtain approval from Franchisor of the site, which may be withheld in Franchisor's sole discretion, within 12 months after the effective date of the Franchise Agreement Franchisor may elect to terminate this Agreement in Franchisor's sole discretion. Franchisee must deliver to Franchisor any traffic, competition and demographic or similar location information relating to any proposed site that Franchisor reasonably requests for review at least 20 days before any proposed Lease signing date. Franchisee must deliver to Franchisor, within 60 days of Franchisor approving the site, a copy of the proposed Lease, in a form acceptable to Franchisor, and such Lease must incorporate the terms of the Lease Addendum attached to this Agreement as **Attachment F**. Notwithstanding anything herein to the contrary, Franchisor may, in its sole discretion, extend the time periods set forth in this Section 8.3(b).

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(c) Subject to the terms of this Section, Franchisee must at all times comply with Franchisor's standards, specifications, processes, procedures, requirements and instructions regarding the Big Air Trampoline Facility's physical facilities, including the layout of the equipment, furnishings, fixtures, and activity, party, and waiting rooms. Franchisee must maintain the Big Air Trampoline Facility and any parking areas in good and safe condition, as specified in the Operations Manual. Franchisee must remodel or upgrade the Big Air Trampoline Facility and/or Computer System at is sole cost and expenses in accordance with Franchisor's standards as set forth in the Operations Manual, which may be modified by Franchisor at any time in Franchisor's discretion.

(d) Franchisee shall apply for all required operating permits and licenses within 120 days after Franchisee signs the Lease for the Big Air Trampoline Facility.

8.4 Subject to the terms of this Agreement, including Subsections 7.3(g)(i) and (ii), during the Term, Franchisee shall strictly comply with all present and future standards, specifications, processes, procedures, requirements, and instructions of Franchisor regarding the operation of the Big Air Trampoline Business and must comply with the following requirements:

(a) Prior to opening the Big Air Trampoline Business, Franchisee or Franchisee's Designated Business Manager must attend and successfully complete all initial programs at least 60 days prior to Franchisee's scheduled opening date. Franchisee shall be responsible for travel, meals, personal expenses and living expenses incurred by itself or the Designated Business Manager, and additional persons that participate in the initial training program.

(b) Franchisee or its Designated Business Manager must attend mandatory annual conferences at such locations as Franchisor may reasonably designate, and Franchisee will pay all salary and other expenses of each person attending, including any conference fees, travel expenses, meals, living expenses and personal expenses. If Franchisee fails to attend an annual conference for any reason, Franchisor shall be entitled to use the accumulated Convention Fee paid by Franchisee for any purpose in Franchisor's sole discretion. The Convention Fee is non-refundable for any reason once paid.

(c) Subject to Section 8.7, any additional required Service or Product introduced into the System by Franchisor must be offered for sale on a continuing basis at the Big Air Trampoline Business at the time and in the manner required by Franchisor. Franchisor will provide at least 30 days prior written notice of any new required Service or Product introduced into the System. All equipment, facilities, vehicles, products, supplies, tools and other items necessary to add the newly required Services or Products must be acquired, installed, and utilized at the time and in the manner required by Franchisor. The marketing of new Services and Products must begin at the Big Air Trampoline Business as reasonably required by Franchisor.

(d) No service or product, except approved Services or Products, may be offered for sale from the Big Air Trampoline Facility or in the Territory, unless

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Franchisee receives the prior written consent of Franchisor (which may be granted or denied in Franchisor's sole discretion).

(e) Only advertising and promotional materials, services, equipment, tools, inventory, products, signage, supplies, and uniforms that meet Franchisor's standards and specifications shall be used at the Big Air Trampoline Business. Advertising and promotional materials, tools, services, equipment, inventory, products, signage, supplies and uniforms produced or approved by Franchisor for use by Franchisee may be used only in the manner and during the period specified by Franchisor.

(f) Equipment, tools, Services, Products, inventory, supplies, signage, uniforms and other items must be added, eliminated, substituted and modified at the Big Air Trampoline Business as soon as possible in accordance with changes in Franchisor's specifications and requirements.

(g) The Big Air Trampoline Business and everything related to the Big Air Trampoline Business must be maintained in good condition and must be kept clean, neat and sanitary. All maintenance, repairs and replacements reasonably requested by Franchisor or required in connection with the Big Air Trampoline Business must be promptly made including, but not limited to, regular maintenance and replacement of trampolines and climbing equipment. All employees must be clean and neat in appearance and wear appropriate Big Air Trampoline attire at all times.

(h) No alterations of the Big Air Trampoline Business materially affecting the image of the Big Air Trampoline Business may be made except at Franchisor's request or approval, and any alterations must strictly conform to specifications and requirements established or approved by Franchisor.

(i) The Big Air Trampoline Business and the Services provided and Products sold by Franchisee must comply with all applicable federal, state, and local laws, ordinances, rules, regulations and other requirements applicable to the care and safety of children, including securing all necessary licenses and complying with all licensing requirements and regulations, if any. Franchisee must obtain all business licenses and permits required by federal, state and local laws, ordinances, rules and regulations before operating its Big Air Trampoline Business. If Franchisee does not obtain all required permits and licenses and other certifications necessary to operate its Big Air Trampoline Business within nine months after Franchisee's execution of the Franchise Agreement, Franchisor may terminate this Franchise Agreement.

(j) The employees, equipment, tools, supplies, inventory, products, and other items on hand at the Big Air Trampoline Business, must be at all times sufficient to efficiently meet the anticipated volume of business and to ensure the safety and security of Franchisee's patrons.

(k) Franchisee shall maintain a competent, conscientious, and trained staff, and shall take such steps as are necessary to ensure that its employees preserve good customer relations; render competent, prompt, courteous, and knowledgeable service, and

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meet such minimum standards as Franchisor may establish from time to time in the Operations Manual or otherwise in writing. Franchisee shall conduct background checks on all employees as required by the terms of the Operations Manual. Franchisee shall be solely responsible for all employment decisions and functions of the Big Air Trampoline Business, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, record keeping, supervision, and discipline of employees, regardless of whether Franchisee has received advice from Franchisor on these subjects.

(l) All debts and taxes arising in connection with the Big Air Trampoline Business, except those duly contested in a bona fide dispute, must be paid when due.

(m) Franchisee will use its best efforts to ensure customer satisfaction; use good faith in all dealings with customers, potential customers, referral sources, suppliers and creditors; respond to customer complaints in a courteous, prompt and professional manner; use its best efforts to promptly and fairly resolve customer disputes in a mutually agreeable manner; and take such actions as Franchisor deems necessary or appropriate to resolve customer disputes.

(n) Franchisee will operate the Big Air Trampoline Business a minimum of six days a week, except that Franchisee may be closed on Thanksgiving Day, Christmas Day, New Year's Day, any other legal holiday authorized by Franchisor in the Operations Manual or in writing, in Franchisor's discretion, or any day that Franchisee is authorized to close by Franchisor in writing, in Franchisor's discretion.

(o) Franchisee shall, at Franchisor's request, accept debit cards, credit cards, stored value gift cards, or other non-cash systems specified by Franchisor to enable customers to purchase the Products and Services offered by the Big Air Trampoline Business. Franchisee shall acquire, at its expense, all necessary hardware and software used in connection with these non-cash systems.

(p) Franchisee shall comply with all terms and pay all fees that may be due under a software license agreement including a licensing fee ("**POS Licensing Fee**") of $200.00 per month and a technology support fee ("**Technology Support Fee**") of $300 per month, or such other amount as Franchisor determines in Franchisor's sole discretion, for any software Franchisee is required to use in the operation of its Big Air Trampoline Business as prescribed by Franchisor. The POS Licensing Fee and Technology Support Fee may be payable to one or more software vendors or to Franchisor, in Franchisor's discretion, and payment will be on such terms and at such times as determined by Franchisor in Franchisor's sole discretion.

(q) Franchisee shall promptly pay to Franchisor any amount equal to all taxes levied or assessed, including, but not limited to, unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipts taxes, taxes on Royalties, or any similar taxes or levies imposed upon or required to be collected or paid by Franchisor by reason of the furnishing or products, intangible property (including trademarks or trade names) or services by Franchisor to

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Franchisee through the sale, license or lease of property or property rights provided by this Agreement.

(r) In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with the procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Big Air Trampoline Facility, or any improvements thereon.

(s) Franchisee shall comply with the advertising requirements set out in Section 11.

(t) Franchisee will not use any materials that are false or misleading.

(u) Franchisee will ensure that all advertising, labeling, packaging and other materials associated with the Services and Products fully conforms to all applicable laws and regulations.

(v) Franchisee will have the Big Air Trampoline Facility inspected for safety compliance ("**Safety Inspection**") no less than on an annual basis.

(w) Franchisee will conduct its business operations in accordance with all applicable laws and regulations, including but not limited to, consumer protection laws and regulations and children's privacy and safety laws. Franchisee will control the quality of the Services and Products to avoid quality problems or product liability claims that could reflect adversely on Franchisee or Franchisor in the minds of consumers.

8.5 In prescribing standards, specifications, processes, procedures, requirements or instructions under Section 8.4 or any other provision of this Agreement, Franchisor will provide guidance to Franchisee, as required in Franchisor's sole discretion, in determining the prices to be charged by Franchisee for Services or Products. Franchisor shall not have control over the day-to-day managerial operations of the Big Air Trampoline Business, and Franchisee shall be free to establish its own prices; provided, however, Franchisor shall have the right to set maximum resale prices as part of any national or regional promotion or multi-area marketing plan.

8.6 Franchisor and Franchisor's representatives will have the right during business hours to inspect the Big Air Trampoline Business and all other facilities used for providing Services and selling approved Products. Franchisor and Franchisor's representatives will have the right to observe the manner in which Franchisee is rendering its Services and conducting its operations of the Big Air Trampoline Business. Franchisor and Franchisor's representatives will have the right to discuss with Franchisee, or other personnel Franchisee may designate, all matters that may pertain to compliance with this Agreement and with Franchisor's standards, specifications, requirements, instructions and procedures and Franchisor may video tape or take photographs of Franchisee's safety training, maintenance procedures and techniques as it relates to the Big Air Trampoline Business. Franchisor and Franchisor's representatives will have the

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right to have any of Franchisor's required Services rendered by any employee at the Big Air Trampoline Business. Franchisee shall in all respects cooperate with Franchisor's rights under this Section 8.6; provided that Franchisor's exercise of these rights shall not unreasonably interfere with Franchisee's conduct of the Big Air Trampoline Business.

8.7 Franchisee will not be required to offer or sell new Services or Products as set out in Section 8.4(c) if Franchisee demonstrates to Franchisor's reasonable satisfaction that:

(a) A substantial capital improvement not contemplated by this Agreement or in the Operations Manual is required, thereby resulting in a material hardship to Franchisee; or

(b) A material reduction in sales or profitability would result therefrom. For the purposes of this Subsection 8.7(b), a 40% decrease in sales from the average sales in the prior 12 months would be considered a material reduction in sales, and a 30% reduction in profitability from the average profitability during the previous 12 months would be considered a material reduction in profitability.

8.8 Franchisor may require Franchisee's compliance with the provisions of this Section 8 even if it does not require such compliance by all franchisees.

8.9 If Franchisee is an individual, Franchisee must directly supervise the Big Air Trampoline Business. If Franchisee is a corporation or other business entity, or if Franchisee has, in Franchisor's sole judgment, insufficient experience in a business similar to the franchise or experience in business management in general, then Franchisee shall nominate a Designated Business Manager having the required experience who shall have direct responsibility for all operations of the Big Air Trampoline Business. Any change in the Designated Business Manager will be subject to Franchisor's approval, in Franchisor's sole discretion.

8.10 Franchisee shall become a member of such trade associations or other organizations which, in the reasonable opinion of Franchisor, are useful in the operation of the Big Air Trampoline Business. Franchisee shall have the option to become a member of all benefit programs which are offered from time to time by Franchisor to all of its franchisees. The costs of participating in such trade associations, organizations, and benefit programs shall be borne by Franchisee and its employees (if applicable to the employees). Nothing in this Section 8.10 limits Franchisee's freedom to join any franchise or franchisees association of its choosing.

8.11 Franchisee shall at all times have sufficient computer skills to operate Franchisee's computer, understand how to utilize any software Franchisor requires to be used in the Big Air Trampoline Business, and to access email and the Internet. If Franchisor determines that Franchisee requires additional computer training, Franchisor will notify Franchisee in writing regarding the nature of the additional training required, and Franchisee will have 90 days to complete such training at a local computer training school at Franchisee's sole cost and expense. Franchisor reserves the right to designate the computer training school which Franchisee must attend. At the end of the training program, Franchisee shall present a certificate reasonably acceptable to Franchisor establishing that Franchisee passed the training course.

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Franchisee's failure to seek additional training or to pass the course shall constitute a default of this Agreement.

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

8.13 Franchisee shall acquire, maintain, and upgrade hardware, software, information processing and communication systems, and Internet and other network access providers, as prescribed in the Operations Manual and as modified periodically by Franchisor in Franchisor's sole discretion. Franchisee shall comply with any separate software or other license agreements that Franchisor or its designee use in connection with the System. Franchisee shall utilize Franchisor's required software, proprietary database management and intranet system, when available, as the exclusive means for tracking and maintaining customer, vendor, and related information, and for such other uses as prescribed by Franchisor periodically in the Operations Manual, in Franchisor's sole discretion. Monthly sales and royalty reporting may occur through mandatory software including the automatic draft via electronic transfer of Royalty Fees and National Marketing and Promotions Fees.

8.14 Franchisee shall at all times maintain an active email account and shall check the account at least once each day. If available, Franchisee shall maintain an email account on Franchisor's proprietary database management and intranet system.

8.15 Franchisee may not open its Big Air Trampoline Business until: (1) Franchisor notifies Franchisee in writing that all of Franchisee's obligations have been fulfilled; (2) the initial training program has been completed to Franchisor's satisfaction; (3) all amounts due to Franchisor have been paid; (4) Franchisor has been furnished with copies of all insurance policies and certificates required by Section 12, or other documentation of insurance coverage and payment of premiums that Franchisor may request, in Franchisor's discretion; (5) Franchisee notifies Franchisor that all approvals and conditions set forth in this Agreement have been met; (6) Franchisee has obtained all necessary permits and licenses; (7) Franchisee has provided Franchisor with a fully executed copy of the Lease for Franchisee's Big Air Trampoline Facility negotiated in accordance with the terms of Section 8.3(b), and (8) Franchisee has ordered, received and installed all equipment, supplies, inventory, tools, products, uniforms and computer hardware and software required by Franchisor (**"Computer System"**). Franchisee shall begin operating the Big Air Trampoline Business immediately after Franchisor determines that the Big Air Trampoline Business is ready for opening.

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9. PURCHASE OF EQUIPMENT, INVENTORY AND SUPPLIES

9.1 Franchisee must purchase all Products, services, equipment, tools, inventory, supplies and hardware and software from Franchisor's designated or approved suppliers, manufacturers and distributors. The standards and specifications for equipment, Computer System, inventory, tools, signage, supplies, Big Air Trampoline Facilities, Services and Products required by Franchisor shall be maintained in the Operations Manual. Franchisor has the right to require Franchisee to discontinue purchasing any Products, services, equipment, tools, inventory, supplies and/or Computer System from a designated or approved supplier, manufacturer or distributor and may designate or approve new suppliers, manufacturers or distributors at any time in Franchisor's sole discretion.

9.2 Franchisee acknowledges and agrees that Franchisor may receive from designated or approved suppliers of Franchisee's Products, services, equipment, tools, inventory, supplies and hardware and software, periodic volume rebates or other revenue or consideration as a result of Franchisee's purchases. Franchisee further acknowledges and agrees that Franchisor shall be entitled to keep for its own use and account such rebates and revenue.

9.3 The names and addresses of Franchisor's required or approved suppliers, manufacturers and distributors shall be maintained in the Operations Manual. Franchisor reserves the right to approve all of the Products, supplies, Services, equipment, tools, inventory, hardware and software used in connection with Franchisee's Big Air Trampoline Business.

9.4 Franchisee may request that Franchisor approve or designate a new supplier by following the procedures, and paying all required fees and expenses for approval, as set forth in the Operations Manual and modified periodically by Franchisor in Franchisor's discretion. Franchisor will not unreasonably withhold the approval of a supplier; however, in order to make such determination, Franchisor may require that samples from a proposed new supplier be delivered to Franchisor for testing and approval prior to use. Franchisor reserves the right to require that Franchisee pay or reimburse Franchisor for the reasonable cost of investigation in determining whether such products, services, materials, forms, items or supplies satisfy Franchisor's specifications.

10. MARKS, COPYRIGHTED WORKS AND OWNERSHIP OF IMPROVEMENTS.

10.1 Franchisee acknowledges and agrees that:

(a) Franchisor is the owner or exclusive licensee of all right, title and interest, together with all the goodwill of the Marks. Franchisee further acknowledges that the Marks designate the origin or sponsorship of the System, the Big Air Trampoline Business, and the Products and Services, and that Franchisor desires to protect the goodwill of the Marks and to preserve and enhance the value of the Marks. In the event that Franchisee acquires any rights, title or interest in the Marks, Franchisee agrees to assign and hereby assigns all such rights, title or interest to Franchisor.

(b) All right, title and interest in and to all materials, including but not limited to, all artwork and designs, created by Franchisor, and used with the Marks or in association with the Big Air Trampoline Business ("**Copyrighted Materials**") are the

property of Franchisor. Additionally, all Copyrighted Materials created by Franchisee or any other person or entity retained or employed by Franchisee are works made for hire within the meaning of the United States Copyright Act and are the property of Franchisor, who shall be entitled to use and license others to use the Copyrighted Materials unencumbered by moral rights. To the extent the Copyrighted Materials are not works made for hire or rights in the Copyrighted Materials do not automatically accrue to Franchisor, Franchisee irrevocably assigns and agrees to assign to Franchisor, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such Copyrighted Materials, which Franchisee and the author of such Copyrighted Materials warrant and represent as being created by and wholly original with the author. Where applicable, Franchisee agrees to obtain any other assignments of rights in the Copyrighted Materials from another person or entity necessary to ensure Franchisor's right in the Copyrighted Materials as required in this Section 10.1(b).

(c) Franchisee will never dispute, contest, or challenge, directly or indirectly, the validity or enforceability of the Marks or Copyrighted Materials or Franchisor's ownership of the Marks or Copyrighted Materials, nor counsel, procure, or assist anyone else to do the same, nor will it take any action that is inconsistent with Franchisor's ownership of the Marks or Copyrighted Materials, nor will it represent that it has any right, title, or interest in the Marks or Copyrighted Materials other than those expressly granted by this Agreement.

(d) Franchisor may decide, in its sole and absolute discretion, to apply to register or to register any trademarks or copyrights with respect to the Services, Products and any other products and services and the Copyrighted Materials. Failure of Franchisor to obtain or maintain in effect any such application or registration is not a breach of this Agreement. Franchisee will not, before or after termination or expiration of the Agreement, register or apply to register any of the Marks or any trademark, service mark or logo confusingly similar thereto or any Copyrighted Materials, anywhere in the world.

(e) Upon Franchisor's request, Franchisee will cooperate fully, both before and after termination or expiration of this Agreement and at Franchisor's expense, in confirming, perfecting, preserving, and enforcing Franchisor's rights in the Marks and Copyrighted Materials, including but not limited to, executing and delivering to Franchisor such documents as Franchisor reasonably requests for any such purpose, including but not limited to, assignments, powers of attorney, and copies of commercial documents showing sale and advertising of the Services and Products and other products and services. Franchisee hereby irrevocably appoints Franchisor as its attorney-in-fact for the purpose of executing such documents.

(f) All usage of the Marks by Franchisee and any goodwill established by Franchisee's use of the Marks shall inure to the exclusive benefit of Franchisor. This Agreement does not confer any goodwill or other interests in the Marks to Franchisee upon expiration or termination of the Agreement.

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(g) **FRANCHISOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE USE, EXCLUSIVE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE MARKS OR COPYRIGHTED MATERIALS.**

10.2 Franchisee acknowledges and agrees that:

(a) Franchisee's right to use the Marks and Copyrighted Materials are derived solely from this Agreement. Franchisee may only use the Marks and Copyrighted Materials in its operation of the Big Air Trampoline Business and only incompliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor in the Operations Manual and elsewhere from time to time during the Term and any Successor Term. Franchisee will make every effort consistent to protect, maintain, and promote the Marks as identifying the System and only the System.

(b) Any unauthorized use of the Marks or Copyrighted Materials by Franchisee constitutes a breach of this Agreement and an infringement of the rights of Franchisor and in and to the Marks and Copyrighted Materials.

(c) Franchisee will not use any Marks or portion of any Marks as part of a corporate or trade name, or with any prefix, suffix or other modifying words, terms, designs or symbols, or in any modified form. Franchisee shall obtain such fictitious or assumed name registrations as may be required by Franchisor or under applicable law.

(d) In order to preserve the validity and integrity of the Marks and Copyrighted Materials licensed herein and to assure that Franchisee is properly employing the same in the operation of its Big Air Trampoline Business, Franchisor or its agents shall have the right of entry and inspection of Franchisee's Big Air Trampoline Business and operating procedures pursuant to Section 8.6.

(e) Franchisee will safeguard and maintain the reputation and prestige of the Marks and Copyrighted Materials and will not do anything that would tarnish the image of or adversely affect the value, reputation or goodwill associated with the Marks. Franchisee will not do anything that would dilute, directly or indirectly, the value of the goodwill attached to the Marks, nor counsel, procure or assist anyone else to do the same.

(f) Franchisee will use the Marks and Copyrighted Materials only in lettering, logos, print styles, forms, and formats, including but not limited to, advertising and promotional materials, invoices, signage, business checks, business cards, stationery, and promotional items such as clothing, hats, pens, mugs, etc., which have been approved by Franchisor in accordance with this Agreement, and promptly follow instructions regarding the Marks and Copyrighted Materials as provided in the Operations Manual and otherwise given by Franchisor from time to time.

(g) Franchisee will use the following copyright notice at least once on each piece of advertising, promotional, or other material used in connection with the Products and Services:

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(h) Franchisee will use the Marks with a superscript "®" or "™", as specified by Franchisor, unless and until advised by Franchisor to use a different notice.

10.3 Franchisee acknowledges and agrees that:

(a) If, in Franchisor's reasonable determination, the use of Marks or Copyrighted Materials in connection with the Services, Products, other products and services or the Big Air Trampoline Business will infringe or potentially infringe upon the rights of any third party, weakens or impairs Franchisor's rights in the Marks or Copyrighted Materials, or it otherwise becomes advisable at any time in Franchisor's sole discretion for Franchisor to modify or discontinue use of the Marks or Copyrighted Materials then upon notice from Franchisor, Franchisee will immediately terminate or modify such use in the manner prescribed by Franchisor. Franchisor may require Franchisee to use one or more additional or substitute trade names, trademarks, service marks or other commercial symbols or copyrighted materials. Franchisor shall reimburse Franchisee for the tangible out-of-pocket cost of compliance with this requirement (such as the cost of printing new letterhead and business cards), but Franchisee will have no rights of damages, offset, or right to terminate this Agreement as a result thereof and Franchisor shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of any Marks or Copyrighted Materials.

(b) Franchisee shall notify Franchisor within three days after receiving notice of any claim, demand or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Marks or any colorable imitation thereof or the Copyrighted Materials. Upon receipt of timely notice of an action, claim or demand against Franchisee relating to the Marks or Copyrighted Materials, Franchisor shall have the sole right, but not the duty, to defend any such action. Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Marks or Copyrighted Materials and shall exercise such right in the sole discretion of Franchisor. Franchisor shall control all actions but not be obligated to take any action. In any defense or prosecution of any litigation relating to the Marks, Copyrighted Materials or components of the System undertaken by Franchisor, Franchisee shall cooperate with Franchisor, execute any and all documents, and take all actions as may be desirable or necessary in the opinion of Franchisor's counsel, to carry out such defense or prosecution. At Franchisor's option, Franchisee will join in any action, in which case Franchisor shall bear all the out-of-pocket costs of Franchisee for such participation. If Franchisee joins in an action, then the recovery, if any, from such legal action shall be first applied to the total expenses associated therewith and then split equally between Franchisor and Franchisee.

10.4 All provisions of this Agreement applicable to the Marks and Copyrighted Materials apply to any and all additional trademarks, service marks, commercial symbols and copyrighted materials authorized for use by and licensed to Franchisee by Franchisor after the date of this Agreement.

10.5 If Franchisee, during the Term of the franchise relationship, or any Interim Period or Successor Term, conceives or develops any improvements or additions to the System, Copyrighted Materials, website or any other documents or information pertaining to or relating to the System or the Big Air Trampoline Business, or any new trade names, trade and service marks, logos, or commercial symbols related to the Big Air Trampoline Business or any advertising and promotional ideas or inventions related to the Big Air Trampoline Business (collectively, the "**Improvements**") Franchisee shall fully disclose the Improvements to Franchisor, without disclosure of the Improvements to others, and shall obtain Franchisor's written approval prior to using such Improvements. Any such Improvement may be used by Franchisor and all other franchisees without any obligation to Franchisee for royalties or other fees. Franchisee shall assign and does hereby assign to Franchisor, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. Franchisor, at its discretion, may make application for and own copyrights, patents, trade names, trademarks and service marks relating to any such Improvement and Franchisee shall cooperate with Franchisor in securing such rights. Franchisor may also consider such Improvements as the property and Trade Secrets of Franchisor. In return, Franchisor shall authorize Franchisee to utilize any Improvement that may be developed by other franchisees and is authorized generally for use by other franchisees.

11. ADVERTISING AND PROMOTION

11.1 Franchisee acknowledges that local advertising is required to advise the public of the Big Air Trampoline Business. For the first 30 days prior to Franchisee's Projected Opening Date ("**Start-Up Advertising and Promotions Period**") and continuing through the first 60 days after Franchisee opens Franchisee's Big Air Trampoline Business, Franchisee will spend a total of Sixty Thousand Dollars ($60,000.00) on promotional advertising, marketing, and public relations efforts within the Territory ("**Start-Up Advertising and Promotions Expense**"). Of the Start-Up Advertising and Promotions Expense, at least Ten Thousand Dollars ($10,000) will be spent on promotional advertising, marketing and public relations efforts within the Territory on Franchisee's grand opening. Upon the expiration of the Start-Up Advertising and Promotions Period, and during the remaining Term, Franchisee shall spend a minimum of the greater of 2% of the Gross Revenues for the preceding month or $5,000 per month ("**Individual Advertising Expense**") for advertising and promotion within the Territory. Franchisee may not advertise outside its Territory without Franchisor's approval, which may be granted or withheld in Franchisor's sole discretion. Franchisee will receive dollar-for-dollar credit up to 2% of Gross Revenues for the preceding month against this obligation for all contributions that Franchisee makes to a Local Advertising Cooperative in accordance with Section 11.10. Expenditures that Franchisee incurs for any of the following shall not qualify as local advertising for purposes of this Section 11.1, unless approved in advance by Franchisor: (a) salaries, expenses or benefits of any employees of Franchisee, including expense for attendance at advertising meetings or activities; (b) in-store materials consisting of furniture or equipment; or (c) seminar and educational costs and expenses of Franchisee's employees. Franchisee shall also be responsible for paying its pro rata share of a classified directory listing and/or Yellow Pages advertisement to be placed by Franchisor, or at Franchisor's option, Franchisee or the Local Advertising Cooperative, on behalf of all Big Air Trampoline Facilities in the market. If Franchisee operates the only Big Air Trampoline Facility in the market, Franchisee shall be responsible for full payment of the classified directory advertising. Franchisee shall be entitled to apply any

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payment made for classified directory advertising toward Franchisee's Individual Advertising Expense obligation.

11.2 During the Term, Franchisee shall furnish Franchisor an accounting of Franchisee's previous month's expenditures for advertising and promotion on a form approved by Franchisor.

11.3 Franchisor will make available to Franchisee all advertising and promotion materials for the Big Air Trampoline Business which are used by Franchisor and other franchisees. Franchisee may not develop advertising materials for use in the Big Air Trampoline Business without Franchisor's approval. If Franchisor approves the advertising materials prepared by Franchisee in writing, Franchisor may make available to other franchisees such advertising and promotion materials. Franchisee must pay duplication costs of any advertising or promotion material provided by Franchisor.

11.4 Franchisor, in its sole discretion, may elect to form a national marketing and promotions fund ("**National Marketing and Promotions Fund**"). On or before the 10th day of each month, Franchisee shall remit 2% of the Gross Revenues for the preceding month or portion thereof to Franchisor ("**National Marketing and Promotions Fee**"). Franchisor may, in its sole discretion increase the National Marketing and Promotions Fee up to 3% of the Gross Revenues for the preceding month or portion thereof upon 30 days advance notice. No action taken by Franchisee shall diminish Franchisee's obligations to pay the National Marketing and Promotions Fee to the National Marketing and Promotions Fund. The National Marketing and Promotions Fee is in addition to Franchisee's obligations in Section 11.1.

11.5 Advertising materials and services will be provided to Franchisee through the National Marketing and Promotions Fund. Franchisor may occasionally provide for placement of advertising, development of promotional materials, and undertaking public relations activities on behalf of the entire System, including franchisees, or on behalf of a particular region, that may not include Franchisee, through the National Marketing and Promotions Fund. Franchisor reserves the right to use the National Marketing and Promotions Fee from the National Marketing and Promotions Fund to place advertising in national media or regional media (including broadcast, print or other media) in the future. Franchisee acknowledges that the National Marketing and Promotions Fund is intended to maximize the general brand recognition of the System. Franchisor is not obligated to expend National Marketing and Promotions Funds on Franchisee's behalf or benefit or expend National Marketing and Promotions Funds equivalent or proportionate to Franchisee's National Marketing and Promotions Fees on Franchisee's behalf or benefit.

11.6 National or regional advertising, public relations, and promotions will be started and continued by Franchisor, when, in Franchisor's sole discretion, Franchisor deems that it has accumulated sufficient moneys for that purpose. The National Marketing and Promotions Fund will be used to promote the System, Services and Products sold by Franchisees and will not be used for the purpose of selling additional franchises; provided, however, that Franchisee acknowledges and agrees that Franchisor may undertake certain activities using funds from the National Marketing and Promotions Fund that have the effect of increasing the visibility of, and interest in, the Big Air Trampoline System by prospective franchisees. Franchisor's accounting

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and marketing personnel or a representative designated by Franchisor will administer the National Marketing and Promotions Fund. The National Marketing and Promotions Fund will collect National Marketing and Promotions Fees from all franchisees and Franchisor's Affiliate-owned stores. All payments to the National Marketing and Promotions Fund must be spent on advertising, public relations, market research, trade show attendance, promotion, point-of-sale materials, point-of-sale systems, marketing of goods and services provided by Franchisor and outside vendors, including but not limited to marketing agencies, and administration of the National Marketing and Promotions Fund, including but not limited to, salaries, overhead, administrative, accounting, collection and legal costs and expenses. The National Marketing and Promotions Funds will be maintained by Franchisor in a separate account. An annual un-audited financial statement of the National Marketing and Promotions Fund, at the expense of the National Marketing and Promotions Fund, will be available 120 days after Franchisor's fiscal year end to Franchisee for review once a year upon request.

11.7 The National Marketing and Promotions Fees collected by the National Marketing and Promotions Fund are non-refundable. The National Marketing and Promotions Fund may be terminated at any time by Franchisor, in its sole discretion. In the event that the National Marketing and Promotions Fund is terminated, any remaining balance in the National Marketing and Promotions Fund will be expended as provided for in Section 11.6 or returned to Franchisee on a pro-rata basis.

11.8 Franchisee shall fully participate in all such promotional campaigns, prize contests, special offers, and other programs, national, regional, or local in nature (including the introduction of new Services, Products, new franchises or other marketing programs directed or approved by Franchisor), which are prescribed from time to time by Franchisor. Franchisee shall be responsible for the costs of such participation. In addition, Franchisee shall honor any coupons, gift certificates or other authorized promotional offers of Franchisor at Franchisee's sole cost unless otherwise specified in writing by Franchisor. Franchisee will maintain an adequate supply of marketing brochures, pamphlets and promotional materials as may be required by Franchisor from time to time. The cost for such participation will be applied to Franchisee's Individual Advertising Expense.

11.9 Franchisor (and any designee of Franchisor) will have no direct or indirect liability or obligation to Franchisee or the National Marketing and Promotions Fund or otherwise with respect to the management, maintenance, direction, administration or otherwise of the National Marketing and Promotions Fund. Franchisee and Franchisor agree that their rights and obligations with respect to the National Marketing and Promotions Fund and all related matters are governed solely by this Agreement and neither this Agreement or the National Marketing and Promotions Fund creates a trust, fiduciary relationship, or similar arrangement.

11.10 At the time the designated marketing area ("**DMA**") in which the Big Air Trampoline Facility is located encompasses Big Air Trampoline Facilities operated by at least two other franchisees or Big Air Trampoline Facility operators (including Franchisor's parent or Affiliates), the owners in the DMA will, at Franchisor's request and with Franchisor's advice and assistance, form a cooperative advertising association among themselves ("**Local Advertising Cooperative**" or "**Cooperative**") for the purpose of jointly advertising and promoting their Big

Air Trampoline Facilities. Franchisor shall have control of all Cooperative Funds and expenditures of such funds shall require Franchisor's advanced approval.

(a) If, in connection with a Cooperative's formation or functioning, its members are unable to reach agreement with respect to any disagreement over organization, administration, "spill" policy, contribution waivers or exceptions, budget or other matters that the members cannot resolve within 45 days, the issue will be referred to Franchisor for resolution. Franchisor's decision with respect to the issue's resolution will be binding on all members of the Cooperative. In addition, Franchisor reserves the right to review each Cooperative's contribution rate on an annual basis and to disapprove a rate of less than 1% of Gross Revenues or a rate in excess of 2% of Gross Revenues. Franchisee's contributions to a Cooperative will be credited to Franchisee's Individual Advertising Expense requirements set out in Section 11.1 up to a maximum of 2% of Gross Revenues.

(b) Franchisee agrees (i) to join, participate in, and actively support any Cooperative established in the Big Air Trampoline Facility's DMA, and (ii) to make contributions to each Cooperative on the payment schedule adopted by the Cooperative's members and at the contribution rate Franchisor approves.

(c) Franchisor reserves the right to seek reimbursement from the Cooperative for reasonable administrative costs, salaries and overhead as Franchisor may incur in activities related to the implementation and administration of the Cooperative and related marketing programs.

(d) Franchisor shall have the sole right, in its discretion, to form, change, dissolve or merge any Cooperative.

11.11 Franchisor may establish and maintain an Internet website that provides information about the Big Air Trampoline System and the Products and Services that Big Air Trampoline Facilities offer. Franchisor will have sole discretion and control over the website's design and contents. Franchisor may use part of the marketing fees it collects under Section 11.4 and part of the Marketing and Promotions Fund's revenues to pay or reimburse itself for the costs of maintaining and updating the website, except that Franchisor may not use marketing fees or Marketing and Promotions Fund Contributions to pay for those components of the website that are devoted to the sale of franchises for Big Air Trampoline Businesses.

(a) The website may include a section that provides the address, telephone number and e-mail address of each Big Air Trampoline Facility in the Big Air Trampoline chain, including Franchisee's Big Air Trampoline Facility.

(b) Franchisee will not have any independent right to advertise its Big Air Trampoline Facility on the Internet.

12. INSURANCE AND INDEMNITY

12.1 Franchisee shall, upon commencement of the Term, purchase and at all times maintain in full force and effect:

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(a) Insurance policies, in such amounts and on such terms, as prescribed by the Operations Manual, issued by an insurance company acceptable to Franchisor at all times during the Term of this Agreement and any Successor Terms. Insurance coverage must include, but is not limited to, comprehensive general liability, combined single limit, automobile, bodily injury and all-risk property damage insurance and all other occurrences against claims of any person, employee, customer, agent or otherwise in an amount per occurrence of not less than such amount set forth in the Operations Manual and adjusted by Franchisor periodically in Franchisor's sole discretion, unemployment and workers compensation insurance and any other additional insurance required by the terms of any Lease or lender for the Big Air Trampoline Business. Insurance policies must insure Franchisee, Franchisor, Franchisor's Affiliates, and Franchisor's and Franchisor Affiliates' respective officers, directors, shareholders, managers, members and all other parties designated by Franchisor, as additional named insureds against any liability which may accrue against them because of the ownership, maintenance or operation by Franchisee of the Big Air Trampoline Business. The policies must also stipulate that Franchisor shall receive a 30-day prior written notice of cancellation and must contain endorsements by the insurance companies waiving all rights of subrogation against Franchisor. Original or duplicate copies of all insurance policies, certificates of insurance, or other proof of insurance (collectively, "**Certificates of Insurance**") acceptable to Franchisor, including original endorsements effecting the coverage required by this Section, shall be furnished to Franchisor together with proof of payment within 10 days of issuance thereof. Franchisee shall also furnish Franchisor with certificates and endorsements evidencing such insurance coverage within 10 days after each of the following events: (i) at all policy renewal periods, no less often than annually, and (ii) at all instances of any change to, addition to, or replacement of any insurance. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are subject to approval by Franchisor. Franchisor reserves the right to require complete, certified copies of all required insurance policies at any time in Franchisor's sole discretion. In the event Franchisee fails to obtain the required insurance and to keep the same in full force and effect, Franchisor may, but shall not be obligated to, purchase insurance on Franchisee's behalf from an insurance carrier of Franchisor's choice, and Franchisee shall reimburse Franchisor for the full cost of such insurance, along with a reasonable service charge to compensate Franchisor for the time and effort expended to secure such insurance, within five days of the date Franchisor delivers an invoice detailing such costs and expenses to Franchisee. Notwithstanding the foregoing, failure of Franchisee to obtain insurance constitutes a material breach of this Agreement entitling Franchisor to terminate this Agreement or exercise any or a combination of the other default remedies set forth in Section 17 of this Agreement. Franchisee shall also procure and pay for all other insurance required by state or federal law. Franchisor reserves the right to modify minimum insurance requirements or the types of coverage required at any time in its sole discretion by updating the Operations Manual.

(b) All public liability and property damage policies shall contain a provision that Franchisor, although named as an additional insured, shall nevertheless be entitled to recover under such policies on any loss occasioned to Franchisor or its shareholders, members, directors, managers, employees or agents.

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(c) All liability insurance policies procured and maintained by Franchisee in connection with the Big Air Trampoline Business will require the insurance company to provide and pay for attorneys to defend any legal actions, lawsuits or claims brought against Franchisee, Franchisor, Franchisor's Affiliates and their respective officers, directors, managers, members, agents, employees, and all other entities or individuals designated by Franchisor as additional insureds.

(d) Franchisee must purchase insurance policies set out in this Section 12.1 from Franchisor's designated supplier if required by Franchisor in the Operations Manual.

12.2 Franchisee shall, during the Term and any Successor Terms and after the termination or expiration of this Agreement, indemnify and defend Franchisor, its Affiliates and their respective officers, directors, managers, members, and employees, and hold them harmless against all claims, demands, losses, damages (including punitive damages), costs, suits, judgments, penalties, expenses (including reasonable attorneys' fees and amounts paid in settlement or compromise) and liabilities of any kind, whether or not ultimately determined to be meritorious (and including damages suffered by Franchisee or any of its property) (collectively, "**Damages**") for which they are held liable, or which they incur (including travel, investigation and living expenses of employees and witness fees) in any litigation or proceeding as a result of or arising out of:

(a) a breach of this Agreement, or any other agreement between the parties, or any breach of a Lease or other instrument by which the right to occupy any Big Air Trampoline Facility or any other premises used by Franchisee to operate the Big Air Trampoline Business is held, by Franchisee;

(b) any injury to, or loss of property of, any person in, or on, the Big Air Trampoline Facility or any other premises used by Franchisee to operate the Big Air Trampoline Business;

(c) Franchisee's taxes, liabilities, costs or expenses of its Big Air Trampoline Business;

(d) any negligent or willful act or omission of Franchisee, its officers, directors, managers, members, partners, employees, agents, servants, contractors or others for whom it is, in law, responsible;

(e) any violation of any federal, state or local law, ordinance or regulation imposing requirements or prohibitions on Franchisee in the operation of the Big Air Trampoline Business; and

(f) any advertising or promotional material distributed, broadcasted or in any way disseminated by Franchisee, or on its behalf unless such material has been produced, or approved in writing, by Franchisor.

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13. RELATIONSHIP

13.1 Franchisee acknowledges that it is an independent contractor and is not an agent, partner, joint venturer or employee of Franchisor and no training or supervision given by, or assistance from, Franchisor shall be deemed to negate such independence. Neither party is liable or responsible for the other's debts or obligations, nor shall either party be obligated for any damages to any person or property directly or indirectly arising out of the operation of the other party's business authorized by or conducted pursuant to this Agreement. Franchisor and Franchisee agree that no partnership, fiduciary relationship, joint venture or employment relationship exists between them. Franchisee shall conspicuously identify itself in all dealings with the public as a sole operator that is an entity separate from Franchisor and state that Franchisor has no liability for the Big Air Trampoline Business being conducted from the Big Air Trampoline Business location. It is expressly agreed that the parties intend by this Agreement to establish between Franchisor and Franchisee the relationship of franchisor and franchisee. It is further agreed that Franchisee has no authority to create or assume in Franchisor's name or on behalf of Franchisor, any obligation, express or implied, or to act or purport to act as agent or representative on behalf of Franchisor for any purpose whatsoever. Franchisee agrees that it will not hold itself out as the agent, employee, partner or co-venturer of Franchisor. All employees hired by or working for Franchisee shall be the employees of Franchisee and shall not, for any purpose, be deemed employees of Franchisor or subject to Franchisor's control. Each of the parties agrees to file its own tax, regulatory and payroll reports with respect to its respective employees and operations, saving and indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof.

13.2 Neither party hereto shall make any agreements, representations or warranties (except by Franchisor in advertising as provided herein) in the name of, or on behalf of, the other party; neither party hereto shall be obligated by, nor have any liability for, any agreements, representations or warranties made by the other (except by Franchisor in advertising as provided herein) nor shall Franchisor be liable for any damages to any person or property, directly or indirectly, arising out of the operation of Franchisee's Big Air Trampoline Business, whether caused by Franchisee's negligent or willful action or failure to act.

13.3 Franchisor shall have no liability for Franchisee's obligations to pay any third parties, including without limitation, any product vendors, or any value added, sales, use, service, occupation, excise, Gross Revenues, income, property or other tax levied upon Franchisee, Franchisee's property, the Big Air Trampoline Business or upon Franchisor in connection with the sales made or business conducted by Franchisee (except any taxes Franchisor is required by law to collect from Franchisee with respect to purchases from Franchisor).

14. RESTRICTIVE COVENANTS

14.1 Franchisee acknowledges and agrees that:

(a) Franchisee's entire knowledge of the operation of the Big Air Trampoline Business, the System, and the concepts and methods of promoting the Big Air Trampoline Business hereunder, that it has now or obtains in the future, is derived from Franchisor's Confidential Information and Trade Secrets. Franchisee further

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acknowledges and agrees that all of the Confidential Information and Trade Secrets are the sole property of Franchisor, represent valuable assets of Franchisor and that Franchisor has the right to use the Confidential Information and Trade Secrets in any manner it wishes at any time.

(b) During the Term and any Successor Terms, Franchisee, and Franchisees' owners, Designated Business Managers, officers, directors, managers, members, partners, and employees who have access to the Confidential Information and Trade Secrets agree that they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information and Trade Secrets; and (4) will adopt and implement all reasonable procedures Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring employees, Designated Business Managers, training class attendees, and Franchisee owners who have access to the Confidential Information and Trade Secrets to execute such nondisclosure and noncompetition agreements as Franchisor may require periodically, and provide Franchisor, at Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(c) After the Agreement expires or is terminated, Franchisee, and Franchisees' owners, Designated Business Managers and employees who have access to the Confidential Information and Trade Secrets agree that for a period of two years after the termination or expiration of the Agreement (unless such information is a Trade Secret in which case the requirements in this Section 14.1(c) will remain in place for as long as such information constitutes a Trade Secret) they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information or Trade Secrets; and (4) will adopt and implement all reasonable procedures Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring written nondisclosure and noncompetition agreements for those individuals as Franchisor may require and provide Franchisor, at Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(d) Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to the following: (a) Confidential Information in the public domain after it was communicated to Franchisee through no fault of Franchisee, its owners, Designated Business Managers or employees; (b) Confidential Information in Franchisee's possession free of any obligation of confidence at the time it was communicated to Franchisee; or (c) the disclosure of the Confidential Information in judicial or administrative proceedings to the extent that Franchisee is legally compelled to disclose the information, if Franchisee has notified Franchisor before disclosure and used Franchisee's best efforts, and afforded Franchisor the

opportunity, to obtain an appropriate protective order or other assurance satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

14.2 Franchisee covenants and agrees that:

(a) During the Term of this Agreement and any Successor Terms thereof, Franchisee, its owners, Designated Business Managers, officers, directors, managers, members, and partners shall not, without the prior written consent of Franchisor, either individually or in a partnership, corporation, limited liability company, joint venture or other business entity or jointly or in conjunction with any person, firm, association, syndicate or corporation, as principal, agent, shareholder, member, partner or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business operating in competition with any business operating indoor trampoline recreation and party centers featuring trampolines, foam pits, rock climbing walls and other elements and the ale of related Products, or any business similar to the Big Air Trampoline Business ("**Competitive Business**") as carried on from time to time during the Term of this Agreement, including any Successor Term.

(b) Upon termination or expiration of the Term or any Successor Term, or the transfer, sale or assignment of this Agreement by Franchisee, neither Franchisee, the Designated Business Manager nor Franchisee's owners, officers, directors, managers, members, or partners will have any direct or indirect interest (i.e. through a relative) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent, for two years, in any Competitive Business in: (1) the Territory or any other franchisee's territory; (2) within 100 miles of the Territory or any other franchisee's territory; or (3) within 100 miles of any Franchisor or Affiliate-owned Big Air Trampoline Business.

14.3 During the Term (including any Successor Term) of this Agreement and for a period of two years thereafter, Franchisee, Franchisee's owners, officers, directors, managers, members, partners, and the Designated Business Manager shall not attempt to attain an unfair advantage over other franchisees or Franchisor or any Affiliates thereof by soliciting for employment any person who is, at the time of such solicitation, employed by Franchisor, other franchisees or any Affiliates, nor shall Franchisee, Franchisee's owners, officers, directors, managers, members, partners, nor the Designated Business Manager, directly or indirectly induce or attempt to induce any such person to leave his or her employment as aforesaid.

14.4 If any person restricted by this Section 14 refuses to voluntarily comply with the foregoing obligations, the two-year period will commence with the entry of any order of a court or arbitrator enforcing this Section 14.

14.5 The parties have attempted in Section 14.2 above to limit Franchisee's right to compete only to the extent necessary to protect Franchisor from unfair competition. The parties hereby expressly agree that if the scope of enforceability of the provision of Section 14.2 is disputed at any time by Franchisee, a court or arbitrator, as the case may be, may modify Section 14.2 to the extent that it deems necessary to make such provision enforceable under applicable

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law. In addition, Franchisor reserves the right to reduce the scope of said provision without Franchisee's consent, at any time or times, effective immediately upon notice to Franchisee. Franchisee EXPRESSLY ACKNOWLEDGES THAT IT POSSESSES SKILLS AND ABILITIES OF A GENERAL NATURE AND HAS OTHER OPPORTUNITIES TO EXPLOIT SUCH SKILLS. CONSEQUENTLY, ENFORCEMENT OF THE COVENANTS SET FORTH ABOVE WILL NOT DEPRIVE FRANCHISEE OF THE ABILITY TO EARN A LIVING.

14.6 Nothing in this Section 14 shall prevent any active officer of Franchisee or member of Franchisee's family, either individually or collectively, from owning not more than a total of 5% of the stock of any company which is subject to the reporting requirements of the U.S. Securities and Exchange Act of 1934, provided that Franchisee or any member of Franchisee's family is otherwise not actively involved in the management or operation of that business and does not serve that business in any capacity other than as a shareholder.

14.7 Franchisor must be protected against the potential for unfair competition by Franchisee's use of Franchisor's training, assistance, Confidential Information and Trade Secrets in direct competition with Franchisor. Franchisee further acknowledges that Franchisor would not have entered into this Agreement or shared the Confidential Information, Trade Secrets and other information with Franchisee absent Franchisee's agreement to strictly comply with the provisions of this Section 14. Franchisee acknowledges that as a Franchisee of Franchisor, it will have access to Franchisor's Trade Secrets and Confidential Information and therefore be in a unique position to use the special knowledge gained as a franchisee. Franchisee acknowledges that a breach of the covenants contained in this Section 14 will be deemed to threaten immediate and substantial irreparable injury to Franchisor. Accordingly, Franchisee agrees that Franchisor will have the right, without prior notice to Franchisee, to obtain immediate injunctive relief without limiting any other rights or remedies and without posting a bond.

14.8 In the event that Franchisee is not an individual, this Section 14 will also apply to the officers, directors, stockholders, partners, members, trustees, beneficiaries and/or principals of Franchisee, Franchisee, and any persons controlled by, controlling or under common control with Franchisee.

15. ASSIGNMENT

15.1 Franchisee acknowledges that Franchisor's obligations under this Agreement are not personal. Franchisor shall have the absolute right, in its sole discretion and at any time, to unconditionally transfer or assign this Agreement or any of its rights or obligation under this Agreement to any person, corporation or other party.

15.2 Franchisor reserves the right to assign the franchise System to anyone, including the operator of a competing national or regional chain or franchise system. Franchisee acknowledges and agrees that Franchisor may sell its assets, the Marks or the System to any third party of Franchisor's choice; may offer its securities privately or publicly; may merge with or acquire other business entities or be acquired by another business entity; may permit and participate in any transfer or distribution of its securities in connection with a spin-off; may undertake a refinancing, recapitalization, leveraged buyout, or other economic or financial restructuring; or may terminate or cease to exist or dissolve, in any such case without

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Franchisee's consent and, provided the transferee expressly assumes and undertakes to perform Franchisor's obligations in all material respects, do so free of any responsibility or liability whatsoever to Franchisee after the transaction occurs.

15.3 With regard to any of the above sales, assignment and dispositions, Franchisee expressly and specifically waives any claims, demands, or damages against Franchisor arising from or related to the transfer of the Marks, assets or the System from Franchisor to any other party.

15.4 Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee. Accordingly, this Agreement, Franchisee's rights and interests hereunder, the property and assets owned and used by Franchisee in connection with the Big Air Trampoline Business, and any shares, stock, membership or interest in any corporation, limited liability company, or other entity having an interest in the Big Air Trampoline Business, shall not be voluntarily or involuntarily, directly or indirectly sold, pledged, assigned, transferred, shared, subdivided, sub-franchised, encumbered or transferred in any way (including, without limitation, in the event of the death of Franchisee if Franchisee is an individual), in whole or in part, in any manner whatsoever without the prior written approval of Franchisor, which approval will not be unreasonably withheld or delayed, and compliance with all terms of this Section 15. Any unauthorized sale, assignment, transfer or other conveyance, by operation of law or otherwise, or any attempt to do so, shall be deemed void and grounds for termination of this Agreement by Franchisor.

15.5 With and after each valid assignment of this Agreement pursuant to this Section 15, the assignee or assignees of Franchisee shall be deemed to be Franchisee under this Agreement and will be bound by and liable for all of Franchisee's existing and future obligations. No stockholder in any corporation, member in any limited liability company or partner in any partnership which becomes Franchisee shall have any rights under this Agreement by reason of his, her or its stock ownership, membership interest or partnership interest.

15.6 If Franchisee shall at anytime determine to sell, in whole or in part, the Big Air Trampoline Business, Franchisee shall obtain a bona fide, executed, written offer ("**Purchase Offer**") for the Big Air Trampoline Business together with all real or personal property, leasehold improvements and other assets used by Franchisee in its Big Air Trampoline Business from a responsible, arms' length, and fully disclosed purchaser and shall submit an exact copy of such Purchase Offer to Franchisor. Franchisor will have a right of first refusal to purchase the Big Air Trampoline Business as provided in Section 16.

15.7 No transfer or assignment of this Agreement will be approved by Franchisor or be effective unless and until all the following conditions are satisfied:

(a) Franchisee being then in full compliance herewith and paying to Franchisor all outstanding debts or amounts owing to Franchisor and any Affiliates or suppliers of Franchisor;

(b) the transferee executing Franchisor's then-current form of franchise agreement (which, in Franchisor's sole discretion, may have terms equal to the remainder

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of Franchisee's initial Term, or may include a new full length Term, and which may otherwise contain provisions substantially different from those contained herein, including a higher royalty and greater required expenditures for advertising and promotion than are provided hereunder, and such other documents then customarily used by Franchisor to grant franchises, but which shall not require the payment of another Initial Franchise Fee), all other documents as may be reasonably requested by Franchisor and paying to Franchisor a transfer fee ("**Transfer Fee**") in the amount of Ten Thousand Dollars ($10,000.00);

(c) Franchisee's execution of a general release of Franchisor, including its officers, directors, members, agents, and employees and Affiliates from such parties' obligations under the Agreement;

(d) the transferee is purchasing all of Franchisee's assets used in the Big Air Trampoline Business in accordance with all applicable bulk sales legislation and assuming all of the liabilities of the Big Air Trampoline Business unless such liabilities have been paid prior to the closing of the transaction of purchase and sale or unless the sale is a sale of shares in the capital stock or membership interest of Franchisee;

(e) the transferee shall be an individual, corporation, limited liability company, partnership or other business entity having adequate financial resources who shall meet all criteria established by Franchisor for franchisees. The transferee shall also complete Franchisor's then-current training program established by Franchisor for franchisees unless: (i) the transferee is a current franchisee in good standing in the System, or (ii) the transferee is or has been a Designated Business Manager for a period of one year or more of a Big Air Trampoline Business in good standing;

(f) Franchisee shall, at Franchisor's request, prepare and furnish to the transferee and/or Franchisor such financial reports and other data relating to the Big Air Trampoline Business and its operations as Franchisor deems reasonably necessary or appropriate for the transferee and/or Franchisor to evaluate the Big Air Trampoline Business and the proposed transfer. Franchisee authorizes Franchisor to confer with a proposed transferee and furnish it with information concerning the Big Air Trampoline Business and the terms and conditions of the proposed transfer, and Franchisor may do so without any liability, except for intentional misstatements made to a transferee;

(g) the parties to the proposed transaction will have entered into a binding agreement subject only to the rights of Franchisor set out in Section 16. Franchisor shall be furnished a copy of this binding agreement, and such agreement shall be subject to Franchisor's approval in writing. Franchisee must advise each prospective transferee of this provision and the other terms of this Agreement;

(h) the proposed transferee or the stockholders, partners, members or owners of a beneficial interest in a proposed corporation, partnership, limited liability company or other entity transferee, provide jointly and severally such personal guarantees as Franchisor may request, guaranteeing the proposed transferee's performance of its obligations under the agreements to be entered into;

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(i) the proposed transferee shall have demonstrated to Franchisor's satisfaction that it, he or she will meet in all respects Franchisor's standards applicable to new franchisees regarding experience, personal and financial reputation and stability, willingness and ability to devote its, his or her full time and best efforts to the operation of the Big Air Trampoline Business, and any other conditions as Franchisor may reasonably apply in evaluating new franchisees. Franchisor must be provided with all information about the proposed transferee as Franchisor may reasonably require. Because of the confidential information and trade secrets available to a franchisee, no assignment to a competitor of Franchisor will be permitted; and

(j) the transferee paying all costs of Franchisor with respect to (i) the granting of its approval, as hereinbefore contemplated, including but not limited to all of its legal costs with respect to the preparation and execution of the above noted then-current form of Franchise Agreement, and all other documents then customarily used by Franchisor to grant franchises; and (ii) the transfer, including but not limited to, all professional fees (attorney's fees, broker fees, and the like), leasing expenses, brokerage commissions or fees, document preparation costs and due diligence.

15.8 Notwithstanding anything to the contrary herein contained, Franchisor shall, upon Franchisee's compliance with such requirements as may from time to time be prescribed by Franchisor (including the obtaining of all necessary approvals to the assignment of the Lease, if any, of the Big Air Trampoline Facility), consent to an assignment of Franchisee's right, title and interest in and to this Agreement, and the property and assets owned and used by Franchisee in connection therewith and any other agreement then in effect between Franchisee and Franchisor to a corporation, limited liability company or other business entity which is wholly owned and controlled by Franchisee, subject to the following (provided that such assignment shall in no way release Franchisee from any liability under this Agreement):

(a) Contemporaneously with such assignment and thereafter upon the appointment or election of any person as director, officer, partner or manager of such corporation, limited liability company or other business entity, such corporation, limited liability company, partnership or other business entity shall cause each shareholder, partner, member, manager, director(s) and officer(s) of the corporation, limited liability company, partnership or other business entity to execute a written agreement with Franchisor, personally guaranteeing full payment and performance of Franchisee's obligations to Franchisor and individually undertaking to be bound, jointly and severally, by all the terms of this Agreement or any new current form of Franchise Agreement and jointly and severally liable;

(b) No shares or interest in the capital of such corporation, limited liability company, partnership or other business entity shall be issued nor shall Franchisee directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, donate, pledge, mortgage or otherwise encumber any such shares or interest or offer or attempt to do so or permit the same to be done without Franchisor's prior written consent;

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(c) The corporation shall maintain stop transfer instructions against the transfer of shares or membership interests on its records subject to the restrictions of this Section and shall have all outstanding shares or membership interest certificates endorsed with the following legend printed conspicuously upon the face of each share or certificate:

> "*The transfer of this certificate is subject to the terms and conditions of a certain Franchise Agreement with BIG AIR FRANCHISING, LLC. Reference is made to said Franchise Agreement and to the restrictive provisions of the articles of this corporation.*"

(d) The articles of incorporation, articles of organization, operating agreement, partnership agreement, shareholder agreement, and by-laws of the corporation, limited liability company, partnership or other business entity shall provide that its objectives or business is confined exclusively to the operation of the Big Air Trampoline Business as provided for in this Agreement, and recite that the issuance and transfer of any shares, membership interest, partnership interest or other interest is restricted by the terms of this Agreement, and copies thereof shall be furnished to Franchisor upon request;

(e) Franchisor's consent to a transfer of any interest subject to the restrictions of this Section shall not constitute a waiver of any claim it may have against the assignor, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the assignee;

(f) The corporation, partnership, limited liability company or other business entity shall advise Franchisor and keep Franchisor current as to the names and addresses of the directors, officers, members, partners and shareholder of and those persons financially involved in the corporation, partnership, limited liability company or other business entity; and

(g) Franchisee agrees to devote its full time and best efforts to manage the day-to-day operations of the Big Air Trampoline Business unless it has an operational partner or Designated Business Manager approved by Franchisor.

15.9 Upon the death or permanent disability of an individual Franchisee (or the controlling shareholder, member or partner if Franchisee is a legal entity), the personal representative of such person shall transfer all right, title and interest in this Agreement or such interest in Franchisee to any approved third party, which may include an heir or legatee that otherwise satisfies Franchisor's then-current standards and qualifications for new Franchisee. Such disposition of this Agreement or such interest (including, without limitation, transfer by bequest or inheritance, provided such transfer is in accordance with the requirements of this Section 15.9) shall be completed within a reasonable time, not to exceed six months from the date of death or permanent disability (unless extended by probate proceedings), and shall be subject to all the terms and conditions applicable to transfers contained in this Section. Franchisor shall have the right, in Franchisor's sole discretion, to operate the Big Air Trampoline Facility or to appoint a representative or designee to operate the Big Air Trampoline Facility, for

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a period of up to 180 days, or until such time as Franchisee's interest shall have been transferred to an approved third party, whichever occurs first. Franchisor or the appointed representative shall be entitled to retain all revenues, and shall pay all operating expenses from the operation of the Big Air Trampoline Facility, without the right to seek or require reimbursement by Franchisee's estate or personal representative, during the period of operation of the Big Air Trampoline Facility. Failure to transfer the interest in this Agreement or such interest in Franchisee within said period of time shall constitute a breach of this Agreement and shall entitle Franchisor to terminate this Agreement without further notice or the opportunity to cure. For purposes hereof, the term "**Permanent Disability**" shall mean a mental or physical disability, impairment or condition that prevent Franchisee or Franchisee's controlling shareholder, member or partner from performing the essential functions of Franchisee.

15.10 Franchisee shall grant no security interest in any of the assets of the Big Air Trampoline Business unless the secured party agrees that in the event of any default by Franchisee under any documents related to the security interest, Franchisor shall have the right and the option to be substituted as obligor to the secured party and to cure any default of Franchisee, except that any acceleration of indebtedness due to Franchisee's default shall be void.

15.11 Franchisee shall not have the right to grant a subfranchise.

16. OPTION TO PURCHASE — RIGHT OF FIRST REFUSAL

16.1 Unless otherwise explicitly provided by this Agreement, Franchisor shall be entitled to exercise the rights provided in this Section immediately upon:

(a) The expiration without extension of Franchisee's rights to operate the Big Air Trampoline Business or the termination for any reason of the License or this Agreement;

(b) Any breach, default or other event that gives Franchisor the right to terminate the License or this Agreement, after expiration of any applicable notice and cure period; or

(c) The receipt by Franchisor of a copy of a Purchase Offer.

16.2 Upon any event described in Subsection 16.1, Franchisor shall have the option to purchase all of Franchisee's rights, title and interest in the Big Air Trampoline Business, and all its improvements, furniture, fixtures, equipment and products, and all of Franchisee's accounts, contract rights, customer and vendor lists, work in progress and other business assets.

16.3 The purchase price for assets itemized in Subsection 16.2 will be, subject to Section 16.4: (i) the current fair market value if Subsection 16.1(a) or 16.1(b) is applicable; or (ii) the price specified in the Purchase Offer received by Franchisee if Subsection 16.1(c) is applicable. If Franchisee and Franchisor cannot agree on fair market value within a reasonable time, an independent appraiser will be designated by Franchisee and Franchisor and an average of the two appraised values will be binding. Appraised values will exclude any and all

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consideration for goodwill or going concern value created by the Marks and business system licensed to Franchisee.

16.4 If Franchisor elects to exercise any option to purchase provided in this Section 16, Franchisor will have the right to set off all amounts due from Franchisee under the Franchise Agreement or any other agreements between the parties, any commissions or fees payable to any broker, agent or other intermediary and the cost of the appraisal, if any, against any payment. Franchisee shall also have the right to substitute cash for any other form of consideration specified in the Purchase Offer and to pay in full the entire purchase price at the time of closing.

16.5 Franchisor will notify Franchisee of its intention to exercise or not exercise its rights to purchase ("**Notice of Intent**") within 60 days following an event described in Subsection 16.1(a) or (b) or within 15 days following an event described in Subsection 16.1(c). The Notice of Intent will specify the assets to be purchased, and the current fair market value as determined by Franchisor if Subsection 16.1(a) or 16.1(b) is applicable. In the event Franchisor is purchasing the assets pursuant to Subsections 16.1(a) or (b), Franchisee will have 14 days following receipt of Franchisor's Notice of Intent to object to any of the prices specified therein, and any disputes over pricing shall be resolved through appraisal as specified by Subsection 16.3. If Franchisor declines to exercise its rights under this Section within the 15 or 60 day period described above, as applicable, Franchisee may thereafter sell or dispose of the Big Air Trampoline Business to any third party in the event of a sale under Subsection 16.1(a) or 16.1(b) or to the third party identified in the Purchase Offer in the event of a sale under Subsection 16.1(c), but not at a lower price nor on more favorable terms than set forth in the Purchase Offer, if any, or the Notice of Intent and subject to the prior written permission of Franchisor and satisfaction of the other conditions to assignment set forth in Section 15. If the sale to such third party purchaser is not completed within 90 days after Franchisor delivers the Notice of Intent to Franchisee, Franchisor shall again have the right of first refusal provided in this Agreement.

16.6 If Franchisor provides Franchisee with its Notice of Intent to exercise its rights under this Section 16, the purchase and sale contemplated in this Section shall be consummated as soon as possible. In the event Franchisor is purchasing the assets pursuant to Subsections 16.1(a) or (b), following the delivery of a Notice of Intent as specified in Subsection 16.5, Franchisor or Franchisor's designee shall have the immediate right to take possession of the Big Air Trampoline Business and to carry on and develop the Big Air Trampoline Business for the exclusive benefit of Franchisor or its designee.

17. DEFAULT AND TERMINATION

17.1 Franchisor shall have the right, at its option, to (i) suspend performance of certain or all of its services to Franchisee during the time period Franchisee is in default of this Agreement; or (ii) terminate this Agreement and all rights granted Franchisee hereunder (subject to the provisions of applicable state law governing franchise termination and renewal), effective upon receipt of notice by Franchisee, addressed as provided in Section 18, upon the occurrence of any of the following events:

(a) Franchisee fails or refuses to open the Big Air Trampoline Facility on or before the Projected Opening Date;

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Exhibit 5

HELLMAN & YATES

ATTORNEYS AND COUNSELORS AT LAW

JASON S. SMITH
DIRECT VOICE 843 414-9755
JS@HELLMANYATES.COM

HELLMAN YATES & TISDALE, PA
105 BROAD STREET, THIRD FLOOR
CHARLESTON, SOUTH CAROLINA 29401
V 843 266-9099
F 843 266-9188

August 3, 2023

VIA E-MAIL AND U.S. MAIL

Brian A. Autry, Esq.
Ashley C. Thibault, Esq.
Kenison, Dudley & Crawford, LLC
1122 Barnwell Street, Suite B
Columbia, South Carolina 29201
autry@conlaw.com
thibault@conlaw.com

Re: *BA Holdings, Inc. v. Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan*
Civil Action No. 2023-CP-2302302
Greenville County Circuit Court
Filed May 9, 2023

Dear Brian and Ashley,

Enclosed for service, please find Defendant Mohammad Farhan's first set of requests for production, interrogatories, and requests to admit on BA Holdings, Inc.

With warmest regards, I am

Very truly yours,

Jason S. Smith

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE 13th JUDICIAL CIRCUIT
	)	
BA HOLDINGS, INC.,	)	Case No. 2023-CP-2302302
	)	
Plaintiff,	)	
	)	**DEFENDANT MOHAMMAD FARHAN'S FIRST SET OF REQUESTS FOR ADMISSIONS TO PLAINTIFF BA HOLDINGS, INC.**
v.	)	
	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN,	)	
	)	
Defendants,	)	
	)	

Defendant Mohammad Farhan propounds this first set of requests for admissions to Plaintiff BA Holdings, Inc., under Rules 26 and 36, SCRCP, to be responded to within 30 days from the date of service of the same, to Jason S. Smith, Esq., Hellman & Yates, PA, 105 Broad Street, Third Floor, Charleston, South Carolina 29401.

1. Admit that BA Holdings, Inc. did not actually provide any management services for which it has demanded a monthly management fee of $5,000 in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

2. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

3. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

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/Jason S. Smith/
Jason S. Smith, Esq. (80700)
HELLMAN & YATES, PA
105 Broad Street, Third Floor
Charleston, SC 29401
(843) 414-9755 (phone)
(843) 266-9188 (facsimile)
js@hellmanyates.com

Attorney for Defendant Mohammad Farhan

Charleston, South Carolina
August 3, 2023

Certificate of Service

The foregoing requests for admissions were served on Plaintiff's counsel of record by e-mail and U.S. mail on August 3, 2023.

/Jason S. Smith/

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EXHIBIT 1

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KDC KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

Brian A. Autry
Member
Licensed in SC
1122 Barnwell Street, Suite B
Columbia, SC 29201
864.242.4899
autry@conlaw.com

April 11, 2023

VIA US MAIL

Zay N Limo, LLC
Attn: Mohammad Farhan
23 Sandusky Lane
Simpsonville, SC 29680

Sharif Farhan
154 Easy Gap Rd.
Anderson, SC 29621

RE: BA Holdings, Inc. – Assignment and Assumption Agreement with Zay N Limo, LLC
DEMAND FOR PAYMENT

Messrs. Farhan:

This firm represents BA Holding, Inc. (hereinafter "BA") regarding its Assignment and Assumption Agreement (hereinafter "Agreement") with Zay N Limo, LLC (hereinafter "Zay"). In conjunction with the Agreement, you each signed a Guaranty Agreement (hereinafter the "Guaranty Agreements") stating that you are each personally liable for payment and performance of the Agreement. Please see a copy of the Agreement and Guaranty Agreements attached hereto as **Exhibit A**.

Under Section 2.1 of the Agreement, Zay agreed to pay BA the following amounts on the 10th day of each month:

a. A sum equal to 1% of the monthly gross sales, which is $2,695.12;
b. A sum equal to 5% of the monthly net profits; and
c. A monthly management fee of $5,000.00.

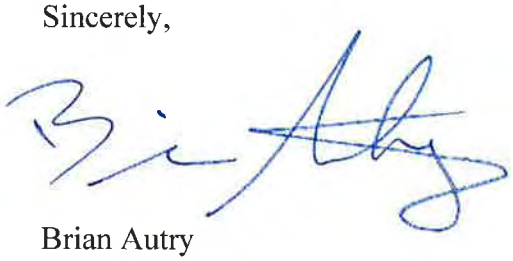
The above payment was due on April 10, 2023, but Zay did not remit payment to BA. As such, BA demands that Zay performs its contractual obligations and remit payment to BA as specified in the Agreement.

Additionally, on April 8, 2023, BA sent Zay written notice of its intent to examine and audit the books and records of Zay. Pursuant to Section 2.4 of the Agreement, Zay has three days to provide BA its financial information. Zay's disclosures are due on April 11, 2023, but Zay has not provided its financial information. As such, BA demands that Zay provide its financial information for an audit.

Please let this letter serve as notice pursuant to Section 6.1 of the Agreement that if payment and financial disclosures are not received within fourteen days of the date of this letter, Zay will be in breach of the Agreement. Please let this letter also serve as notice of BA's intention to seek payment personally from each of you under the Guaranty Agreements if Zay does not remit payment within fourteen days of the date of this letter. Actions to be taken by BA include, but are not limited to, filing a lawsuit to collect unpaid payments and interest, as well as charging attorney's fees and costs.

After review of this letter at the attached documentation, please contact our office as soon as possible to resolve this matter.

Sincerely,



Brian Autry

BAA/act
cc: BA Holdings, Inc. (via email)

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KDC KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

Brian A. Autry
Member
Licensed in SC
1122 Barnwell Street, Suite B
Columbia, SC 29201
864.242.4899
autry@conlaw.com

April 25, 2023

VIA US MAIL

Zay N Limo, LLC
Attn: Mohammad Farhan
23 Sandusky Lane
Simpsonville, SC 29680

Sharif Farhan
154 Easy Gap Rd.
Anderson, SC 29621

RE: BA Holdings, Inc. – Assignment and Assumption Agreement with Zay N Limo, LLC
SECOND DEMAND FOR PAYMENT

Messrs. Farhan:

This letter is a follow-up to our demand letter sent to you on April 11, 2023, a copy of which is attached. We have not gotten a response from you in regard to this letter, you have not produced the required accounting information, and you have not made the payments required by the Assignment and Assumption Agreement and the personal guaranties.

Under Section 2.1 of the Agreement, you agreed to pay BA the following amounts on the 10th day of each month:

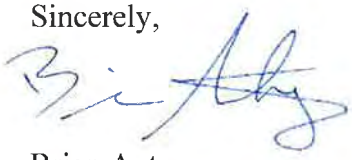
a. A sum equal to 1% of the monthly gross sales, which is $2,695.12;
b. A sum equal to 5% of the monthly net profits; and
c. A monthly management fee of $5,000.00.

The above payment was due on April 10, 2023, but you did not remit payment. As such, BA Holdings, Inc. demands that you perform your contractual obligations and remit payment as specified in the Agreement. You are also required to permit BA Holdings, Inc. to examine and audit your books and records for this location. We demand that you provide this financial information for an audit immediately.

All your deadlines have passed without proper performance. If we have not received payment and the required disclosure of financial information by Friday, April 28, we will proceed to file suit against Zay N Limo, LLC and each of you personally under the personal guaranties. Our lawsuit will seek unpaid payments and interest, as well as attorney's fees and costs.

Please contact our office immediately to resolve this matter.

Sincerely,



Brian Autry

BAA/act
cc: BA Holdings, Inc. (via email)

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KDC KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

Brian A. Autry
Member
Licensed in SC
1122 Barnwell Street, Suite B
Columbia, SC 29201
864.242.4899
autry@conlaw.com

June 12, 2023

VIA E-MAIL
Jason S. Smith, Esq.
Hellman & Yates, PA
105 Broad Street, Third Floor
Charleston, SC 29401
js@hallmanyates.com

RE: **Our Client:** **BA Holdings, Inc. (hereinafter "BA")**
Your Clients: **Zay N Limo, LLC (hereinafter "Zay"), Sharif Farhan and Mohammad Farhan**
Subject: **Demand for payment under the Assignment and Assumption Agreement (hereinafter "Agreement")**

Mr. Smith:

BA has not received payment from your clients for the months of May and June as required under Section 2.1 of the Agreement. Specifically, BA is owed:

a. A sum equal to 1% of the monthly gross sales, which is $3,310.63 for the payment due on May 10th and $2,163.77 for the payment due on June 10th;
b. A sum equal to 5% of the monthly net profits; and
c. A monthly management fee of $5,000.00 for the months of May and June.

Please let this letter serve as notice to your clients that we are adding these amounts to our claim for damages.

Sincerely,

Brian Autry
cc: BA Holdings, Inc. (via email)

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KDC KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

Brian A. Autry
Member
Licensed in SC
1122 Barnwell Street, Suite B
Columbia, SC 29201
864.242.4899
autry@conlaw.com

July 10, 2023

VIA E-MAIL
Jason S. Smith, Esq.
Hellman & Yates, PA
105 Broad Street, Third Floor
Charleston, SC 29401
js@hallmanyates.com

RE: **Our Client:** **BA Holdings, Inc. (hereinafter "BA")**
Your Clients: **Zay N Limo, LLC (hereinafter "Zay"), Sharif Farhan and Mohammad Farhan**
Subject: **Demand for payment under the Assignment and Assumption Agreement (hereinafter "Agreement")**

Mr. Smith:

BA has not received payment from your clients for the month of June as required under Section 2.1 of the Agreement. Specifically, BA is owed:

a. A sum equal to 1% of the monthly gross sales, which is $2,137.03 for the payment due on July 10th;
b. A sum equal to 5% of the monthly net profits; and
c. A monthly management fee of $5,000.00 for the month June.

Please let this letter serve as notice to your clients that we are adding these amounts to our claim for damages.

Sincerely,

Brian Autry
cc: BA Holdings, Inc. (via email)

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Jason Smith
Re: BA Holdings
To: Brian Autry,
Cc: Ashley Thibault

August 4, 2023 at 9:51 AM

Hide

Brian,

The plaintiff sued three defendants. Zay N Limo, LLC served its first set of discovery requests already. This is Mohammad Farhan's first set of discovery requests.

Thanks,

Jason

On Aug 4, 2023, at 5:50 AM, Brian Autry <autry@conlaw.com> wrote:

Thanks, Jason. Just as a point of clarification, these are shown as firstinterrogatories, requests to admit, and requests to produce. This is the second set of discovery requests you have propounded. We will have our written responses to the first set on Monday.

Brian

Brian A. Autry
Member
KENISON, DUDLEY & CRAWFORD, LLC
1122 Barnwell St., Suite B
Columbia, SC 29201
Email: autry@conlaw.com
Main: (864) 242-4899
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<image001.png>

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From: Jason Smith <js@hellmanyates.com>
Sent: Thursday, August 3, 2023 9:42 PM
To: Brian Autry <autry@conlaw.com>; Ashley Thibault <thibault@conlaw.com>
Subject: BA Holdings

Brian and Ashley,

Please see attached discovery requests.

Thanks,

- Jason

Angelia Shaw

October 3, 2023 at 8:33 AM

Re: BA Holdings, Inc. v Zay N Limo, LLC, et al Re Discovery

Hide

To: Jason Smith,

Cc: Brian Autry, Ashley Thibault

Mr. Smith,

Please find attached Plaintiff's discovery responses regarding the above-referenced matter.

Sincerely,

Angelia Shaw
Paralegal
KENISON, DUDLEY & CRAWFORD, LLC
1122 Barnwell St., Suite B.
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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2023-CP-23-02302
BA HOLDINGS, INC., Plaintiffs, vs.	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHOMMAD FARHAN, Defendants.	)	**BA HOLDINGS, INC.'S ANSWERS TO DEFENDANT MOHAMMAD FARHAN'S FIRST REQUESTS FOR ADMISSIONS**

TO: JASON S. SMITH, ESQUIRE, ATTORNEY FOR DEFENDANT ZAY N LIMO, LLC:

Plaintiff BA Holdings, Inc. (hereinafter "Plaintiff"), by and through its undersigned attorneys, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, answers Defendant Mohammad Farhan's ("Defendant") Request for Admissions as follows:

REQUESTS TO ADMIT

1. Admit that BA Holdings, Inc. did not actually provide any management services for which it has demanded a monthly management fee of $5,000 in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

ANSWER: Denied. The management fee has three components identified in Section 3.2 of the Assignment and Assumption Agreement. BA Holdings, Inc./BA Greenville, LLC made these services available to Defendants.

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2. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

ANSWER: Denied. As discussed at length, and as Defendant is fully aware, Plaintiff is the sole member of BA Greenville, LLC. The agreement that Plaintiff made with the Defendant Zay N Limo, LLC should have been made with BA Greenville, LLC rather than with Plaintiff. It was a simple and correctible error. Defendant new full well that BA Greenville, LLC was giving up its exclusive rights to the Anderson Territory so that Zay N Limo, LLC could operate there and that such operation would deprive BA Greenville, LLC of business at its Greenville, SC location. The rights to the Anderson Territory have significant and pecuniary value to Defendants.

3. Admit that BA Holdings, Inc. did not actually provide any services of any kind or anything of value that it owns for which Plaintiff has demanded a sum equal to 1% of monthly gross sales in each of the months of April, May, June, and July of 2023 in its letters attached hereto as Exhibit 1.

ANSWER: This Request is a verbatim repeat of Request No. 2. See response to Request No. 2.

[SIGNATURE ON FOLLOWING PAGE]

Brian A. Autry (SC Bar No.: 69401)
Ashley C. Thibault (SC Bar No.: 103522)
Kenison, Dudley & Crawford, LLC
1122 Barnwell Street, Suite B
Columbia, South Carolina 29201
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Attorneys for Plaintiff BA Holdings, Inc.

October 2, 2023
Columbia, South Carolina

ELECTRONICALLY FILED - 2023 Oct 09 8:12 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

ELECTRONICALLY FILED - 2023 Oct 09 8:12 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO.: 2023-CP-23-02302
BA HOLDINGS, INC., Plaintiffs, vs.	)	**CERTIFICATE OF SERVICE**
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHOMMAD FARHAN, Defendants.	)	

I, Angelia Shaw, the undersigned, paralegal for the law offices of Kenison, Dudley & Crawford, LLC hereby certify that on this 3rd day of October 2023, a copy of the foregoing **Plaintiff's Answers to Defendant Mohammad Farhan's First Requests to Admit**, was served upon all counsel of record via email and addressed as follows:

Jason S. Smith, Esquire
Hellman & Yates, PA
105 Broad Street, Third Floor
Charleston, SC 29401
Email: js@hellmanyates.com

KENISON, DUDLEY & CRAWFORD, LLC

Angelia Shaw, Paralegal
shaw@conlaw.com

Exhibit 6

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. **COMPLAINT** (Non-Jury)

ELECTRONICALLY FILED - 2023 May 09 8:12 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

Plaintiff, BA Holdings, Inc. ("Plaintiff"), by and through its undersigned attorneys, complaining of the Defendants Zay N Limo, LLC ("Zay"), Sharif Farhan ("Sharif"), and Mohammad Farhan ("Mohammad"), (collectively, "Defendants"), and would respectfully show unto this Court as follows:

JURISDICTION AND VENUE

1. Plaintiff is a corporation organized under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

2. Upon information and belief, Defendant Zay is a limited liability company organized under the laws of the State of South Carolina, with its principal place of business in Anderson County, South Carolina.

3. Upon information and belief, Defendant Sharif is a resident and citizen of Anderson County, South Carolina.

4. Upon information and belief, Defendant Mohammad is a resident and citizen of Greenville County, South Carolina.

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5. Venue and jurisdiction are proper in this Court. All Defendants have agreed, in writing, to venue and jurisdiction in this Court.

6. Plaintiff and Defendants have voluntarily waived their rights to a jury trial in their agreements with each other.

GENERAL ALLEGATIONS

7. On February 18, 2021, Plaintiff entered into an Assignment and Assumption Agreement ("Agreement") with Zay for Plaintiff to release the Anderson Territory to allow Zay to enter into a franchise agreement with Big Air Franchising, LLC in the Anderson Territory. A true and correct copy of the Agreement is attached hereto as **Exhibit 1**.

8. Pursuant to Section 2.1 of the Agreement, Zay was to pay Plaintiff on the tenth day of each month a sum equal to one percent of the monthly gross sales, a sum equal to five percent of the monthly net profits, and a monthly management fee of Five Thousand and 00/100 Dollars ($5,000.00) ("Payments").

9. Pursuant to Section 2.3 of the Agreement, late Payments bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Zay will also reimburse Plaintiff for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

10. In conjunction with the Agreement, Sharif and Mohammad each signed a Guaranty Agreement ("Guaranty Agreements") stating that Sharif and Mohammad were personally liable for payment and performance of the Agreement. A true and correct copy of the Guaranty Agreements are attached hereto as **Exhibit 2**.

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11. Pursuant to Section 1 of the Guaranty Agreements, Sharif and Mohammad guaranteed to Plaintiff the full and punctual payment and performance of the Agreement, plus all costs, expenses, and fees, including reasonable attorney's fees and expenses, related to the enforcement of Plaintiff's rights.

12. Zay has not remitted Payments to Plaintiff in accordance with the Agreement.

13. Plaintiff made demands to Defendants to remit Payments, but no Payments were made.

14. Pursuant to Section 2.4 of the Agreement, Zay is to provide financial information for an audit within three days of a request by Plaintiff.

15. On April 8, 2023, Plaintiff sent written notice to Zay of its intent to examine and audit the books and records of Zay.

16. Zay has not provided its financial information to Plaintiff for an audit.

17. On April 11, 2023, Plaintiff sent Defendants a letter demanding Payments and financial disclosures under the Agreement.

18. Defendants did not respond to Plaintiff's April 11, 2023 letter.

19. On April 25, 2023, Plaintiff sent Defendants a second letter demanding Payments and financial disclosures under the Agreement.

20. Defendants did not respond to Plaintiff's April 25, 2023 letter.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Defendant Zay)

21. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim herein.

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22. The Agreement entered into by Plaintiff and Zay was a binding contract for Plaintiff to release the Anderson Territory to allow Zay to enter into a franchise agreement with Big Air Franchising, LLC in the Anderson Territory.

23. Zay breached the Agreement by failing to make Payments when due and failing to provide audit information upon request, as described above.

24. Pursuant to the terms of the Agreement, Plaintiff is entitled to collect attorneys' fees and costs incurred to enforce the terms of the Agreement, including litigation costs.

25. Plaintiff is entitled to judgment against Zay in the amounts to be determined at trial. Plaintiff is further entitled to collect from Zay prejudgment interest, attorneys' fees, and costs associated with sending the pre-suit demands and the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment- Defendant Zay)

26. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim herein.

27. In the alternative, and without relinquishing Plaintiff's assertion that there is a valid contract, should the Court find that there was no valid Agreement, Zay has been unjustly enriched.

28. Plaintiff allowed Zay to use and operate the Big Air Franchise for Zay's benefit.

29. Plaintiff allowed Zay to operate the Big Air Franchise with the understanding that Zay would compensate Plaintiff for use of the Big Air Franchise.

30. Zay knew or should have known that by operating the Big Air Franchise, Zay was required to make Payments to Plaintiff.

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31. Zay has been unjustly enriched by operating the Big Air Franchise without payment, and Plaintiff is entitled to judgment fairly compensating Plaintiff for Zay's operation of the Big Air Franchise in the amount to be determined at trial, together with interest, costs and such other relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Guaranty- Defendants Sharif and Mohammad)

32. Plaintiff realleges and reasserts the allegations of the preceding paragraphs as if set forth verbatim herein.

33. Defendants Sharif and Mohammad are personal guarantors of the Agreement pursuant to the Guaranty Agreements. See, Exhibit 2.

34. The Guaranty Agreements provide that Defendants Sharif and Mohammad are liable for full payments to Plaintiff and indebtedness under the Agreement.

35. The Guaranty Agreements also provide that Defendants Sharif and Mohammad are liable to pay attorneys' fees and costs incurred by Plaintiff in enforcement of the Agreement and collection of amounts due and owing.

36. Defendants have not made Payments to Plaintiff on the outstanding balance due. By virtue of the Guaranty Agreements, Defendants Sharif and Mohammad are personally liable for the debt.

37. Plaintiff is entitled to a judgment against Defendants Sharif and Mohammad in the amounts to be determined at trial, plus prejudgment interest, attorneys' fees, and the costs associated with sending the pre-suit demands and the costs of this action.

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WHEREFORE, Plaintiff, BA Holdings, Inc., prays this Court for the following relief:

A. For Judgment against Defendant Zay on Plaintiff's first cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

B. In the alternative, for judgment against Defendant Zay on Plaintiff's second cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

C. For judgment against Defendants Sharif and Mohammad on Plaintiff's third cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest; and

D. Any such other relief as the Court deems just and proper.

s/ Brian A. Autry
Brian A. Autry (SC Bar No.: 69401)
Ashley C. Thibault (SC Bar No.: 103522)
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Attorneys for Plaintiff

May 9, 2023
Columbia, South Carolina

EXHIBIT 7

ELECTRONICALLY FILED - 2023 Aug 09 8:26 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2023-CP-2302302 **PLAINTIFF'S REPLY TO DEFENDANTS' COUNTERCLAIMS**

TO: JASON S. SMITH, ESQUIRE – ATTORNEY FOR DEFENDANTS

Plaintiff, BA Holdings, Inc. ("Plaintiff"), by and through its undersigned attorneys, not waiving, but specifically reserving, its right to be heard on all SCRCP Rule 12 Motions, hereby replies to the Counterclaims of Defendants Zay N Limo, LLC ("Zay"), Sharif Farhan, and Mohammad Farhan (collectively, "Defendants"), and would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE
(Answering the Counterclaims)

1. Each and every allegation contained within Defendants' Counterclaims not hereinafter specifically admitted, qualified, or explained is denied.

2. Plaintiff denies all allegations contained in the "Introduction" paragraph of the Answer and Counterclaim.

3. Plaintiff is informed and believes that the allegations of Paragraph 1 of the Counterclaims are true, and therefore, admits the same.

4. Plaintiff admits the allegations of Paragraph 2 of the Counterclaims.

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5. As to Paragraph 3 of the Counterclaims, Plaintiff admits only that it met with Mohammad and Sharif Farhan regarding Plaintiff's release of the Anderson territory such that Defendants could operate a Big Air franchise in Anderson, South Carolina. Except as expressly admitted, Plaintiff denies the remaining allegations of Paragraph 3.

6. As to Paragraph 4 of the Counterclaims, Plaintiff admits only that (a) Zay entered into a Franchise Agreement with Big Air Franchising, LLC, and that agreement speaks for itself; (b) Zay entered into an Assignment and Assumption Agreement with Plaintiff, and that agreement speaks for itself; and (c) Mohammad Farhan and Sharif Farhan each provided a Guaranty to Plaintiff for the performance of the Assignment and Assumption Agreement by Zay, and those guaranties speak for themselves (collectively, all agreements referenced above are referred to as the "Agreements"). Plaintiff denies all allegations inconsistent with the express terms of the Agreements and denies the remaining allegations of Paragraph 4.

7. As to Paragraph 5 of the Counterclaims, Plaintiff admits only that Mr. Pelletier assisted in the preparation of the Assignment and Assumption Agreement and the Guaranty agreements. Except as expressly admitted, Plaintiff denies the remaining allegations of Paragraph 5.

8. As to Paragraph 6 of the Counterclaims, Plaintiff admits only that Defendants entered into the Franchise Agreement with Big Air Franchising, LLC, and that agreement speaks for itself. Plaintiff denies all allegations of Paragraph 6 inconsistent with the Franchise Agreement and denies the remaining allegations of Paragraph 6.

9. As to Paragraph 7 of the Counterclaims, Plaintiff admits only that Plaintiff entered into the Assignment and Assumption Agreement with Zay, and that agreement speaks for itself.

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Plaintiff denies all allegations of Paragraph 7 inconsistent with the Assignment and Assumption Agreement and denies the remaining allegations of Paragraph 7.

10. As to Paragraph 8 of the Counterclaims, Plaintiff is informed and believes that Zay paid to Big Air Franchising, LLC the franchise fee required by the Franchise Agreement. Plaintiff's participation, if any, in the proceeds of the franchise fee paid to Big Air Franchising, LLC is governed by the Regional Director Agreement entered into by Plaintiff and Big Air Franchising, LLC, which speaks for itself. Plaintiff denies any allegations of Paragraph 8 inconsistent with the Franchise Agreement and the Regional Director Agreement and denies the remaining allegations of Paragraph 8.

11. As to Paragraph 9 of the Counterclaims, Plaintiff is informed and believes that Zay borrowed and invested certain funds into the operation of its Big Air facility in Anderson, SC. Plaintiff is without information or belief necessary to admit or deny the amount of such investment. Plaintiff denies the remaining allegations of Paragraph 9.

12. As to Paragraphs 10 through 14 of the Counterclaims, Plaintiff is informed and believes that Defendants engaged in discussions with Big Air Franchising, LLC and Mr. Pelletier regarding the Agreements and the operation of their Big Air franchise in Anderson, SC; therefore, Plaintiff admits only that such discussions occurred. Plaintiff denies that its regional director relationship with Big Air Franchising was not disclosed to Defendants. Defendants were informed that Plaintiff was the regional director for Big Air Franchising, LLC and that Plaintiff would receive compensation for the same. Plaintiff denies the remaining allegations of Paragraphs 10 through 14.

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13. Paragraph 15 does not contain any allegations against Plaintiff. To the extent it does or to the extent it alleges that the success of the grand opening of the Big Air franchise in Anderson, SC was only because of the investment of time and resources by Defendants, those allegations are denied.

14. As to Paragraphs 16 through 19, Plaintiff admits only that discussions have taken place between Defendants, Plaintiff, and Big Air Franchising regarding a resolution of the dispute that is the subject of this litigation. Plaintiff cannot speak for Big Air Franchising, LLC. Plaintiff denies the remaining allegations of Paragraphs 16 through 19.

15. Plaintiff denies the allegations of Paragraph 20 of the Counterclaims.

16. As to Paragraph 21 of the Counterclaims, Plaintiff admits that it filed a Complaint with exhibits that inadvertently contained social security numbers for Mohammad Farhn's and Sarif's. Except as expressly admitted, Plaintiff denies the remaining allegations of Paragraph 21 of the Counterclaims and denies that Defendants have any damages associated with the same.

17. As to Paragraph 22 of the Counterclaims, Plaintiff admits only that the Assignment and Assumption Agreement speaks for itself. Plaintiff denies any allegations inconsistent with the Assignment and Assumption Agreement and denies the remaining allegations of Paragraph 22.

18. As to Paragraph 23 of the Counterclaims, Plaintiff admits only that the referenced exhibits were sent to Defendants through counsel and those agreements speak for themselves. Plaintiff denies any allegations of Paragraph 23 inconsistent with the documents sent and the terms thereof.

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19. Plaintiff admits the allegations of Paragraphs 24 through 27 of the Counterclaims. Plaintiff is the sole and controlling member of BA Greenville, LLC, which is a franchisee of Big Air Franchising, LLC.

20. As to Paragraphs 28 through 37, Plaintiff admits only that (a) BA Greenville, LLC entered into a franchise agreement with Big Air Franchising, LLC, which gave BA Greenville, LLC exclusive rights to the Anderson territory now being operated by Defendants; (b) Plaintiff is the sole and controlling member of BA Greenville, LLC, and Plaintiff's name was inadvertently used as a party to the Assignment and Assumption Agreement, instead of BA Greenville, LLC; (c) BA Greenville, LLC's rights to the Anderson territory are separate and apart from any rights that Plaintiff has pursuant to its Regional Director Agreement with Big Air Franchising, LLC; (d) Defendants could not have operated in the Anderson territory without Plaintiff and BA Greenville, LLC agreeing to release the Anderson territory back to Big Air Franchising, LLC, and Defendants were aware of this fact; (e) Defendants were given the opportunity to open and operate in a different location in South Carolina that would not require release of the territory being held by another party; (f) the operation of Defendants' Big Air location in Anderson, SC took (and will take) business away from BA Greenville's location, a fact that was also known to Defendants; (g) the amounts agreed to be paid by Defendants pursuant to the Assignment and Assumption Agreement were to compensate BA Greenville, LLC (and Plaintiff, its sole member) for the release of the Anderson territory, the loss of a portion of its business to the Anderson location, and for management assistance in the operation of the Anderson location. Any allegations inconsistent with the above and inconsistent with all the agreements pertaining to this matter contained in Paragraphs 28 through 37 are denied.

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21. Plaintiff denies the allegations of Paragraphs 38 through 40 of the Counterclaims.

22. As to Paragraph 41 of the Counterclaims, Plaintiff admits only that Big Air Franchising, LLC did not participate in the negotiation and execution of the Assignment and Assumption Agreement. Plaintiff denies the remaining allegations of Paragraph 41.

23. As to Paragraphs 42 and 43 of the Counterclaims, Plaintiff admits only that the documents and agreements referenced therein speak for themselves and denies any allegations inconsistent with the same and any allegations that Plaintiff was without authority to enter into agreements with Defendants related to the Anderson territory. Except as otherwise admitted, Plaintiff denies the remaining allegations of Paragraphs 42 and 43.

24. As to Paragraph 44 of the Counterclaims, Plaintiff admits only that the Franchise Agreement between Defendants and Big Air Franchising, LLC speaks for itself. Plaintiff denies any allegations inconsistent with the Franchise Agreement and denies the remaining allegations of Paragraph 44.

25. As to Paragraph 45, Plaintiff admits only that the Assignment and Assumption Agreement speaks for itself and denies anything inconsistent with it. Plaintiff denies the remaining allegations of Paragraph 45, including all subparagraphs, and any allegations that Plaintiff breached the Assignment and Assumption Agreement.

26. As to Paragraph 46 of the Counterclaims, Plaintiff admits only that the Franchise Agreement between Big Air Franchising, LLC and Defendants speaks for itself. Plaintiff denies any allegations inconsistent with the Franchise Agreement and any allegations made against Plaintiff in Paragraph 46.

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27. As to Paragraph 47 of the Counterclaims, Plaintiff is unclear about the meaning of "separate disclosure document" and requests clarification of the same. Without clarification, Plaintiff denies the allegations of Paragraph 47.

28. To the extent that the allegations of Paragraph 48 of the Counterclaims are directed at Plaintiff, Plaintiff denies the same.

29. Paragraph 49 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 48, above, as if repeated verbatim.

30. To the extent that the allegations of Paragraphs 50 through 57 of the Counterclaims are directed at Plaintiff, Plaintiff denies the same.

31. Paragraph 58 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 57, above, as if repeated verbatim.

32. To the extent the allegations of Paragraphs 59 through 65 of the Counterclaims are directed at Plaintiff, Plaintiff denies the same.

33. Paragraph 66 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 65, above, as if repeated verbatim.

34. As to Paragraphs 67 through 73 of the Counterclaims, Plaintiff admits only that the proper party to the Assignment and Assumption Agreement should have been BA Greenville, LLC and that Plaintiff is the sole and controlling member of BA Greenville, LLC. Plaintiff denies the remaining allegations of Paragraphs 67 through 73.

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35. Paragraph 74 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 73, above, as if repeated verbatim.

36. Plaintiff denies the allegations of Paragraphs 75 through 77 of the Counterclaims.

37. Paragraph 78 of the Counterclaims is an administrative paragraph to which no response is required. To the extent a response is required, Plaintiff incorporates its responses to Paragraphs 1 through 77, above, as if repeated verbatim.

38. Plaintiff denies the allegations of Paragraph 79 of the Counterclaims.

39. Plaintiff denies the allegations contained in the "Prayer for Relief" and denies that Defendants are entitled to the relief requested.

FOR A SECOND DEFENSE
(Failure to State a Claim or Cause of Action)

40. Defendants fail to state a cause of action against Plaintiff and fails to state a claim upon which relief may be granted.

FOR A THIRD DEFENSE
(Laches, Estoppel, Waiver)

41. That all claims asserted against Plaintiff are barred by the equitable doctrines of laches, waiver, and/or estoppel.

FOR A THIRD DEFENSE
(Comparative Negligence)

42. Defendants' claims and damages, if any, are barred, or should be reduced, by Defendants' own contributory and comparative negligence and recklessness, which combined with, contributed to, and concurred with any alleged negligence on the part of the Plaintiff, if any (which is expressly denied).

FOR A FOURTH DEFENSE

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(Failure to Mitigate Damages)

43. Defendants had an obligation to mitigate its damages, if any, but failed to do so.

FOR A FIFTH DEFENSE
(Proximate Cause)

44. Even if Plaintiff is liable to Defendants on any of the causes of action alleged herein (which is expressly denied), Plaintiff alleges that Defendants' claims are barred due to the lack of proximate cause between Defendants' alleged damages and the alleged actions/inactions of Plaintiff.

FOR A SXTH DEFENSE
(Punitive Damages Unconstitutional)

45. Plaintiff would show that if the Defendants are making any claim for punitive damages, such claims violate the due process and equal protection laws of the United States Constitution and the Constitution of the State of South Carolina.

46. Punitive damages are inappropriate in this case, as a matter of law, and because Plaintiff did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages would be based.

47. Plaintiff would show that any award of punitive damages is subject to the limitations set forth in South Carolina Code § 15-32-530.

48. Plaintiff pleads the limitation on damage awards found in S.C. Code § 15-32-510 et seq. and requests bifurcation in accordance with those code sections.

FOR A SEVENTH DEFENSE
(Conditions Precedent)

49. To the extent Defendants allege Plaintiff has any obligation as to which full performance has not been rendered or excused, Defendants failed to satisfy all conditions

precedent to said obligations or duties, including conditions precedent under applicable South Carolina law. Therefore, Defendants' claims are barred.

FOR AN EIGHTH DEFENSE
(Reservation of Defenses)

50. Plaintiff reserves the right to assert any additional defenses throughout the course of the case as the defenses becomes known.

WHEREFORE, Plaintiff, BA Holdings, Inc., prays for the following relief:

1. Dismissal of Defendants' Counterclaims against Plaintiff in their entirety, with prejudice;

2. Judgment on all of Plaintiff's causes of action alleged in the Complaint;

3. That the Plaintiff's costs and attorney's fees be taxed against the Defendants; and

4. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Brian A. Autry

Brian A. Autry (SC Bar No.: 69401)
Ashley C. Thibault (SC Bar No.: 103522)
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E-mail: thibault@conlaw.com
Attorneys for Plaintiff BA Holdings, Inc.

August 7, 2023
Columbia, South Carolina

ELECTRONICALLY FILED - 2023 Aug 09 8:26 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

Exhibit 8

ELECTRONICALLY FILED - 2023 Sep 29 8:32 PM - GREENVILLE - COMMON PLEAS - CASE#2023CP2302302

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC~~.~~, and BA GREENVILLE, LLC, Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN. Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. **AMENDED COMPLAINT** (Non-Jury)

~~Plaintiff~~Plaintiffs, BA Holdings, Inc. ~~("Plaintiff"),~~and BA Greenville, LLC (together, "Plaintiffs"), by and through ~~its~~their undersigned attorneys, complaining of the Defendants Zay N Limo, LLC ("Zay"), Sharif Farhan ("Sharif"), and Mohammad Farhan ("Mohammad~~"),~~") (collectively, "Defendants"), ~~and~~ would respectfully show ~~unto~~the following to this Court ~~as follows~~:

JURISDICTION AND VENUE

1. ~~Plaintiff~~BA Holdings, Inc. ("BAH") is a corporation organized under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

2. BA Greenville, LLC ("BA Greenville") is a South Carolina limited liability company with its principal place of business in Greenville, South Carolina. BAH is the sole member of BA Greenville.

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~~2.~~3. Upon information and belief, Defendant Zay is a limited liability company organized under the laws of the State of South Carolina, with its principal place of business in Anderson County, South Carolina.

~~3.~~4. Upon information and belief, Defendant Sharif is a resident and citizen of Anderson County, South Carolina.

~~4.~~5. Upon information and belief, Defendant Mohammad is a resident and citizen of Greenville County, South Carolina.

~~5.~~6. Venue and jurisdiction are proper in this Court. All Defendants have agreed, in writing, to venue and jurisdiction in this Court.

~~6.~~7. ~~Plaintiff and~~ Defendants have voluntarily waived their rights to a jury trial in their ~~agreements with each other~~agreements that are the subject matter of this dispute.

GENERAL ALLEGATIONS

1. BA Greenville entered into a Franchise Agreement with Big Air Franchising, LLC ("BAF"), dated October 7, 2017 (the "BAG Franchise Agreement"). Pursuant to the BAG Franchise Agreement, BA Greenville was given exclusive rights to operate a Big Air trampoline business in Anderson County, South Carolina (the "Anderson Territory").

2. BAH became the Regional Developer for BAF for the State of South Carolina pursuant that certain Regional Director Agreement, dated April 1, 2018 (the "RD Agreement"). Pursuant to the RD Agreement, BAH is responsible for advertising, recruiting, screening, and reviewing prospects for Big Air trampoline business franchises within the State of South Carolina and receives a commission on the franchise fees paid by new franchisees. However, BAH does not have authority to sell BAF franchises.

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3. On July 14, 2020, Defendant Mohammad contacted BAF regarding a franchise opportunity through BAF's online inquiry process. BAF then provided Defendants with sales and disclosure requirements for a franchise opportunity. BAF also disclosed to Mohammad that BAH was the regional director for BAF.

4. Defendants were interested in opening a Big Air franchise in the Anderson Territory. BAH disclosed to Defendants that the Anderson Territory was not available without payment of an additional fee. This was because of BA Greenville's exclusive rights to the Anderson Territory. BAH recommended the Myrtle Beach, South Carolina territory to Defendants because it was not subject to an exclusivity agreement or other franchise agreement. Defendants chose, instead, to continue pursuing the Anderson Territory.

5. BAF could not have sold a Big Air franchise to Defendants in the Anderson Territory without the release of the Anderson Territory zip codes from BA Greenville back to BAF.

6. BA Greenville's business drew customers and clients from the Anderson Territory. A release of the Anderson Territory and a new Big Air location in Anderson, SC would take away business and revenue from BA Greenville. This fact was disclosed to Defendants by BAH.

7. After negotiations with Defendants, BAH agreed that the Anderson Territory would be released back to BAF so it could be assigned to Zay as part of its franchise agreement with BAF. BAH is in full and unfettered control of BA Greenville.

~~1.~~8. On February 18, 2021, ~~Plaintiff~~BAH entered into an Assignment and Assumption Agreement ("Assignment Agreement") with ~~Zay for Plaintiff to release the Anderson Territory to allow~~ Zay that purported to ~~enter into a~~assign the Anderson Territory to Zay in conjunction with

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Zay's franchise agreement with ~~Big Air Franchising, LLC in the Anderson Territory~~BAF. A true and correct copy of the ~~Agreement~~Assignment Agreement (redacted to protect personal information of the Defendants) is attached hereto as **Exhibit 1**.

9. The Assignment Agreement is in error in at least two ways: (a) BA Greenville should be the counterparty, not BAH; and (b) it should provide for the assignment of the Anderson Territory back to BAF instead of assigning it directly to Zay.

~~2.~~10. Pursuant to Section 2.1 of the Assignment Agreement, Zay ~~was~~is required to pay ~~Plaintiff~~to BA Greenville, on the tenth day of each month, a sum equal to (a) one percent of ~~the~~its monthly gross sales~~,~~; plus (b) a sum equal to five percent of ~~the~~its monthly net profits~~, and~~; plus (c) a monthly management fee of Five Thousand and 00/100 Dollars ($5,000.00) ("Payments").

~~3.~~11. Pursuant to Section 2.3 of the Assignment Agreement, late Payments bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Zay ~~will~~is also required to reimburse ~~Plaintiff~~BA Greenville for all reasonable costs incurred in collecting any late ~~payments~~Payments, including, without limitation, attorneys' fees.

~~4.~~12. In conjunction with the Assignment Agreement, Sharif and Mohammad each signed a ~~Guaranty Agreement ("Guaranty Agreements")~~personal guaranty stating that ~~Sharif and Mohammad~~they were personally liable for payment and performance of the Assignment Agreement~~. A true~~ (the "Guaranty Agreements"). True and correct ~~copy~~copies of the Guaranty Agreements (redacted to protect personal information of the Defendants) are attached hereto as **Exhibit 2**.

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~~5.~~13. Pursuant to Section 1 of the Guaranty Agreements, Sharif and Mohammad guaranteed ~~to Plaintiff~~ the full and punctual payment and performance of the Assignment Agreement, plus all costs, expenses, and fees, including reasonable attorney's fees and expenses, related to the enforcement of ~~Plaintiff's~~BA Greenville's rights.

~~6.~~14. Zay has not remitted any Payments ~~to Plaintiff~~ in accordance with the Assignment Agreement.

~~7.~~15. ~~Plaintiff~~Plaintiffs have made demands to Defendants to remit Payments, but no Payments ~~were~~have been made.

16. Pursuant to Section 2.4 of the Assignment Agreement, Zay is to provide financial information for an audit within three days of a request by ~~Plaintiff.~~BA Greenville.

17. In December 2022, Defendants contacted BAF and expressed concern that the Assignment Agreement was invalid and that they should not have to pay the amounts required by the Assignment Agreement. Neither Defendants nor BAF disclosed this concern to Plaintiffs prior to March 2023.

~~8.~~18. On April 8, 2023, ~~Plaintiff~~BAH sent written notice to Zay of its intent to examine and audit the books and records of Zay.

~~9.~~19. Zay has not provided its financial information ~~to Plaintiff~~ for an audit.

~~10.~~20. On April 11, 2023, ~~Plaintiff~~BAH sent Defendants a letter demanding Payments and financial disclosures under the Assignment Agreement.

~~11.~~21. Defendants did not respond to ~~Plaintiff's~~BAH's April 11, 2023 letter.

~~12.~~22. On April 25, 2023, ~~Plaintiff~~BAH sent Defendants a second letter demanding Payments and financial disclosures under the Assignment Agreement.

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~~13.~~23. Defendants did not respond to Plaintiff's April 25, 2023 letter.

~~14.~~24. On August 14, 2023, BAH, in an attempt to correct the error identified in Paragraph 9(a), above, assigned its right, title, and interest in the Assignment Agreement to BA Greenville. A copy of that assignment is attached hereto as **Exhibit 3**.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Defendant Zay)

~~15.~~25. ~~Plaintiff realleges~~Plaintiffs reallege and ~~reasserts~~reassert the allegations of the preceding paragraphs as if set forth verbatim herein.

~~16.~~26. The Assignment Agreement ~~entered into by Plaintiff and Zay was~~is a binding contract with BA Greenville for ~~Plaintiff to~~(a) the release of the Anderson Territory to allow Zay to enter into a franchise agreement with ~~Big Air Franchising, LLC~~BAF in the Anderson Territory and (b) the performance by Plaintiffs of certain other services and obligations.

~~17.~~27. Zay breached the Assignment Agreement by failing to make Payments when due and failing to provide audit information upon request, as described above.

~~18.~~28. Pursuant to the terms of the Assignment Agreement, ~~Plaintiff~~BA Greenville is entitled to collect attorneys' fees and costs incurred to enforce the terms of the Assignment Agreement, including litigation costs.

~~19.~~29. ~~Plaintiff is~~Plaintiffs are entitled to judgment against Zay in the amounts to be determined at trial. ~~Plaintiff is~~Plaintiffs are further entitled to collect from Zay prejudgment interest, attorneys' fees, and costs associated with sending the pre-suit demands and the costs of this action.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment- Defendant Zay)

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~~20.~~30. ~~Plaintiff realleges~~Plaintiffs reallege and ~~reasserts~~reassert the allegations of the preceding paragraphs as if set forth verbatim herein.

~~21.~~31. In the alternative, and without relinquishing ~~Plaintiff's~~Plaintiffs' assertion that there is a valid contract, should the Court find that ~~there was no valid~~Assignment Agreement is either invalid or unenforceable, Zay has been unjustly enriched.

~~22.~~32. Plaintiff~~s~~ allowed Zay to operate the Big Air ~~Franchise~~franchise in the Anderson Territory for Zay's benefit, with the understanding that Zay would ~~compensate~~ have to pay ~~Plaintiff~~ for ~~use~~the release of the ~~Big Air Franchise.~~Anderson Territory.

~~23.~~33. Zay knew or should have known that by operating the Big Air ~~Franchise~~franchise in the Anderson Territory, Zay was required to make Payments ~~to Plaintiff.~~as provided in the Assignment Agreement.

34. Zay has been unjustly enriched by operating the Big Air ~~Franchise~~franchise in the Anderson Territory without ~~payment~~paying~~, and Plaintiff is~~ for the release of the Anderson Territory.

~~24.~~35. Plaintiffs are entitled to judgment fairly compensating ~~Plaintiff~~Plaintiffs for Zay's operation of the Big Air ~~Franchise~~franchise in the Anderson Territory in the amount to be determined at trial, together with interest, costs and such other relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Guaranty- Defendants Sharif and Mohammad)

~~25.~~36. ~~Plaintiff realleges~~Plaintiffs reallege and ~~reasserts~~reassert the allegations of the preceding paragraphs as if set forth verbatim herein.

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~~26.~~37. Defendants Sharif and Mohammad are personal guarantors of the Assignment Agreement pursuant to the Guaranty Agreements. See, Exhibit 2.

~~27.~~38. The Guaranty Agreements provide that Defendants Sharif and Mohammad are liable for ~~full payments to Plaintiff~~the Payments and indebtedness under the Assignment Agreement.

~~28.~~39. The Guaranty Agreements also provide that Defendants Sharif and Mohammad are liable to pay attorneys' fees and costs incurred ~~by Plaintiff~~ in enforcement of the Assignment Agreement and collection of amounts due and owing.

~~29.~~40. Defendants have not made Payments to ~~Plaintiff~~Plaintiffs on the outstanding balance due. By virtue of the Guaranty Agreements, Defendants Sharif and Mohammad are personally liable for the debt.

~~30.~~41. ~~Plaintiff is~~Plaintiffs are entitled to a judgment against Defendants Sharif and Mohammad in the amounts to be determined at trial, plus prejudgment interest, attorneys' fees, and the costs associated with sending the pre-suit demands and the costs of this action.

WHEREFORE, ~~Plaintiff~~Plaintiffs, BA Holdings, Inc~~., prays~~. and BA Greenville, LLC, pray this Court for the following relief:

A. For Judgment against Defendant Zay on ~~Plaintiff's~~Plaintiffs' first cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

B. In the alternative, for judgment against Defendant Zay on ~~Plaintiff's~~Plaintiffs' second cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest;

C. For judgment against Defendants Sharif and Mohammad on ~~Plaintiff's~~Plaintiffs' third cause of action in the amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest; and

D. Any such other relief as the Court deems just and proper.

s/ Brian A. Autry
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~~May 2~~September 25, 2023
Columbia, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2023-CP-23-02302
	)	
BA HOLDINGS, INC.,	)	**PLAINTIFF'S MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION TO AMEND THE COMPLAINT**
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN,	)	
	)	
Defendants.	)	

Plaintiff, BA Holdings, Inc. ("BAH"), by and through its undersigned attorneys, files this Motion to Reconsider the Court's ruling on Defendants' Motion for Partial Summary Judgment and BAH's Motion to Amend the Complaint.

STANDARD OF REVIEW

A motion for reconsideration pursuant to Rule 59(e), SCRCP, is appropriate to "correct a clear error of law or prevent manifest injustice." Collison v. International Chem. Workers Union, 34 F.3d 233, 236 (4th Cir. 1994) (applying Fed. R. Civ. P. 59(e), upon which the SC Rule 59(e) is modeled). Motions for reconsideration are completely within the Court's discretion. Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 153, 723 S.E.2d 835, 841 (Ct. App. 2012).

STATEMENT OF FACTS

Big Air Franchising, LLC ("Big Air") sells franchises to operate indoor adventure parks throughout the United States. Big Air's principal place of business and state of domicile is in California.

BAH is the Regional Director for Big Air for the State of South Carolina by virtue of a Regional Director Agreement. BAH is the sole member of BA Greenville, LLC ("BA Greenville"), which entered into a franchise agreement with Big Air to operate a Big Air location in an exclusive

territory, including Anderson, South Carolina. Dustin Pelletier is the sole shareholder of BAH. See Affidavit of Dusitn Pelletier, previously filed with the Court.

This lawsuit concerns the alleged breach of contract by Zay of an Assignment and Assumption Agreement with BAH (the "Agreement") related to a territory of operations in Anderson, South Carolina (the "Anderson Territory") where Zay is currently operating a Big Air franchise. The Agreement is attached to the Complaint in this matter. **At the time Zay sought a franchise from Big Air, BA Greenville had exclusive rights to operate in the Anderson Territory, and Zay could not obtain a franchise agreement from Big Air without BA Greenville giving up those rights.** See, Affidavit of Dusitn Pelletier.

The purpose of the Agreement was to allow for Zay to have the rights to the Anderson Territory and to provide start-up and management services to Zay in exchange for the payments outlined in the Agreement. However, when the Agreement was entered, Mr. Pelletier mistakenly named BAH as the counterparty, instead of BA Greenville. BAH has since assigned the contract to BA Greenville. See, Affidavit of Dustin Pelletier and Assignment of Contract, dated August 14, 2023, between BAH and BA Greenville. Zay conceded at the hearing on this matter that the Agreement does not prohibit assignment.

Defendants take the position that they should not have had to pay for the release of the Anderson Territory and that now, because of the naming error and the various agreements between and among Big Air, BAH, BA Greenville, and Defendants, they are free to operate in the Anderson Territory without providing consideration to BA Greenville.

On August 14, 2023, Defendants filed their Motion for Partial Summary Judgment as to all claims asserted in the Complaint. BAH's Complaint includes causes of action for Breach of Contract, Unjust Enrichment, and Breach of Guaranty.

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On September 25, 2023, BAH filed its Motion to Amend Complaint to add BA Greenville as a Plaintiff because BA Greenville had the exclusive right to the Anderson Territory in which Zay now operates and to add allegations based on newly acquired information.

On October 9, 2023, Defendants filed a Memorandum in Support of their Motion for Partial Summary Judgment and Against BAH's Motion to Amend Complaint. Defendants argued that BAH's Amended Complaint could not, as a matter of law, give BAH's new assignee, BA Greenville, a claim to litigate this matter under the proposed amended complaint and that BAH is not permitted to charge fees to Defendants for the right to operate in the Anderson Territory. Defendants further argued that BAH's Motion to Amend should be denied as futile. **Defendants' Memorandum did not address BAH's claim for unjust enrichment.**

The parties have not yet completed discovery. Defendants have not even responded to Plaintiff's discovery requests. Plaintiff is also seeking subpoenas from Big Air Franchising that have not yet been approved by the California courts. No depositions have been taken. **Defendants submitted no affidavits or rebuttal affidavits in response to Mr. Pelletier's affidavit.**

On October 10, 2023, the Court heard oral arguments on the pending motions. **At the hearing on this matter, Defendants' counsel did not raise any arguments regarding BAH's claim for unjust enrichment.**

On October 16, the Court entered a Form 4 Order granting Defendants' Motion for Summary Judgment and denying BAH's Motion to Amend Complaint. The Court's Order instructed the Defendants' counsel to prepare a formal order for review. As of this filing, no draft order has been submitted by Defendants' counsel. Plaintiff is filing this Motion out of an abundance of caution in regard to the timing requirements of the SCRCP, but Plaintiff will provide an additional memorandum once such formal order is entered by the Court.

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LEGAL ANALYSIS AND ARGUMENT

I. There are Genuine Issues of Material Fact as to BAH's Claims against Defendants

Pursuant to Rule 56 of the SCRCP, judgment as a matter of law is only appropriate where "there is no genuine issue as to any material fact." The purpose of summary judgment is to dispose of factually unsupported claims. Celotex v. Catrett, 477 U.S. 317, 322 (1986). **"Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues."** Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 563 S.E.2d 109, 112 (Ct. App. 2002). "Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ." Tompkins v. Festival Centre Group, 306 S.C. 193, 410 S.E.2d 593 (Ct. App. 1991).

Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Schmidt v. Courtney, 357 S.C. 310 (2003). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Id. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Id.

Here, summary judgment is not appropriate as there are genuine issues of material facts as to BAH claims against Defendants. It is undisputed that BA Greenville had the exclusive right to operate a Big Air franchise in the Anderson Territory by virtue of its franchise agreement with Big Air. It is also undisputed that the zip codes assigned exclusively to BA Greenville include the same zip codes assigned to Zay in its franchise agreement with Big Air. How, then, could Big Air

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assign zip codes to one franchisee when another franchisee already had the exclusive rights to those zip codes? That question, alone, precludes summary judgment in this matter because there are many facts and pieces of evidence that bear on the answer. Either one of two things is true: (1) Zay and Big Air are currently violating BA Greenville's exclusive rights to operate in the Anderson Territory, and Zay has no right to operate there; or (2) Defendants procured BA Greenville's consent to allow Big Air to enter into the franchise agreement with Zay in the Anderson Territory by promising to pay for it and, after such consent was given, Zay refused to pay for it.

Questions of fact also exist regarding whether (i) BAH and/or BA Greenville had the right to assign the Anderson Territory back to Big Air so that Big Air could enter into a franchise agreement with Zay for the Anderson Territory, (ii) BAH and/or BA Greenville are able to charge Defendants for the release of the Anderson Territory contemplated in the Agreement, and (iii) Big Air was aware of the Agreement between Zay and BAH and approved it. All of these issues are contested and questions of fact for the jury. As such, summary judgment is not appropriate.

Defendants' Motion for Partial Summary Judgment is also premature because discovery is in its infancy. Defendants did not provide a single affidavit in support of their Motion for Partial Summary Judgment. No depositions have been taken in this case. BAH has issued subpoenas to Big Air for the production of documents and for the deposition of Kevin Odekirk, the President of Big Air. Those subpoenas have not yet been approved by the State of California. Previously, BAH attempted for several weeks to obtain an affidavit from Big Air regarding the facts of this case but Big Air was unwilling to do so. Therefore, it became necessary for BAH to schedule the deposition of Kevin Odekirk and obtain additional documents from Big Air. BAH has been diligently working to obtain the required subpoenas to obtain the requested documents from Big Air and take the

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deposition of Kevin Odekirk. BAH believes that this discovery from Big Air will assist with the above questions of material fact.

A manifest injustice will be created in this matter if the Court's ruling on Summary Judgment stands. The Court will be allowing Defendants to obtain a right belonging to BA Greenville without providing agreed-upon consideration for it. The Court cannot rule in favor of the Defendants while also allowing Defendants to continue operating in the Anderson Territory without consequence.

For these reasons, BAH respectfully requests the Court to reconsider its ruling granting Defendants' Motion for Summary Judgment and deny it.

II. The October 16, 2023 Order dismisses BAH's Unjust Enrichment cause of action even though Defendants failed to make an argument for summary judgment on this cause of action in their Memorandum or oral arguments at the hearing.

Even if the Court is not inclined to reconsider and reverse its October 16, 2023 Order related to the breach of contract and breach of guaranty causes of action, the Court should not grant summary judgment as to BAH's unjust enrichment cause of action. Defendants' Memorandum in Support of Summary Judgment did not address BAH's claim for unjust enrichment. At the hearing on this matter, Defendants' counsel did not raise any arguments supporting summary judgment on BAH's claim for unjust enrichment.

As stated above, there is a factual dispute regarding whether BAH and/or BA Greenville had the exclusive rights to operate in the Anderson Territory and whether Defendants could have opened a Big Air franchise in the Anderson Territory without BAH and/or BA Greenville giving up these rights and releasing the territory back to Big Air. Defendants are currently operating profitably in the Anderson Territory without paying the agreed-upon consideration for it. They are violating BA Greenville's exclusivity. Defendants have not established that summary judgment

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is appropriate on BAH's unjust enrichment cause of action nor have they even provided an argument in that regard.

Therefore, BAH respectfully requests the Court to reconsider and reverse its ruling dismissing BAH's cause of action for Unjust Enrichment.

III. BAH's Motion to Amend Complaint is not Moot or Futile

The Court's October 16, 2023 Order denied BAH's Motion to Amend Complaint as moot based on the Court's ruling on Defendants' Motion for Summary Judgment. For the reasons stated above, Defendants' Motion for Summary Judgment should not have been granted. Therefore, BAH's Motion to Amend is not moot or futile. Additionally, a motion to amend under Rule 15 is addressed to the sound discretion of the trial judge, and the party opposing amendment has the burden of establishing that the motion should not be granted because of prejudice. *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004) (citing *Tanner v. Florence Cty. Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999)). "The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it." *Id.* Defendants did not present any evidence that they would be prejudiced if BAH was permitted to Amend its Complaint. BA Greenville is a proper party for two reasons: (1) BA Greenville has the exclusive rights to operate in the Anderson Territory where Zay is now operating; and (2) BA Greenville is the proper Assignee of the Agreement between BAH and Zay, the effect of which allowed Zay to obtain a franchise agreement from Big Air for the Anderson Territory.

For these reasons, BAH respectfully requests the Court to reconsider and reverse its ruling denying BAH's Motion to Amend Complaint.

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CONCLUSION

For the reasons set forth above, BAH respectfully requests the Court to reconsider and reverse its ruling granting Defendants' Partial Motion for Summary Judgment and denying BAH's Motion to Amend Complaint. Upon submission of a formal order, BAH will submit additional information and arguments for the Court's consideration.

Respectfully submitted,

s/Brian A. Autry
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October 26, 2023
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November 7, 2023

VIA E-FILING AND E-MAIL

The Honorable G.D. Morgan, Jr.
Circuit Court Judge
305 E. North Street
Greenville, South Carolina 29601
gmorgansc@sccourts.org

Re: *BA Holdings, Inc. v. Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan*
Case No. 2023-CP-2302302
Greenville County Circuit Court

Dear Judge Morgan,

On behalf of Defendants, please be advised that it appears Plaintiff did not comply with Rule 59(g), SCRCP, regarding a motion for reconsideration it filed but did not timely provide Your Honor with a copy.

Rule 59(g), SCRCP, provides: "Judge to be Provided with Copy. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." (emphasis in original).

Construing this rule, the South Carolina Court of Appeals held: "Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule." *Smith v. Fedor*, 809 S.E.2d 612, 616, 422 S.C. 118, 126 (Ct. App. 2017) ("Accordingly, the trial court properly denied Smith's motion for reconsideration because he did not timely provide a copy of the motion to the judge.").

In this case, on October 16, 2023, partial summary judgment was entered in favor of Defendants, together with a denial of Plaintiff's motion to amend. The judgment was issued in a Form 4 Order, which expressly states: "This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp . . . E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties." The judgment was e-signed by Your Honor on October 13, 2023 and subsequently entered by the Clerk on October 16, 2023 and simultaneously served on the parties' counsel via e-filing. The judgment included a "Statement of Judgment,"

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discussing the evidence and explaining the basis of the Court's decision, and directing Defendants to prepare a formal order:

> "Statement of Judgment . . . Please see page two below . . . This matter is before the Court on Defendants' Motion for Partial Summary Judgment as to all Claims Asserted in the Complaint by Plaintiff BA Holdings, INC. and Plaintiff's Motion to Amend Complaint. Based on a review of the file, submissions by the parties, and oral arguments, the Defendants' motion is hereby GRANTED. The evidence reveals that Plaintiff never had the right to sell a Big Air Franchise nor the right to sell the Anderson territory. Furthermore, Plaintiff did not have the rights to own and operate any franchises. Although, BA Greenville LLC did have the rights to own one franchise, they did not have the right to sell a franchise or the Anderson territory. Nor did Plaintiff have the authority to open an additional franchise. Based on the decision on Defendant's motion, Plaintiff's Motion to Amend is moot and therefore denied. Counsel for Defendants to prepare a formal order. It is so ordered."

On October 26, 2023, Plaintiff filed a motion for reconsideration, under Rule 59(e), SCRCP, requesting that the Court alter or amend the judgment. The motion challenges the Court's assessment of the evidence and the basis of its decision as set forth above in the "Statement of Judgment." Pursuant to Rule 59(e), SCRCP, the motion was timely filed within ten (10) days of the entry of judgment on October 16, 2023. However, it appears that Plaintiff did not thereafter provide a copy of said motion to Your Honor within ten (10) days, as additionally required by Rule 59(g), SCRCP. As of the date of this letter, November 7, 2023, twelve (12) days have passed.

Notably, Plaintiff made the following comment in its motion for reconsideration:

> "On October 16, the Court entered a Form 4 Order granting Defendants' Motion for Summary Judgment and denying BAH's Motion to Amend Complaint. The Court's Order instructed the Defendants' counsel to prepare a formal order for review. As of this filing, no draft order has been submitted by Defendants' counsel. Plaintiff is filing this Motion out of an abundance of caution in regard to the timing requirements of the SCRCP, but Plaintiff will provide an additional memorandum once such formal order is entered by the Court."

This comment did not excuse Plaintiff from complying with Rule 59(g), SCRCP.

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On October 30, 2023, Defendants submitted a proposed formal order.

On November 3, 2023, the Court e-signed a formal order and it was e-filed by the Clerk on November 7, 2023.

Notwithstanding any additional motions or memoranda Plaintiff may submit in response to the formal order, Plaintiff did not comply with Rule 59(g), SCRCP, as to its motion to reconsider the entry of judgment against it on October 16, 2023, including the well-reasoned "Statement of Judgment" therein. To be sure, in addition to this procedural defect, Plaintiff's motion for reconsideration is also substantively without merit.

Enclosed herewith is a copy of Plaintiff's motion for reconsideration filed on October 26, 2023, as well as a copy of the judgment it challenges entered on October 16, 2023.

With warmest regards, I am

Very truly yours,

HELLMAN & YATES, PA



Jason S. Smith

Encls.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2023-CP-23-02302
	)	
BA HOLDINGS, INC.,	)	
	)	**PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING PARTIAL SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION TO AMEND THE COMPLAINT**
Plaintiff,	)	
	)	
vs.	)	
	)	
ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN,	)	
	)	
Defendants.	)	
	)	

Plaintiff, BA Holdings, Inc. ("BAH"), moves pursuant to Rules 59(e), SCRCP, and the Court's inherent authority, for the Court to reconsider and vacate its Order Granting Defendants' Motion for Partial Summary Judgment and Denying BAH's Motion to Amend the Complaint (the "Order").

BAH's Motion to Amend the Complaint, and the Court's Order denying the same, is the crux of this motion to reconsider. The record is now clear that BAH was the incorrect entity to enter into the contract with Defendants that is at the center of this litigation. *See*, Assignment and Assumption Agreement, attached hereto as Exhibit 1 (hereinafter, the "Contract"). The Contract should have been between Defendants and BA Greenville, LLC ("BA Greenville"), which held exclusive rights to open and operate a franchise for Big Air Franchising, LLC ("Big Air") in Anderson County, South Carolina (the "Anderson Territory"), and other contractually defined locations.

After determining that BA Greenville was the correct party in interest, BAH moved to amend the complaint to add BA Greenville as a plaintiff and move forward with this action in a judicially efficient manner. BA Greenville could have initiated a separate action to assert its

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exclusivity over the Anderson Territory and protect its rights against Defendants, but because of the closely related nature of the two companies and the fact that discovery was just beginning, an amendment was determined to be most efficient.

The Order, in denying BAH's Motion to Amend, analyzes the merits of BA Greenville's claims and potential claims against Defendants, effectively treating the Complaint as amended and then at the same time undertaking a summary judgment analysis of the merits of BA Greenville's claims against Defendants. Such a procedure violates Rule 56(c), SCRCP's notice requirement, amounts to an improper advisory opinion, and prejudices BA Greenville by ruling on the merits of its claim without allowing it to present materials showing the disputed factual issues. *See Tanner v. Florence County Treasurer*, 336 S.C. 552, 560, 521 S.E.2d 153, (1999) (finding the lower court erred in granting summary judgment at same hearing as ruling motion to supplement complaint, which precluded plaintiff from producing evidence to support its amended claim and determining the "prejudice in doing so is obvious").

LEGAL STANDARDS

Rule 59 – Motion to Alter or Amend

A motion made pursuant to Rule 59(e), SCRCP, is an appropriate "vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. DOT*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Such a motion is appropriate where a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780. A motion for reconsideration is appropriate to "prevent manifest injustice" and permit a "court to correct its own errors, 'sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.'" *Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

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Rule 56 - Summary Judgment

Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "A fact is deemed 'material' if proof of its existence or nonexistence would affect the disposition of the case under the applicable law." *Knight v. Am. Nat. Fire Ins. Co.*, 831 F.Supp. 1284, 1285 (D.S.C. 1993) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "An issue of material fact is 'genuine' if the evidence offered is such that a reasonable jury might return a verdict for the non-movant." *Id.*

"Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). When deciding whether a genuine issue of material fact exists, the court must view "the evidence and all inferences which can be reasonably drawn therefrom . . . in the light most favorable to the nonmoving party." *Id.* at 361-62, 563 S.E.2d at 333 (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)).

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* at 363, 563 S.E.2d at 334 (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000)). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." *Id.* at 362, 563 S.E.2d at 333 (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)). "Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Id.* at 363, 563 S.E.2d at 334 (citing *Baughman,*

306 S.C. 101, 410 S.E.2d 537). "This means . . . that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.*

PROCEDURAL HISTORY

Plaintiff initiated this action on May 9, 2023, asserting causes of action against Defendants for breach of contract, unjust enrichment, and breach of guaranty. Defendants filed an answer and counterclaims on June 9, 2023, to which Plaintiff filed a reply on August 7, 2023. On August 14, 2023, Defendants filed their Motion for Partial Summary Judgment as to all claims asserted in the Complaint.

On September 25, 2023, BAH filed its Motion to Amend Complaint to add BA Greenville as a Plaintiff because BA Greenville had the exclusive right to the Anderson Territory in which Defendant Zay N Limo, LLC ("Zay") now operates and to add allegations based on newly acquired information.

On October 9, 2023, Defendants filed a Memorandum in Support of their Motion for Partial Summary Judgment and Against BAH's Motion to Amend Complaint. Defendants failed to appreciate the import of the proposed amended complaint and erroneously argued that BAH's Motion to Amend should be denied as futile. Defendants' Memorandum did not address BAH's claim for unjust enrichment.

The parties had only just begun discovery when the Court heard Defendants' motion for summary judgment. As of the date of this Motion, Defendants have not produced any documents other than documents already produced by Plaintiff. Plaintiff has served subpoenas on Big Air for production of documents, but Big Air has not yet responded. No depositions have been taken. Defendants submitted no affidavits or rebuttal affidavits in response to Mr. Pelletier's affidavit.

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On October 10, 2023, the Court heard oral arguments on the pending motions. At the hearing on this matter, Defendants' counsel did not raise any arguments regarding BAH's claim for unjust enrichment.

The Court issued a Form 4 Order on October 16, 2023, with a short paragraph of reasoning that contained no case law and no references to facts in the record and directing Defendants' counsel to prepare a formal order.

On October 26, 2023, Defendants filed a Motion to Reconsider based on the Court's Form 4 Order and as a placeholder until such time as the formal order with the full extent of the Court's findings of fact and conclusions of law was on file.

Counsel for Defendants prepared and submitted a proposed order on October 27, 2023, and the Court adopted and entered the proposed order as its formal order on November 7, 2023 (the "Order"). This motion is filed within ten days as required by Rule 59(e), SCRCP.

STATEMENT OF FACTS

Big Air sells franchises to operate indoor adventure parks throughout the United States. Big Air's principal place of business and state of domicile is in California. BAH is the Regional Director for Big Air for the State of South Carolina by virtue of a Regional Director Agreement, dated April 1, 2018. A copy of the Regional Director Agreement is attached hereto as Exhibit 2. Dustin Pelletier is the sole shareholder of BAH. BAH is the sole member of BA Greenville, LLC ("BA Greenville"). BA Greenville entered into a franchise agreement with Big Air to operate a Big Air location in an exclusive territory that included Anderson, South Carolina. (Dustin Pelletier Aff., filed Oct 6, 2023, ¶ 4; Franchise Agreement between Big Air and BA Greenville, dated October 7, 2017, attached hereto as Exhibit 3). BAH and BA Greenville are separate entities with separate agreements with Big Air.

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Zay first contacted Big Air about a franchise opportunity on July 14, 2020. (Pelletier Aff. ¶ 5). At that time, BA Greenville had exclusive rights to the Anderson Territory. (Pelletier Aff. ¶ 4); BA Greenville Franchise Agreement, Section 4.1 and Attachment A). **That means, as of July 14, 2020, Zay could not have obtained a franchise agreement in the Anderson Territory from Big Air without BA Greenville giving up those rights.** It is irrelevant that BA Greenville could not open another franchise in the Anderson Territory without entering into a new franchise agreement with Big Air. **What is critically relevant is that Zay could not open a Big Air franchise in the Anderson Territory without BA Greenville's consent.**

The Contract was signed by Plaintiff and Defendants on February 18, 2021. Prior to executing the Contract, Mr. Pelletier and Mohammad Farhan, on behalf of Zay, had multiple email exchanges discussing their proposed deal. A selection of these emails is attached as Exhibit 4. Mr. Pelletier stated that he had exclusive rights to the Anderson Territory and that he was unwilling to give up those rights without some form of payment.[1] (Email from Pelletier to Farhan, Sept 23, 2020). The two even discussed a potential partnership but ultimately agreed that the terms captured in the Contract were more desirable. (Email from Pelletier to Farhan, Aug 18, 2020; email from Pelletier to Farhan, Nov 26, 2020; email from Pelletier to Farhan, Nov 27, 2020).

The parties discussed the Contract at length, exchanged drafts, and negotiated the terms to the point of striking the deal. Those emails are attached hereto as Exhibit 5. The first draft of the Contract was sent to Mr. Farhan on January 20, 2021. Mr. Farhan asked for changes to be made to the document, which were made on January 29, 2021. Email from Pelletier to Farhan, Jan 29, 2021). These communications show that Defendants knew what the parties were trying to

[1] As the sole shareholder of BAH, which is the sole member of BA Greenville, Mr. Pelletier in talking with Mr. Farhan about franchise opportunities and exclusivity understandably referred to such rights as "his," not intending to delineate which legal entity in fact holds such rights.

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accomplish in entering into the Contract – namely, a deal that would allow Zay to obtain a franchise agreement from Big Air to operate in BA Greenville's exclusive territory, with BA Greenville's consent.

Attached as Exhibit 6 are Mohammad Farhan's own notes, in his handwriting, working through the financial terms of his proposed arrangement with BAH/BA Greenville on November 23, 2020. On page 1, it shows the gross sales and net profit that BA Greenville was generating from the Anderson Territory, assuming the same revenues (10%). Then on page two, Farhan's notes show BA Greenville "losing" that 10% by giving up the Anderson Territory, which equals $104,418. Mohammad knew, based on his own estimate, that BA Greenville stood to lose $104,418 annually in giving up the Anderston Territory.

On November 27, 2020, Mr. Pelletier sent an email to Mohammad recapping their meeting and the financial considerations reflected in Mohammad's notes. (Email from Pelletier to Farhan, Nov 27, 2020). The email proposes the deal terms between Zay and Mr. Pelletier/BA Greenville. In the next to last bullet point, one of the deal terms is that BA Greenville would "release exclusive zip code territory in and around Anderson for exclusive marketing access to Big Air Anderson." (Email from Pelletier to Farhan, Nov 27, 2020). Defendants knew all along and understood that the purpose of the Contract was for BA Greenville to release its exclusive rights to the Anderson Territory.

Attached as Exhibit 7 is an email sent by Kevin Odekirk of Big Air to Mr. Pelletier on August 29, 2023. Attached to the email is an affidavit that Mr. Odekirk represents, in writing, that he is willing to sign in exchange for Mr. Pelletier executing a very broad and full release in favor of Big Air related to all claims Mr. Pelletier and his companies may have against Big Air, including unknown claims. Given the nature of this lawsuit and the claims made by Defendants, including

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claims of coercion and collusion by Big Air, Mr. Pelletier did not feel it prudent to execute the release. As a result, Big Air did not execute the affidavit. However, the affidavit provides the Court with factual evidence, in dispute, that Big Air consented to the deal between Defendants and BA Greenville and entered into the franchise agreement with Zay only because BA Greenville agreed to release its contractual rights to the Anderson Territory.

BAH assigned the Contract to BA Greenville by virtue of an Assignment of Contract (the "Assignment"), dated August 14, 2023, and attached to this Motion as Exhibit 8.

LEGAL ANALYSIS AND ARGUMENT

I. Defendants failed to show prejudice or demonstrate that the proposed Amended Complaint would be clearly futile.

BAH moved to amend the complaint to correct the result of what essentially amounts to a scrivener's error in the Contract naming BAH as the contracting party when it should have been BA Greenville. The amended complaint sought to add BA Greenville as the proper party in interest. In opposing this motion to amend, Defendants had the burden of proving prejudice or futility of the amendment. Defendants did not argue prejudice and failed to show that this case falls into that rare category of cases where amendment would be futile.

Leave to amend a pleading shall be freely given when justice so requires, and the grant of such leave does not prejudice the other party. Rule 15, SCRCP. The party opposing amendment has the burden of establishing that the motion should not be granted. *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). There are limited reasons to deny a motion to amend, including "bad faith, undue delay, or prejudice," or in rare cases "if the amendment would be clearly futile." *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019) (quoting *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988)).

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Defendants did not argue that BAH's proposed Amended Complaint was made in bad faith, untimely, or prejudicial, and the Order did not deny BAH's motion to amend on any of these grounds. Defendants are not prejudiced in any way by the addition of BA Greenville as a party, all their defenses and counterclaims are preserved, and they are put at no disadvantage. Instead, Defendants argued against BAH's motion to amend solely on the grounds that such an amendment would be futile, which is the sole basis upon which this Court denied BAH's motion to amend. (Order at pp. 2, 22).[2]

The South Carolina Supreme Court has cautioned that "[a] court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint," and only in "rare cases" may a court deny a motion to amend "if the amendment would be clearly futile." *Skydive Myrtle Beach*, 426 S.C. at 182, 826 S.E.2d 589. The only appellate case examples of such "rare cases" all include situations where a party is determined to be statutorily immune from suit. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 636, 743 S.E.2d 808, 813, 814 (2013) (affirming denial of motion to amend where a related case between the same parties had been ongoing for seven years and the court determined the defendant was immune from suit under the plaintiff's theory of liability); *Jennings v. Jennings*, 389 S.C. 190, 208-09, 697 S.E.2d 671, 680-81 (Ct. App. 2010) (denying motion to amend to add party where statutory basis for liability only extends to persons who committed statutorily prohibited acts and there were no allegations of such acts by the new party), *rev'd on other grounds, Jennings v. Jennings*, 401 S.C. 1, 736 S.E.2d 242 (2012); *Higgins v. Medical Univ.*, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (affirming summary judgment in favor of defendant and observing that any amendment would be futile where doctor defendant had statutory immunity

[2] It is worth noting that the Form 4 Order denying BAH's motion to amend does not mention futility as the basis for the Court's ruling.

from suit). There is no corollary statutory immunity for the defendants in this case, and this is not such a "rare case" where it would be futile to allow an amendment.

In ruling that BAH's proposed amended complaint would be futile, the Court did not assume the truth of all facts in the amended complaint, as is required on a motion to dismiss, and it did not then analyze those facts under the South Carolina Supreme Court's precedent on futile amendments. Instead, the Court opined, and essentially granted summary judgment, on the merits of BA Greenville's claims that it would assert as part of the amended complaint. Such a determination on BA Greenville's claims effectively amounts to an advisory opinion, which courts are prohibited from issuing. *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 577 n.6, 703 S.E.2d 197, 204 n.6 (2010) (noting that it was an advisory opinion and error for the lower court to discuss the manner and mode of class certification in an order on motion to strike class allegations). As such, Defendants have failed to show that BAH's proposed amended complaint would be clearly futile.

II. Summary judgment as to the allegations in the proposed Amended Complaint is improper.

Even if the Court could properly undertake such a merits review of BAH's proposed Amended Complaint, the Order did not undertake its review under the applicable standard for summary judgment. In determining that BAH's proposed Amended Complaint would be clearly futile, in essence determining that summary judgment would be granted on the amended pleading were such amendment granted, the same standards for summary judgment should apply. This means that Defendants have the initial burden of demonstrating the absence of a genuine issue of material fact, all evidence and interferences must be viewed in the light most favorable to Plaintiff, and Defendants must demonstrate why further inquiry into the facts of this case is not desirable to clarify the application of the law under these circumstances. (See Standard of Review, supra at 3).

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Defendants carry the burden to show that such a drastic remedy should be granted in this case, especially where discovery has barely begun.

The Order discusses, at length, the effect of language in agreements among BAH, BA Greenville, and Big Air. Big Air is not a party to this action. Big Air has not been deposed and has not produced documents to give the Court clarity on what Big Air understood about the agreements it has with BAH and BA Greenville. Of critical importance is the fact that Big Air and BA Greenville could modify or amend their Franchise Agreement at any time by mutual consent. (BA Greenville Franchise Agreement, Section 21.11). Defendants repeatedly point to actions that the agreements between Big Air and BA Greenville or BAH prohibit but fail to acknowledge circumstances where Big Air allows BA Greenville or BAH to take actions otherwise prohibited by their written agreements. Even so, in this case, Big Air *has* explicitly acknowledged BA Greenville's exclusivity and consented to the actions taken by BA Greenville and BAH to release the Anderson Territory to Defendants, or at a minimum the documents evidence a genuine issue of material fact on these questions that preclude summary judgment. (Odekirk email to Pelletier with affidavit, Aug 29, 2023).

The Order erroneously concludes that BAH and BA Greenville double sold and charged extra fees to Defendants for the transfer of exclusivity. (Order at 21). BA Greenville did not "double sell" anything. BAH's rights and benefits created in the Regional Director Agreement with Big Air are entirely separate and unrelated to BA Greenville's rights and privileges created in its franchise agreement with Big Air. The two have no practical bearing on each other. BAH is entitled to a portion of franchise fees paid by any franchisee in the State of South Carolina, regardless of whether that franchisee wants to operate in territory that is under an exclusivity provision or not. (BAH Regional Director Agreement, Section 5). BAH would have been entitled

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to a portion of the franchise fee paid by Zay, regardless of any agreements or deals involving BA Greenville. Just because BAH received compensation under its agreement with Big Air related to another franchisee does not mean BA Greenville is precluded from receiving compensation from that same franchisee. There is no legal basis stated for the Court's finding in this regard. The Court does not explain why, as a matter of law, BA Greenville would not be allowed to charge Zay for its consent to release the Anderson Territory, but simply states, without allowing discovery and a trial on the merits, that it was "wrong and inequitable." (Order at 21). The documents clearly show that there is, at minimum, a genuine issue of material fact as to whether BAH could earn a portion of the franchise fee under its agreement with Big Air, which Defendants do not dispute, and separately BA Greenville could be compensated for releasing its exclusivity on the Anderson Territory. As such, summary judgment is not appropriate.

Additionally, the findings in the Order, beginning at the bottom of page 20 and continuing through page 21, do not comport with the facts before the Court. Viewing the facts in the light most favorable to BA Greenville, the Court cannot find, as a matter of law, that "BA Greenville, LLC, would not have had the right to enter into the Contract with Defendants to begin with, either. Nor does it have the equitable right to restitution." (Order at 20-21). It is undisputed that BA Greenville had the exclusive right to operate in the Anderson Territory prior to Zay's initial inquiry to Big Air in July 2020 and that Big Air consented to BA Greenville entering into the Contract with Defendants. (Odekirk email to Pelletier with affidavit, Aug 29, 2023).

The facts in the record also do not support the conclusion that the agreements reached among Defendants and BAH/BA Greenville were "wrong and inequitable." (Order at 21). To the contrary, Plaintiff has provided evidence to the Court tending to show that Defendants knew the

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additional payments being sought by BA Greenville were for the release of the Anderson Territory, no matter how the Contract ultimately got drafted. (Pelletier email to Farhan, Sep 23, 2020).

On page 21 of the Order, the Court makes the following finding:

> Plaintiff's new assignee of the Contract, BA Greenville, LLC, only had the right, license, and duty to operate the "one," already existing franchise business in Greenville; and numerous conditions and restrictions prohibited and rendered "void" any attempted assignment of the same without the franchisor's "prior written approval" (which it admittedly did not receive). Because neither Plaintiff, nor BA Greenville, LLC, had the rights they purported to sell Defendants and made representations and warranties about that were indisputably false, neither has a valid claim under the Contract or the alternative theory of unjust enrichment asserted in the Complaint and the proposed amended pleading.

Section 15.4 of the BA Greenville Franchise Agreement with Big Air contains this "prior written approval" language. It is Big Air's contractual right to enforce or not enforce. Big Air has not brought any legal action against BA Greenville or BAH for breaching their agreements with Big Air in entering into the Contract with Zay, because Big Air consented to it. (Odekirk email to Pelletier with affidavit, Aug 29, 2023). Even though the Franchise Agreement between BA Greenville and Big Air requires amendment in writing, South Carolina law has long recognized that an oral amendment can be made to written agreements. *See, e.g. Koontz v. Thomas*, 511 S.E.2d 407, 411 (S.C. Ct. App. 1999) ("A written contract may be modified by oral agreement even if the contract expressly states that all changes must be in writing.").

Finally, the Amended Complaint makes the following allegations that involve genuine issues of material fact and preclude summary judgment and Defendants' futility argument:

***

> 3. On July 14, 2020, Defendant Mohammad contacted BAF regarding a franchise opportunity through BAF's online inquiry process. BAF then provided Defendants with sales and disclosure requirements for a franchise opportunity. BAF also disclosed to Mohammad that BAH was the regional director for BAF.

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4. Defendants were interested in opening a Big Air franchise in the Anderson Territory. BAH disclosed to Defendants that the Anderson Territory was not available without payment of an additional fee. This was because of BA Greenville's exclusive rights to the Anderson Territory. BAH recommended the Myrtle Beach, South Carolina territory to Defendants because it was not subject to an exclusivity agreement or other franchise agreement. Defendants chose, instead, to continue pursuing the Anderson Territory.

5. BAF could not have sold a Big Air franchise to Defendants in the Anderson Territory without the release of the Anderson Territory zip codes from BA Greenville back to BAF.

6. BA Greenville's business drew customers and clients from the Anderson Territory. A release of the Anderson Territory and a new Big Air location in Anderson, SC would take away business and revenue from BA Greenville. This fact was disclosed to Defendants by BAH.

7. After negotiations with Defendants, BAH agreed that the Anderson Territory would be released back to BAF so it could be assigned to Zay as part of its franchise agreement with BAF. BAH is in full and unfettered control of BA Greenville.

***

9. The Assignment Agreement is in error in at least two ways: (a) BA Greenville should be the counterparty, not BAH; and (b) it should provide for the assignment of the Anderson Territory back to BAF instead of assigning it directly to Zay.

***

17. In December 2022, Defendants contacted BAF and expressed concern that the Assignment Agreement was invalid and that they should not have to pay the amounts required by the Assignment Agreement. Neither Defendants nor BAF disclosed this concern to Plaintiffs prior to March 2023.

***

24. On August 14, 2023, BAH, in an attempt to correct the error identified in Paragraph 9(a), above, assigned its right, title, and interest in the Assignment Agreement to BA Greenville. A copy of that assignment is attached hereto as Exhibit 3.

***

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> 30. In the alternative, and without relinquishing Plaintiffs' assertion that there is a valid contract, should the Court find that Assignment Agreement is either invalid or unenforceable, Zay has been unjustly enriched.
>
> 31. Plaintiffs allowed Zay to operate the Big Air franchise in the Anderson Territory for Zay's benefit, with the understanding that Zay would have to pay for the release of the Anderson Territory.
>
> 32. Zay knew or should have known that by operating the Big Air franchise in the Anderson Territory, Zay was required to make Payments as provided in the Assignment Agreement.
>
> 33. Zay has been unjustly enriched by operating the Big Air franchise in the Anderson Territory without paying for the release of the Anderson Territory.

These allegations, taken together with the record in this case, show that a number of genuine issues of material fact exist that must be resolved by a fact finder after full discovery is completed. Taken together, these factual disputes preclude summary judgment.

III. BAH and BA Greenville have viable claims for unjust enrichment.

It is undisputed that Zay is currently operating a Big Air franchise in BA Greenville's exclusive territory, which is competing with and taking customers from BA Greenville's location. BA Greenville is sustaining a tangible and quantifiable loss as a result. In fact, Defendants knew BA Greenville would sustain such a loss when it entered the Contract. (Mohammad Farhan handwritten notes, Nov 23, 2020).

Despite Defendants never making a specific argument in their filings or in oral argument related to BAH's unjust enrichment claim, the Order dismisses the claim outright and even goes so far as to say BA Greenville could never have an unjust enrichment claim. (Order at 21). The Order sets forth no legal basis for this conclusion. Even if the Court could make a ruling on the non-party BA Greenville's legal claims (which it cannot because it would be an advisory

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opinion), there is certainly not enough evidence in the record to make this determination as a matter of law.

To recover for unjust enrichment, "the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003). A non-gratuitous benefit is a benefit conferred either at the defendant's request or in circumstances where the plaintiff reasonably relied upon or ought to have understood that the plaintiff expected compensation and looked to the defendant for payment. *Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc.*, 296 S.C. 530, 532-33, 374 S.E.2d 507, 509 (Ct. App. 1988).

In this case, BA Greenville conferred a non-gratuitous benefit on the Defendants. BA Greenville gave up its right to the Anderson Territory and repeatedly told Defendants that it expected to be compensated for it. Defendants understood that and went through extensive negotiations to reach an agreement. Defendants have realized value for the benefit. They are operating and profiting from a business in the Anderson Territory, which by admission and in Mohammad Farhan's own handwriting, is taking business away from BA Greenville. The facts are very much in dispute as to whether Defendants can retain the right to operate in the Anderson Territory without paying BA Greenville for it, because they could never have obtained that right without BA Greenville's consent. BA Greenville was unwilling to give its consent without payment. The disputed facts already before the Court are more than enough to preclude the Court from making a finding that BA Greenville has no claims for unjust enrichment.

IV. The assignment of the Contract from BAH to BA Greenville is a valid assignment and provides adequate basis for adding BA Greenville as a party.

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The Order finds that the Assignment from BAH to BA Greenville is an amendment to the Contract. However, the case law and legal principles cited by the Court refer to contract formation and amendment, not assignment. An assignment is not an amendment, and there are no South Carolina cases finding that an assignment of a contract amends the contract as between the assigning party and the other party to the assigned contract. No language in the Assignment states that it is intended to amend the Contract. In fact, the opposite is true. The Assignment provides that BA Greenville is obligated to perform the Contract in all respects and is entitled to the benefits of the same. BAH and BA Greenville have made no attempt to unilaterally amend the Contract. An assignment is generally permissible under the law unless there is an express prohibition against assignment in the underlying contract. The Contract does not contain a provision prohibiting assignment (a fact admitted by Defendants). There is no South Carolina law prohibiting assignment of a contract in this context, and Defendants have not attempted to cite to any.

Three elements constitute a valid assignment: (1) an assignor; (2) an assignee; and (3) transfer of control of the thing assigned from the assignor to the assignee. An assignment of a right is a manifestation of the assignor's intention to transfer it by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance. The principle is well settled that a valid assignment operates to pass the whole right of the assignor, and that thereafter the assignee stands in the place of the assignor, possessing all rights or remedies available to the assignor. *Sanders v. Savannah Highway Automotive Co.*, 432 S.C. 328, 852 S.E.2d 744, (Ct. App. 2020).

Mr. Pelletier's affidavit and the contemporaneous communications between Mr. Pelletier and Mohammad show that the parties intended for BA Greenville to be the counterparty to the Contract, not BAH. The Assignment comports with the intent of the parties as demonstrated by

the evidence and substitutes BA Greenville for BAH. This is more than enough for the Court to grant BAH's Motion to Amend and allow BA Greenville to be added as a party to this matter. BA Greenville's presence is necessary for a full and complete resolution of the matters in controversy among the parties.

V. Discovery in this matter has not been completed.

There are genuine issues of material fact related to the allegations in the proposed Amended Complaint. The materials provided to the Court also highlight another significant problem with the Order – discovery has not been completed. The terms of the agreements reached among BAH, BA Greenville, Defendants, and Big Air would become even more clear to the Court through the course of discovery, which has barely begun. The Defendants have not produced any documents except those previously produced by BAH. Big Air has not produced any documents in response to BAH's subpoenas. The Defendants have not been deposed. Mr. Pelletier has not been deposed. It cannot be stressed enough how premature the Court's Order is and how much it cuts against South Carolina law related to motions for summary judgment and completion of discovery.

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CONCLUSION

When properly viewing the amended allegations in the light most favorable to BA Greenville and when applying well-settled South Carolina law in regard to motions for summary judgment, the Court must determine that summary judgment is inappropriate in regard to BA Greenville's claims, which, in turn, means that BAH's proposed Amended Complaint is not futile.

For these reasons and those set forth above, BAH respectfully requests the Court to reconsider and reverse its ruling granting Defendants' Partial Motion for Summary Judgment and denying BAH's Motion to Amend Complaint.

Respectfully submitted,

s/Brian A. Autry
Brian A. Autry (SC Bar No.: 69401)
Ashley C. Thibault (SC Bar No.: 103522)
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Attorneys for Plaintiff

November 17, 2023
Columbia, South Carolina

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ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") dated as of January 29, 2021 ("Effective Date"), is entered into by and between BA HOLDINGS, INC., a South Carolina corporation ("Assigning Party") and ZAY N LIMO, LLC, a South Carolina limited liability company ("Assuming Party").

RECITALS

Assigning Party desires to assign to Assuming Party all its rights, including exclusive marketing rights, to the Anderson County, South Carolina territory (the "Anderson Territory") owned by Assigning Party pursuant to its franchise agreement with ©Big Air Franchising, LLC (the "Franchise Agreement"). The Anderson Territory is more fully described as zip codes. See, Exhibit A.

Sharif Farhan and Mohammad Farhan are the sole members of Assuming Party's limited liability company (each an "Owner" and, together, "Owners").

Assuming Party desires to accept such assignment of rights and delegation of obligations for the Anderson Territory.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Anderson Territory.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties and obligations related to the Anderson Territory on and after the Effective Date.

1.3 Term. The term of this Agreement is equal to the length of time that Assuming Party operates a Big Air franchise in Anderson County, South Carolina pursuant to a franchise agreement with ©Big Air Franchising, LLC (the "Term").

2. Consideration.

2.1 For the entire time Term, Assuming Party agrees to pay the following to Assigning Party as consideration for the assignment of the Anderson Territory:

(a) A sum equal to 1% of the monthly gross sales of Assuming Party. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Gross sales will be calculated for the monthly immediately preceding the payment date.

(b) A sum equal to 5% of the monthly net profits of Assuming Party. Net profits will be calculated by taking the gross revenue and subtracting expenses. Expenses include normal operating expenses and excludes Owner personal expenses, salaries of Owners greater

than $45,000 in the aggregate, new major equipment expenses greater than $5,000 per purchase, and bonuses, if any. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Net profits will be calculated for the monthly immediately preceding the payment date.

(c) A monthly management fee of Five Thousand and 00/100 ($5,000.00). The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term.

2.2 All payments will be made by WIRE TRANSFER WITH BACKUP PAYMENT delivered to PO BOX 171592, SPARTANBURG, SC 29301.

2.3 All late payments shall bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Assuming Party will also reimburse Assigning Party for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Assigning Party does not waive by the exercise of any rights hereunder), Assigning Party shall be entitled to suspend any of its obligations hereunder if the Assuming Party fails to pay any amount when due hereunder and such failure continues for fourteen (14) days following written notice thereof.

2.4 Audit Rights.

(a) Within seven (7) days after the end of each month during the Term, Assuming Party will provide Assigning Party with an accounting of its operating costs, expenses, sales, revenues, and related items from the immediately preceding month, along with any other information related thereto and reasonably requested by Assigning Party.

(b) Assigning Party shall have the right to examine and audit the books and records of Assuming Party upon three (3) days' advance written notice. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

3. Continuing Obligations.

3.1 Assuming Party.

(a) Assuming Party will accept, at its Anderson location ("Big Air Anderson"), coupons, gift cards, passes, annual passes, etc. that originated from Assigning Party's locations in Greenville and Spartanburg, South Carolina ("Big Air Greenville" and "Big Air Spartanburg," respectively).

(b) Assuming Party will offer the same prices at Big Air Anderson as are offered at Big Air Greenville and Big Air Spartanburg, including prices on daily specials, birthday packages, socks, etc.

3.2 Assigning Party.

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(a) Assigning Party will accept, at Big Air Greenville and Big Air Spartanburg, coupons, gift cards, passes, annual passes, etc. that originated from Big Air Anderson.

(b) Assigning Party will provide Assuming Party with access to Assigning Party's marketing director to provide content and management of marketing for Big Air Anderson. However, Assuming Party will still be responsible for purchasing its own paid advertisements for Big Air Anderson.

(c) Assigning Party will provide Assuming Party with access to Assigning Party's maintenance director to manage and direct the maintenance tasks for Big Air Anderson. Assuming Party will still be responsible for providing employees to perform most maintenance tasks and for purchasing replacement parts and material at Big Air Anderson.

4. Representations and Warranties.

4.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the State of South Carolina.

(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.

(f) It is the sole legal and beneficial owner of the all the rights to the Anderson Territory on the Effective Date, free and clear of any lien, security interest, charge or encumbrance, except for the rights of ©Big Air Franchising, LLC to the Anderson Territory.

(g) The Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement.

(h) It has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date.

4.2 Assuming Party's Representations and Warranties. Assuming Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of South Carolina.

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(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of Assuming Party, enforceable against it in accordance with its terms.

(f) It has or will enter into a separate franchise agreement with ©Big Air Franchising, LLC on or before the Effective Date.

5. Indemnification; Insurance.

5.1 Assuming Party Indemnification. To the fullest extent permitted by applicable law and subject to the terms and conditions set out in Section 5.2, Assuming Party (as "Indemnifying Party") shall indemnify, defend, and hold harmless Assigning Party and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney's fees, that are incurred by Indemnified Party (collectively, "Losses") relating to, arising out of, or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise ("Claim") or any direct Claim against Indemnifying Party alleging:

(a) A material breach or non-fulfillment of any material representation, warranty, or covenant under this Agreement by Indemnifying Party or its representatives;

(b) any negligent or more culpable act or omission of Indemnifying Party or any of its representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;

(c) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party or its representatives (including any reckless or willful misconduct); or

(d) any failure by Indemnifying Party to materially comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.

5.2 Exceptions and Limitations on Indemnification. Despite anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from Indemnified Party's:

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(a) Sole negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) Bad faith failure to materially comply with any of its material obligations set out in this Agreement.

5.3 Assuming Party's Insurance. During the Term Assuming Party shall, at its own expense, maintain and carry in full force and effect commercial general liability insurance in a sum no less than $1,000,000 per occurrence with financially sound and reputable insurers, and upon Assigning Party's request, shall provide Assigning Party with a certificate of insurance evidencing the insurance coverage specified in this Section.

6. Events of Default; Remedies.

6.1 Assuming Party shall be in default under this Agreement if Assuming Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, Assuming Party does not cure such breach within fourteen (14) days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within fourteen (140 days or is not dismissed or vacated within forty-five (45) days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(g) Has its franchise agreement with ©Big Air Franchising, LLC terminated.

6.2 In addition to any other remedy it may have at law or equity, Assigning Party may terminate this Agreement upon Assuming Party's default.

7. COVID Mandatory Shutdowns.

7.1 The parties acknowledge and agree that as of the effective date of this Agreement, the COVID-19 global pandemic ("COVID Pandemic") is impacting various industries. Considering the foregoing, Assuming Party will use best efforts to plan and execute its operations in a manner to minimize the impacts of the COVID-19 Pandemic on Big Air Anderson and its performance under this Agreement.

7.2 In the event of a mandatory shutdown imposed on Big Air Anderson by city, county, state, or federal governmental authorities due to the COVID-19 Pandemic, the monthly management

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fee provided in Section 2.1(c) will be prorated for a period of time equal to the length of the mandatory shutdown. No other performance of either Party under this Agreement will be excused.

8. Miscellaneous.

8.1 Relationship of Parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

8.2 Further Assurances. On the other party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

8.3 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties contained in this Agreement survive the expiration or earlier termination of this Agreement.

8.4 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at its address set out below (or to such other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to Assigning Party:	PO BOX 171592 SPARTANBURG, SC 29301 E-mail: dustin@bigairusa.com Attention: Dustin Pelletier
Notice to Assuming Party:	23 SANDUSKY LANE SIMSPONVILLE, SC 29680 E-mail: MohammahFarhan45@yahoo.com Attention: Mohammad Farhan

8.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" is deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, schedules and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The

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schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

8.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

8.7 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.8 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

8.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each party to this Agreement.

8.10 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of the party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(c) None of the following is a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission or course of dealing between the parties.

8.11 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

8.12 No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.13 Choice of Law. This Agreement and exhibits and schedules attached hereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina, without regard to the conflict of laws provisions thereof

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to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

8.14 Choice of Forum. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, and exhibits and schedules attached hereto, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud and statutory claims, in any forum other than in Greenville County, South Carolina and any appellate court from any thereof.

8.15 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS AND SCHEDULES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY ABOUT ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS OR SCHEDULES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.16 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BA HOLDINGS, INC.

By: _____ 2/18/21
Name: Dustin Pelletier
Title: President

ZAY N LIMO, LLC

By: _____ 2/18/21
Name: Mohammad Farhan
Title: Member

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Exhibit A: Anderson Zip Codes

In blue	up to dividing line
29672	29691
29693	29631
29678	29670
30577	29697
29643	29621
29625	29627
30553	29627
29626	29654
29624	29692
29684	29638
30520	29630
30521	29653
30662	29620
30634	29628
29655	
30635	
30538	
30557	
30553	
30662	
30516	
30643	



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EXHIBIT 2

BIG AIR FRANCHISING, LLC

REGIONAL DIRECTOR AGREEMENT

BA HOLDINGS INC
Regional Director

April 1, 2018
Date

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EXHIBITS:

Attachment I	Rider to Regional Director Agreement
Attachment I-A	Calculation Of Initial Regional Director Fee
Attachment II	Statement of Ownership
Attachment III	Guaranty & Assumption of Regional Director's Obligations
Attachment IV	Collateral Assignment of Telephone Numbers, Telephone Listings and Internet Addresses
Attachment V	Non-Disclosure and Non-Competition Agreement
Attachment VI	Form Acknowledgement of Termination and Release Agreement

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REGIONAL DIRECTOR AGREEMENT

This Regional Director Agreement ("**Agreement**") is entered into and made effective as of the 1st day of April, 2018, by and between **Big Air Franchising, LLC**, a California limited liability company, with a principal place of business at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and BA Holding INC, located at P.O. Box 171592, Spartanburg, SC 29301 ("**Regional Director**").

WHEREAS, Franchisor has developed a system using the trademark "BIG AIR TRAMPOLINE PARK and LOGO™" and related trade names and trademarks ("**Marks**") for the operation of a business offering an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related products ("**Big Air Trampoline Business**"); and

WHEREAS, the franchise is operated under a business format per a unique system, including our valuable know-how, information, trade secrets, training methods, Operations Manual, standards, designs, methods of trademark usage, copyrights, sources and specifications, confidential electronic and other communications, methods of Internet usage, marketing programs, and research and development connected with the operation and promotion of Big Air Trampoline Businesses ("**System**"); and

WHEREAS, Franchisor has also developed a system for Regional Directors to market and provide site selection and support services to franchisees operating Big Air Trampoline Businesses ("**RD System**"). The RD System includes proprietary operating and marketing procedures, business format, specifications for equipment and supplies, procedures, confidential information and trade secrets;

WHEREAS, Regional Director desires to act as a special agent to Franchisor within a certain geographic area, enabling Regional Director to market franchises for the operation of a Big Air Trampoline Business for Franchisor and to develop, support and provide services to Big Air Trampoline Businesses within such geographical area, under the terms and conditions contained in this Agreement ("**RD Business**"); and

WHEREAS, Franchisor is willing to grant Regional Director the right to serve as a regional director, enabling Regional Director to market franchises for, and to provide site selection and support services to franchisees operating Big Air Trampoline Businesses within a certain geographical area, under terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein contained, and the acts to be performed by the respective parties, the parties hereto agree as follows:

1. DEFINITIONS

1.1. Assignment. "**Assignment**" shall mean an assignment or other transfer to a Franchisee of all of Regional Director's rights, title and interest in and to a Prime Lease.

1.2. Authorized Third-Party Product. **"Authorized Third-Party Product"** means any product authorized by Franchisor to be sold by a Big Air Trampoline Business that is not proprietary to or trademarked by Franchisor or an affiliate of Franchisor.

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

1.4. Commissions. **"Commissions"** means all payments of any kind due to Regional Director under the terms of this Agreement.

1.5. Development Quota. **"Development Quota"** means the development quota described in Attachment I.

1.6. Effective Date. **"Effective Date"** shall be the date this Agreement is executed by Franchisor as evidenced by dating and signing by an officer of Franchisor, regardless of the date first written above.

1.7. Franchise Agreement. **"Franchise Agreement"** means the forms of agreement (including, without limitation, franchise agreement and any exhibits, riders, collateral assignments of lease or sublease, and personal guarantees used in connection therewith) used by Franchisor from time to time in the granting of franchises for the ownership and operation of Big Air Trampoline Businesses. Regional Director acknowledges that Regional Director will use Franchisor's then-current form of Franchise Agreement and that Franchisor may, from time to time, modify or amend, in any respect, the form of Franchise Agreement and related agreements, including, without limitation, modifying fees, customarily used in granting Big Air Trampoline Business franchises.

1.8. Franchisee. **"Franchisee"** means any person, corporation, partnership or other entity who has entered into a Franchise Agreement with Franchisor to operate a Big Air Trampoline Business in the RD Development Area.

1.9. Initial Franchise Fee. **"Initial Franchise Fee"** means that amount paid by a Franchisee to purchase the rights to operate a Big Air Trampoline Business, as more specifically identified in ITEM 5 of Franchisor's Store Disclosure Document. The Initial Franchise Fee does not include any amounts paid by Franchisee to Franchisor for equipment, inventory, or other expense items.

1.10. Prime Lease and Premises. **"Prime Lease"** shall mean a lease of commercial space (**"Premises"**) entered into by Regional Director, as tenant, for Premises located within the RD Development Area.

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1.11. Products. **"Products"** means products related to the Services, including birthday cakes and favors, other food items, and Big Air Trampoline branded apparel to be worn by customers.

1.12. RD Manual. **"RD Manual"** means the regional director manual, technical bulletins or other written materials containing uniform procedures for the operation of an RD Business and the standards and specifications for franchise sales and promotional materials and the System.

1.13. RD Development Area. **"RD Development Area"** is the geographical area described in the attached Attachment I.

1.14. Sales Quarter. **"Sales Quarter"** means each calendar quarter during the Initial Term of this Agreement as set out in Attachment I.

1.15. Services. The **"Services"** include providing indoor activities for families, children, teens and young adults including birthday parties and other celebrations, open play sessions, and other activities for children as required by Franchisor.

1.16. System. **"System"** means the Big Air Trampoline Business System and the RD System.

1.17. Sublease. **"Sublease"** shall mean a lease entered into between Regional Director, as sublessor, and a Franchisee as subtenant, for all or any portion of the Premises leased pursuant to a Prime Lease.

2. SCOPE OF APPOINTMENT

2.1. Appointment of Regional Director/Scope of Operations. Franchisor appoints Regional Director, and Regional Director agrees to perform its obligations, as a special agent of Franchisor in accordance with the terms and conditions of this Agreement, and only within the RD Development Area, to: (1) solicit prospective Franchisees located in the RD Development Area for Big Air Trampoline Businesses (**"Sales Services"**), as described in Section 8.3; (2) perform certain site acquisition and development services described in Section 8.4 (**"Site Services"**); and (3) to render sales and marketing support and other services (**"Support Services"**) to Big Air Trampoline Businesses located within the RD Development Area, as those services are described in Section 8.5. Franchisor may, in its sole discretion, grant Regional Director the nonexclusive right to serve as landlord or sublessor to Franchisees in the RD Development Area. In the event that Regional Director requests such right and Franchisor consents, this Agreement shall govern the terms and conditions of such grant.

2.2. Rights and Limitations to RD Development Area. During this Agreement's Initial Term and any Interim Period (as such terms are defined in Section 15.5), Franchisor will not establish and license any other regional director to act as special agent to perform Sales Services or to thereafter render Site Services or Support Services to Franchisees within the RD Development Area; provided, however, that Franchisor shall retain such rights in the RD Development Area as described in Section 2.3.

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2.3. Reservation of Rights to Franchisor. Regional Director acknowledges that the rights granted hereunder are nonexclusive and Franchisor (on behalf of itself, its affiliates and designees), retains the right (without compensation or obligation whatsoever to Regional Director unless specifically set forth herein):

(a) To use, and to license others to use, the Marks and System for the operation of other RD Businesses at any location outside of the RD Development Area, wherever located;

(b) To solicit prospective Franchisees and to grant other persons franchises to operate Big Air Trampoline Businesses at such locations, within and outside of the RD Development Area, and on such terms and conditions as Franchisor deems appropriate and to own and operate such Big Air Trampoline Businesses within the RD Development Area (subject to its obligation to compensate Regional Director, as set forth in Section 5.2);

(c) Subject to Section 2.5, to use and license the use of alternative proprietary marks or methods in connection with the operation of businesses featuring trampolines, foam pits, rock climbing walls, clothes and other accessories bearing the Marks and related services at any location, which businesses may be the same as, or similar to, or different from Big Air Trampoline Businesses;

(d) To use the Marks and System in connection with some or all of the same Products and Services offered by Big Air Trampoline Businesses, other Services and Products, promotional and marketing efforts or related items, including the Internet, at any location (subject to its obligation to compensate Regional Director, as set forth in Section 5.6) which businesses may be the same as, similar to, or different from Big Air Trampoline Businesses. Franchisor exclusively reserves the Internet as a channel of distribution and Regional Director may not independently market on the Internet, conduct e-commerce, or engage in social networking using the Marks without Franchisor's advanced written consent;

(e) To acquire, merge with, or be acquired by any other business, including a business that competes with Big Air Trampoline Businesses or the RD Business; and

(f) To implement multi-area marketing programs which allow Franchisor or others (including designated third-party distributors) to market Products to customers anywhere ("**National Accounts**"). Franchisor also reserves the right to issue mandatory policies to coordinate such multi-area marketing programs.

3. FRANCHISE SALES PROCEDURES

3.1. Development Quota. Regional Director agrees to comply with the development quota set forth in **Attachment I** to this Agreement ("**Development Quota**") with respect to each sales quarter ("**Sales Quarter**"). The determination as to whether Regional Director has met the Development Quota for any Sales Quarter under this Agreement shall be based on the total number of Big Air Trampoline Businesses purchased and paid for by Franchisees within the RD Development Area by the end of a Sales Quarter. Regional Director agrees that, during the Initial Term of this Agreement and any Interim Period, Regional Director will at all times faithfully,

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honestly, and diligently perform its obligations hereunder and will continuously exert its best efforts to promote and enhance the development and operation of Big Air Trampoline Businesses within the RD Development Area.

3.2. Franchise Registration and Disclosure. Neither Regional Director, nor any employee or representative of Regional Director, shall solicit prospective Franchisees of Big Air Trampoline Businesses until Franchisor has registered its current Uniform Franchise Disclosure Document for Big Air Trampoline Businesses ("**Store Disclosure Document**") in applicable jurisdictions in the RD Development Area and has provided Regional Director with the requisite documents, or at any time when Franchisor notifies Regional Director that its registration is not then in effect or its documents are not then in compliance with applicable law. If at any time during this Agreement, Franchisor shall, for more than ninety (90) days, fail to register a current Store Disclosure Document for the RD Development Area, then the Development Quota shall be suspended until the Store Disclosure Document is properly registered. If Regional Director's activities pursuant to this Agreement require the preparation, amendment, registration or filing of information or any disclosure or other documents, all requisite Disclosure Documents, ancillary documents and registration applications shall be prepared and filed by Franchisor or its designee, and registration secured before Regional Director may solicit prospective Franchisees of Big Air Trampoline Businesses in the RD Development Area. Regional Director will reimburse Franchisor within twenty (20) days for the cost for certain business exemption filing expenses and registration expenses. Regional Director shall at its expense:

(a) Prepare and forward to Franchisor verified financial statements of Regional Director in such form and for such periods as shall be designated by Franchisor, including audited financial statements if necessary and appropriate to comply with applicable federal or state disclosure, filing or other legal requirements;

(b) Promptly provide all information reasonably required by Franchisor to prepare all requisite Disclosure Documents and ancillary documents for the offering of franchises throughout the RD Development Area; and

(c) Execute all documents required by Franchisor for the purpose of registering Regional Director and Franchisor to offer franchises throughout the RD Development Area.

Regional Director agrees to review all information pertaining to Regional Director prepared to comply with legal requirements for selling franchises in the RD Development Area and verify its accuracy if so requested by Franchisor. Regional Director acknowledges that Franchisor, its affiliates or its assignees, shall not be liable to Regional Director for any errors, omissions or delays that may occur in the preparation or filing of such materials.

Regional Director further acknowledges and agrees that Regional Director may be deemed to be a "subfranchisor" under the laws of some states and, as a result, may be required to prepare, maintain, and register its own franchise disclosure document. In such event, Regional Director agrees that it will use Franchisor's franchise disclosure document as the basis for Regional Director's franchise disclosure document and will prepare and maintain such franchise disclosure document at Regional Director's sole cost and expense. Franchisor shall at all time have the right to approve the form and content of Regional Director's franchise disclosure document, and

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Regional Director shall make any changes or updates required by Franchisor within five business days of receiving notice from Franchisor.

3.3. Advertising, Recruiting and Screening. Regional Director shall be responsible for advertising for, recruiting, screening and reviewing prospects for Big Air Trampoline Business franchises within the RD Development Area. Regional Director shall provide prospective Franchisees with written information, approved by Franchisor, regarding a Big Air Trampoline Business franchise, or via the telephone, face-to-face meetings or by visiting other Big Air Trampoline Businesses within the RD Development Area. Regional Director shall submit a qualified applicant ("**Applicant**") for a Big Air Trampoline Business franchise to Franchisor for approval. Regional Director further agrees that all Applicants submitted to Franchisor by Regional Director, if an individual, or the Manager of the Applicant, if the Applicant is not an individual, shall be individuals who are of good character, have adequate financial resources and meet Franchisor's criteria for Franchisees or Managers of Franchisees. ("**Manager**" is defined in Section 12.4 of the Franchise Agreement). An application for a Big Air Trampoline Business franchise received by Regional Director shall be submitted to Franchisor with all information with respect to the Applicant, the Manager of the Applicant, if applicable, the Applicant's proposed franchise location, if known, and all other information customarily required by Franchisor concerning Applicants, including such financial statements and other information as Franchisor may reasonably require. Regional Director shall assist the Applicant in the preparation of such financial reports and other information. Franchisor shall have the right to revise the information required to be submitted by Regional Director by updating the RD Manual from time to time.

3.4. Franchisor's Approval of Prospective Franchisees. By delivery of written notice to Regional Director, Franchisor shall approve or disapprove Applicants to become Franchisees. Franchisor agrees to exert reasonable efforts to deliver such notification to Regional Director within ten (10) business days after the later of: (a) receipt by Franchisor of a complete application, financial statement and other materials regarding the Applicant requested by Franchisor; or (b) the personal interview of Applicant by Franchisor, if any. Franchisor shall determine whether the Applicant possesses sufficient financial and managerial capability and has satisfied the other criteria then utilized by Franchisor in the granting of franchises. Franchisor may refuse to grant a franchise to an Applicant for any reason or no reason at all in Franchisor's sole discretion. The grant of the franchise shall be affected only upon and after the full execution of the then-current Franchise Agreement by Franchisor and the Applicant.

4. PAYMENTS TO FRANCHISOR

4.1. Initial Regional Director Fee. The initial regional director fee ("**Initial Regional Director Fee**") shall be payable to Franchisor by Regional Director in consideration of Regional Director's appointment as exclusive Regional Director within the RD Development Area and shall be calculated by multiplying the number of people living in the RD Development Area, as determined by Franchisor in Franchisor's sole discretion, by $.05 and rounding to the nearest ten-thousand-dollar increment. The Initial Regional Director Fee is set forth in the attached **Attachment I**. Initial Regional Director Fee is payable upon execution of this Agreement. The Initial Regional Director Fee is fully earned by Franchisor upon receipt and is nonrefundable once paid. Regional Director acknowledges that the Initial Regional Director Fee does not include payment of any Initial Franchise Fees for individual Big Air Trampoline Businesses.

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4.2. Franchise Development Fund. Regional Director shall contribute to a franchise development fund ("**Franchise Development Fund**"). The Franchise Development Fund contribution will be collected as a flat fee, which is initially set at one thousand five hundred dollars ($1,500.00), per franchise sale made by Regional Director and will be paid at the time Franchisor receives the Initial Franchise Fee, and shall be deposited into the Franchise Development Fund directly by Franchisor. This contribution will be used by Franchisor for one or more regional or national marketing campaigns to attract prospective franchisees

5. COMMISSIONS PAYABLE TO REGIONAL DIRECTOR

5.1. Sales Service Commissions and Conditions of Payment. During the Initial Term of this Agreement and any Interim Period, Regional Director shall be paid a commission, as set forth in this Section, based on a percentage of Initial Franchise Fees paid by each Franchisee for the purchase of a franchise for a Big Air Trampoline Business to be located within the RD Development Area ("**Sales Service Commissions**"). Payment is conditioned upon the satisfactory fulfillment of the following conditions ("**Franchise Sales Conditions**"):

(a) Franchisee executes a Franchise Agreement with Franchisor and an Initial Franchise Fee has been paid in full and actually received by Franchisor. Franchisor shall not be deemed to have received any fees that have been deferred as a condition of registration in a state, or paid into escrow or a state-imposed impound account, if applicable, until such fees have actually been remitted to Franchisor;

(b) The sale for which the Initial Franchise Fee has been paid is not a resale of any existing Big Air Trampoline Business, or any interest therein;

(c) The original franchise inquiry was the direct result of Regional Director's marketing and promotional efforts in the Regional Director Area and the lead did not originate from a third-party broker or from the direct marketing or promotional efforts of Franchisor; and

(d) Regional Director has complied with all of its other obligations under this Agreement with respect to such sale and verified the same to Franchisor, in writing, in a form prescribed by Franchisor.

5.2. Sales Service Commission Payments. The Sales Service Commission shall depend upon the source of the franchise lead. If the lead is generated solely and independently by Regional Director, then the Sales Services Commission shall be an amount equal to fifty percent (50%) of the Initial Franchise Fees paid to Franchisor. If the lead is generated by any other source, then Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. If a sales lead is generated solely and independently by Regional Director prior to Regional Director completing the Initial Regional Director Training Program and the Franchisee Training Program and/or complying with all other obligations required to be met prior to opening the RD Business, Franchisor will deduct the commission Franchisor pays to a third party for that lead from the Initial Franchise Fee and pay Regional Director a Sales Service Commission equal to fifty percent (50%) of the remaining balance of the Initial Franchise Fee. Franchisor retains the sole right to determine the source of the

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lead, and Franchisor's determination shall be final. Regional Director will also be required to contribute to the Franchise Development Fund in accordance with Section 4.2. The Sales Service Commissions will be payable to Regional Director within twenty (20) days after the Franchise Sales Conditions have been fulfilled, provided that the Initial Franchise Fees have not been deposited into an escrow or impound account, in which case, the Sales Service Commission will be payable to Regional Director within ten (10) days after Franchisor has received funds out of escrow, from the impound account or received funds that were previously deferred. Regional Director shall not receive any Sales Service Commission for franchises sold on or before the date of this Agreement or for Big Air Trampoline Businesses owned and operated by Franchisor, its affiliates or designees ("**Company Businesses**") in the RD Development Area, if any.

5.3. Commissions on Transfers of Franchises. If, during the Initial Term of the Agreement or any Interim Period, an open and operating Big Air Trampoline Business located within the RD Development Area or an interest therein is resold to a different Franchisee and the sale results in the execution of a Franchise Agreement and the payment of a Transfer Fee (as defined in the Franchise Agreement), then Regional Director will be paid a commission in an amount equal to fifty percent (50%) of the Transfer Fee paid and actually received by Franchisor, payable within twenty (20) days after the completion of the transfer, provided that Franchisor shall not be deemed to have received any Transfer Fee paid into escrow, if applicable, until such Transfer Fee has actually been remitted to Franchisor. Franchisor reserves the right to waive some or all of the Transfer Fee due for any particular transfer in Franchisor's sole discretion, and Regional Director shall not be entitled to receive any commission on any portion of a Transfer Fee waived by Franchisor.

5.4. Commission on Royalty Payments. Franchisor shall pay to Regional Director, within twenty (20) days of the end of the month, fifty percent (50%) of all royalty payments ("**Royalties**") actually received from each Franchisee in the RD Development Area during the previous month ("**Royalty Commission**"). Regional Director shall be entitled to receive Royalty Commissions each month unless Regional Director has failed to perform, in any material respect, the services described in Section 8 during the prior month including, but not limited to, the conducting of periodic inspections and the filing of written reports as required by Section 8.6.

5.5. Commissions on Product. Franchisor shall pay to Regional Director, within twenty (20) days of the end of each month, an amount that shall be calculated as set forth in the attached **Attachment I** for Products ("**Product Commissions**"). Regional Director shall be entitled to receive Product Commissions unless Regional Director has failed to perform, in any material respect, the services described in Section 8 during the prior month including, but not limited to, the conducting of periodic inspections and the filing of written reports as required by Section 8.6. Regional Director shall be entitled to receive Product Commissions only on Product sales made by Franchisees in the RD Development Area.

5.6. No Commissions Before Training and Opening the RD Business. Regional Director shall not be entitled to share in or receive any commissions described in this Section 5 prior to the time Regional Director has completed the RD Initial Training Program, the Franchisee Training Program, opens the RD Business and commences full performance of the services set forth in Section 8.

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5.7. No Commissions on Company Business Sales. Under no circumstances shall Regional Director be entitled to receive any commissions on the sales of Products by any Company Business.

5.8. No Commissions if in Default. Under no circumstances shall Regional Director be entitled to receive any commissions set forth herein if Regional Director is in default of this Agreement or any other agreement between it and Franchisor or Franchisor's affiliates.

5.9. Commission After Termination. All payments under this Section 5 shall immediately and permanently cease after the expiration or termination of this Agreement, although Regional Director shall receive, within twenty (20) days of the end of the month this Agreement terminates or expires, all amounts that have accrued to Regional Director as to the effective date of expiration or termination.

5.10. Application of Payments. Franchisor's payments to Regional Director shall be based on amounts actually collected from Franchisees for Royalties, Transfer Fees, and Product sales made in accordance with Sections 5.4 and 5.5, not on payments accrued, due or owing, but if any payments by Franchisees to Franchisor have been deposited into an escrow account, payments to Regional Director will be made after Franchisor has received the funds from escrow. In the event of termination of a Franchise Agreement for a Big Air Trampoline Business within the RD Development Area under circumstances entitling Franchisee to the return of all or part of the Initial Franchise Fee or Royalty (or in the event that Franchisor becomes legally obligated or decides, in its sole discretion, to return part or all of the Initial Franchise Fee, Royalty, or Product payments), Franchisor may deduct the portion of the amount to be returned to Franchisee in the same proportion as Regional Director shared in the Initial Franchise Fee, Royalty, or Product Commission from any future amounts owed to Regional Director. Franchisor shall apply any payments received from a Franchisee to any past due indebtedness of that Franchisee for Royalties, Product payments, advertising contributions, purchases from Franchisor or its affiliates, interest or any other indebtedness of that Franchisee to Franchisor or its affiliates. To the extent that such payments are applied to a Franchisee's overdue Royalties or Product payments, Regional Director shall be entitled to its pro rata share of such payments, less its pro rata share of the costs of collection paid to third parties, including attorney's fees and any other costs of settlement.

5.11. Setoffs. Regional Director shall not be allowed to set off amounts owed to Franchisor for fees or other amounts due hereunder, against any monies owed to Regional Director by Franchisor, which right of set off is hereby expressly waived by Regional Director. Franchisor shall be allowed to set off amounts owed to Regional Director for Sales Service Commissions, Royalties, Product Commissions or other amounts due hereunder, against any monies owed to Franchisor by Regional Director, including setting off amounts owed to Regional Director for Sales Service Commissions, Royalties, or Product Commissions against monies owed to Franchisor for Sales Service Commissions that were paid to Regional Director before Franchisee failed to successfully complete Franchisor's RD Initial Training Program and the Franchisee Training Program.

6. TRAINING ASSISTANCE

6.1. RD Initial Training Program. Within sixty (60) days after the date of execution of this Agreement, Franchisor shall furnish and Regional Director, or if Regional Director is a

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partnership, corporation, or other entity, an individual designated by Regional Director who has been approved by Franchisor, who shall be designated as the regional operating manager ("**Regional Operating Manager**") shall attend, at Regional Director's sole cost and expense, an initial training program ("**RD Initial Training Program**"). The RD Initial Training Program shall consist of training on legal compliance issues, site selection criteria, lease negotiation, business operations and strategies for supporting franchisees operating Big Air Trampoline Businesses. Regional Director or the Regional Operating Manager shall also attend the training program applicable to Franchisor's Franchisees ("**Franchisee Training Program**"). The RD Initial Training Program and the Franchisee Training Program shall take place at such place and time as Franchisor may designate. Regional Director may not begin offering Sales Services, Site Services or Support Services in the RD Development Area until Regional Director, or the Regional Operating Manager, has satisfactorily completed the training described herein unless Regional Director receives written authorization to begin its Sales Services, Site Services and Support Services at an earlier date from Franchisor. Franchisor reserves the right to waive a portion of the RD Initial Training Program or the Franchisee Training Program in Franchisor's sole discretion.

6.2. Length of Training. Franchisor shall determine the appropriate length of the Franchisee Training Program applicable only to Regional Director, which shall then be added to the RD Initial Training Program. No tuition or fee shall be charged for the initial training for Regional Directors, or Regional Operating Manager, and one additional person. However, Regional Director shall be responsible for all travel and living expenses incurred by its personnel in connection with attendance at both the RD Initial Training Program and the Franchisee Training Program.

6.3. Additional Training. The RD Initial Training Program and the Franchisee Training Program will be made available to replacement or additional Regional Operating Managers and other management personnel during the Initial Term of this Agreement and any Interim Period. The training fee for additional personnel is one hundred dollars ($100) per day for each additional person that attends the RD Initial Training Program, payable in advance. Franchisor reserves the right to increase the additional training fee at any time. In the event that the Regional Operating Manager must be replaced for any reason, Regional Director shall replace the Regional Operating Manager in accordance with Section 12.8 and Regional Director shall pay to Franchisor a replacement training fee ("**ROM Replacement Training Fee**") of $1,500 prior to the date the replacement Regional Operating Manager attends replacement training. Franchisor reserves the right to increase the replacement training fee, in any amount, at any time, as determined by the Franchisor in the Franchisor's discretion. Regional Director will be responsible for all travel and living expenses incurred by its personnel in connection with attendance at the RD Initial Training Program, the Franchisee Training Program, or any replacement training program. Further, the availability of the RD Initial Training Program and the Franchisee Training Program will be subject to space considerations and prior commitments to new Big Air Trampoline Business Franchisees and other regional directors.

6.4. Seminars and Ongoing Assistance. From time to time, Franchisor may present seminars, conventions or continuing development programs for the benefit of Regional Director. Regional Director, or its Regional Operating Manager, shall be required to attend any ongoing mandatory seminars, conventions or programs as may be offered by Franchisor. If Regional Director fails to attend a mandatory seminar, convention or program without obtaining

Franchisor's prior written approval of the absence and fails to arrange for attendance at an alternate time, Regional Director shall be required to make up the missed program at a time and place designated by Franchisor at a cost of an additional one thousand dollars ($1,000) for each program missed. Franchisor shall give Regional Director at least thirty (30) days prior written notice of any seminar, convention or program that is deemed mandatory. Franchisor will not require that Regional Director attend any ongoing training more often than four (4) times per calendar year. Regional Director will be responsible for all travel and living expenses associated with attendance at any ongoing training program.

7. FRANCHISOR'S OPERATING ASSISTANCE

7.1. Regional Director Manual. Regional Director agrees that the operations manual and other written materials, including information posted on Franchisor's website and information sent to Regional Director by electronic and regular mail, written procedures, memoranda and their supplements loaned to Regional Director by Franchisor (collectively, "**RD Manual**") shall remain the sole property of Franchisor and must be returned to Franchisor at Franchisor's direction. Franchisor shall, in addition to providing the RD Initial Training Program and Franchisee Training Program, loan to Regional Director, during the Initial Term and any Interim Period hereof, one copy of its RD Manual to assist Regional Director and its employees in the conduct of the RD Business contemplated by this Agreement. Franchisor may prescribe mandatory and suggested standards and operating procedures for Regional Director in the RD Manual, which may be modified from time to time by Franchisor. Regional Director shall keep its copy of the RD Manual current. In the event of a dispute relating to the RD Manual, the master copy that Franchisor maintains at its principal office shall be controlling. Regional Director may not at any time copy any part of the RD Manual, unless approved in writing by Franchisor. In the event Regional Director's copy of the RD Manual is lost, destroyed or damaged, Regional Director shall be obligated to obtain from Franchisor, at Franchisor's then applicable charge, a replacement copy of the RD Manual. The RD Manual and other writings communicated to Regional Director shall constitute material provisions of this Agreement as if fully set forth within its text. At any time in Franchisor's discretion, Franchisor may convert the RD Manual to an exclusively electronic format and require Regional Director to access the document through the Internet or an intranet created and supported by Franchisor.

7.2. Trade Secrets. Regional Director, its members, shareholders, partners, and guarantors, if any, acknowledge that the contents of the RD Manual and Regional Director's knowledge of Franchisor's processes, services, Products, know-how and the System, are secret, unique and confidential and contain trade secrets and other material proprietary to Franchisor. Regional Director acknowledges that its entire knowledge of the operation of the Big Air Trampoline Business is and shall be derived from information disclosed to Regional Director by Franchisor and that certain of such information is proprietary, confidential and a Trade Secret of Franchisor. "**Trade Secrets**" refer to the whole or any portion of know-how, knowledge, methods, specifications, processes, procedures or improvements regarding the Big Air Trampoline Business RD Business, or System that is valuable and secret in the sense that it is not generally known to competitors of Franchisor. Regional Director shall maintain the absolute confidentiality of all such Trade Secrets during and after the Initial Term of this Agreement, and shall not use any such information in any other business or in any manner not specifically authorized or approved, in writing, by Franchisor. Regional Director agrees not to disclose the contents of the RD Manual to

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unauthorized persons and to use Regional Director's best efforts to prevent unauthorized disclosure to any person, and Regional Director acknowledges that such disclosure would cause irreparable harm to Franchisor and the System. Regional Director agrees to return the RD Manual to Franchisor on the termination of this Agreement or at such times as may otherwise be directed by Franchisor. Regional Director shall not copy or otherwise duplicate the RD Manual or any other proprietary materials.

7.3. Big Air Trampoline Business Operations Manual. Franchisor agrees to loan Regional Director one copy of the operations manual used to operate Big Air Trampoline Businesses ("**Big Air Trampoline Business Operations Manual**"). Regional Director agrees that Sections 7.1 and 7.2 apply equally to Regional Director's use of the Big Air Trampoline Business Operations Manual.

7.4. Operating Assistance. Franchisor will make available the following services during the Initial Term of this Agreement and any Interim Period:

(a) Upon the reasonable request of Regional Director, consultation by telephone regarding advice related to franchise sales, site selection, Franchisee support and other Franchisee required assistance. In providing assistance, Franchisor will be reasonably accessible during normal business hours by phone, fax, e-mail, or other means of communication reasonably determined by Franchisor. Franchisor will not be required to spend money for travel for its personnel and shall be entitled to full reimbursement of all expenses, including travel, lodging and meals, incurred by Franchisor or Franchisor's employees at the request of or on behalf of Regional Director. Regional Director shall pay Franchisor one hundred dollars ($100) per hour for any assistance or services requested by Regional Director and not specifically required to be performed by Franchisor under this Agreement. Regional Director understands and acknowledges that different regional directors will require different levels of service and support and that Franchisor makes no warranties or guarantees that Regional Director will receive the same level of service and support as any other regional director.

(b) Franchisor will provide guidance concerning marketing and advertising for prospective Franchisee and use of the Marks. Franchisor will also provide Regional Director with access to franchise sales advertising and promotional materials, Franchise Agreements and Store Disclosure Documents, as may be developed and updated by Franchisor, the reasonable cost of which may be passed on to Regional Director. Regional Director must purchase an initial compliment of franchise sales and promotional materials ("**Initial Franchise Sales Materials**") from Franchisor. Thereafter, Regional Director may develop its own franchise sales and promotional materials with Franchisor's advanced written permission and approval of such franchise sales and promotional materials. Franchisor shall update old franchise sales and promotional materials or develop new franchise sales and promotional materials from time to time, in Franchisor's sole discretion.

(c) Franchisor shall provide access to its Web site and access to communications with Franchisor regarding the System, the RD Manual, the Big Air Trampoline Business Operations Manual, and Franchisees in the RD Development Area, in a manner Franchisor determines in its sole discretion.

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8. REGIONAL DIRECTOR'S OBLIGATION

8.1. Hiring and Training of Employees of Regional Director. Regional Director shall hire all of Regional Director's employees, shall be exclusively responsible for the terms of their employment and compensation, and shall implement a training program for employees to ensure their compliance with Franchisor's requirements; provided that Regional Director shall not employ any person whom Franchisor, in its sole discretion, has determined to be unfit to represent Franchisor in the marketing of Big Air Trampoline Business franchises or in furnishing services to Franchisees.

8.2. Commencement of Business. Unless otherwise agreed to in writing by Franchisor and Regional Director, Regional Director shall complete the RD Initial Training Program and Franchisee Training Program and commence operation of its RD Business within sixty (60) days from the date of this Agreement. Franchisor will extend the time within which Regional Director has to commence operations for a reasonable period of time, in the event that factors beyond Regional Director's reasonable control prevent Regional Director from meeting this schedule, so long as Regional Director has made reasonable and continuing efforts to comply and Regional Director requests in writing an extension of time in which to have its RD Business established prior to the expiration of the initial sixty (60) day period. The obligations of Regional Director, including Sales Services, Support Services and Site Services, shall begin on the date Regional Director completes the RD Initial Training Program to Franchisor's satisfaction or the date Regional Director receives written authorization from Franchisor that Regional Director may begin offering such Sales Services, Support Services and Site Services. Regional Director will also, at Regional Director's expense, and within thirty (30) days of the Effective Date of this Agreement, purchase or otherwise obtain for use in connection with the RD Business (a) computer hardware and software that comply with the standards and specifications of Franchisor; (b) an office serviced by a minimum of one (1) dedicated telephone line with 24-hour professional answering service or voice mail; (c) a facsimile machine with its own dedicated telephone line; (d) business cards and stationery; (e) an e-mail address; and (f) any other items required by the RD Manual. The telephone number of the RD Business office must be listed in the white pages and the classified telephone directories, as directed by Franchisor, in the RD Development Area.

8.3. Sales Services. Regional Director shall solicit and identify prospective Franchisees for Big Air Trampoline Businesses to be located within the RD Development Area.

8.4. Site Services. Regional Director shall perform the following Site Services on behalf of Franchisor with respect to Franchisees of Big Air Trampoline Businesses located in the RD Development Area:

(a) Assist with location selection for each Franchisee's Big Air Trampoline Business, which shall consist of providing each Franchisee with criteria for a satisfactory site and assisting each Franchisee in completing a site submittal package (containing such demographic, commercial and other information as Franchisor may reasonably require in the RD Manual) for each location at which a Franchisee proposes to establish and operate a Big Air Trampoline Business, assist in negotiating lease terms and coordinate the work of contractors and architects with respect to the "vanilla shell" construction work of each Big Air Trampoline Business;

(b) Provide standards and specifications for the exterior design of the building, parking and driveway facilities, signs, color, décor, equipment and machines of the Big Air Trampoline Business as prescribed from time to time by Franchisor; and

(c) Submit completed forms and reports to Franchisor as prescribed by Franchisor from time to time, including site selection and pre-opening assistance forms and reports related to leases and construction.

8.5. Pre-Opening and Opening Support Services. Regional Director shall perform the following pre-opening and opening Support Services with respect to Franchisees of Big Air Trampoline Businesses located in the RD Development Area:

(a) Provide advice to Franchisees regarding Franchisor's standards and specifications for the equipment, supplies and materials used in, and the Products offered for sale by, the Big Air Trampoline Business and advice regarding the selection of Franchisor-approved suppliers for the purchasing of such items used in connection with the Big Air Trampoline Business, if not purchased from Franchisor or its affiliates;

(b) On-site assistance for a combined total of not less than fifteen (15) hours in the opening of Big Air Trampoline Businesses located in the RD Development Area; and

(c) Provide guidance to Franchisees in implementing advertising and marketing programs, operating and sales procedures, and bookkeeping and accounting programs.

8.6. Ongoing Support Service. With respect to Franchisees of Big Air Trampoline Businesses located in the RD Development Area, Regional Director shall perform the following Support Services on behalf of Franchisor:

(a) Upon reasonable request of Franchisee, provide consultation by telephone regarding the continuing operation and management of the Big Air Trampoline Business and advice regarding business services, Product quality control, and customer relations issues;

(b) Provide on-going updates of information and programs regarding Products, business operations in general, Big Air Trampoline Businesses and the Big Air Trampoline Business System, including, without limitation, information about special or new services of Franchisor;

(c) Provide advice and assistance to Franchisee in connection with the development of and improvements to Franchisee's Big Air Trampoline Business;

(d) Conduct at least one (1) quality service and environment inspection of each Big Air Trampoline Business in the RD Development Area every quarter in the manner as required by Franchisor from time to time, said inspections to be verified by written reports in a form acceptable to Franchisor;

(e) Provide access to advertising and promotional materials as may be developed by Franchisor from time to time;

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(f) At Franchisor's written request, establish an advertising cooperative for all Big Air Trampoline Businesses located in the RD Development Area using forms and procedures supplied by Franchisor;

(g) Host, at Regional Director's cost, at least quarterly meetings of all Franchisees within the RD Development Area to discuss, among other things, training, marketing and new programs or products sponsored by Franchisor; and

(h) Submit periodic reports to Franchisor on activities in the RD Development Area, using procedures and forms prescribed by Franchisor.

8.7. Dealings with Franchisees. Regional Director acknowledges that it is being delegated certain responsibilities of Franchisor under the Franchise Agreement in the RD Development Area. The responsibilities to Franchisees are to be performed by Regional Director as described in this Agreement or as set forth in the RD Manual or other reasonable standards and specifications, as may be provided by Franchisor from time to time, in Franchisor's sole discretion, and the responsibilities to Franchisees will not materially change during the Initial Term of this Agreement or any Interim Period. In providing services to Franchisees of Big Air Trampoline Businesses located in the RD Development Area, Regional Director shall, in all respects, comply with the terms and conditions of any Franchise Agreement or other agreements in effect between Franchisees and Franchisor. Regional Director understands, however, that its rights as a regional director are only by virtue of this Agreement and that it is not in any manner a party, third party beneficiary or holder of any other right, title or interest in or to any Franchise Agreement. Similarly, no Franchisee is a third party beneficiary of this Agreement or any other agreement between Franchisor and Regional Director. Regional Director agrees that it may not, under any circumstances, sell any Products or other items to, or collect any money for any reason from, Franchisees without Franchisor's prior written consent, which consent may be withheld for any reason in Franchisor's sole discretion.

8.8. Regional Director Inspections. Regional Director shall ascertain through field audits, reviews and inspections, that each Franchisee in the RD Development Area has complied satisfactorily with all of the terms and conditions of the Franchise Agreement, specifications, standards, operating procedures, the Franchisee's Operations Manual, that the Franchisee is not stocking or selling any products other than Products and Authorized Third-Party Products, and that Franchisee is complying in all respects with Franchisor's requirements with regard to the use of the Marks, and shall promptly notify Franchisee in writing, with a copy and evaluation report to Franchisor, of any deficiencies; provided, however, Regional Director understands and acknowledges that its inspections and reports are advisory only and that Franchisor shall have: (a) all of the right to inspect and ascertain compliance of all Franchisees as if this Agreement were not in effect; (b) the sole right to send notices of default to Franchisee; (c) the sole right to terminate a Franchise Agreement for failure to cure such defaults (if an opportunity to cure is granted); and (d) the sole right to take any legal action with respect to any default or any violation of a Franchise Agreement. If Regional Director believes that any Franchisee in the RD Development Area has breached a Franchise Agreement with Franchisor, Regional Director shall document, in writing, all facts related to the alleged breach and shall request, in writing, that Franchisor investigate such alleged breach. If, as a result of Franchisor's investigation, Franchisor determines that there is a breach by Franchisee of its Franchise Agreement with Franchisor, Franchisor shall, in its sole discretion, take such action as it deems appropriate.

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8.9. Obligations Under the Prime Leases and Subleases. If Regional Director received Franchisor's prior written approval to act as a landlord or sublessor to a Franchisee of a proposed Prime Lease, then, upon approval by Franchisor, Regional Director may enter into such approved Prime Lease as tenant (subject to Franchisor's right to enter into a master lease with Regional Director and then sublease with the Franchisee) and thereby lease Premises located in the RD Development Area for the sole purpose of subleasing the Premises at Regional Director's cost or assigning Regional Director's rights under a Prime Lease to a Franchisee for a Big Air Trampoline Business. Regional Director may sublet the Premises to a Franchisee if Regional Director obtains Franchisor's prior written approval of the proposed Sublease, which approval will not be unreasonably withheld. Alternatively, Regional Director may assign its rights under a Prime Lease to a Franchisee if Regional Director obtains Franchisor's prior written approval of the proposed Assignment, which approval will not be unreasonably withheld. If Regional Director enters into a Prime Lease, a Sublease, an Assignment or some combination thereof, Regional Director shall be obligated to promptly pay all sums due under such Prime Lease and/or Sublease and/or Assignment, if not paid by the Franchisee, and shall otherwise comply with all terms and conditions of all Prime Leases, Subleases and Assignments executed by Regional Director.

9. MARKS

9.1. Ownership and Goodwill of Marks. Regional Director acknowledges that its right to use the Marks is derived solely from this Agreement (unless such rights are granted under a separate written agreement with Franchisor) and is limited to operating as a regional director pursuant to and in compliance with this Agreement. Any unauthorized use of the Marks by Regional Director shall constitute a breach hereof and an infringement of Franchisor's rights in and to the Marks. Regional Director acknowledges and agrees that its usage of the Marks and any goodwill established thereby shall inure to Franchisor's exclusive benefit and that this Agreement does not confer any goodwill or other interests in the Marks upon Regional Director.

9.2. Limitations on Use. Regional Director shall not use any Mark (a) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed to Regional Director under this Agreement), (b) in connection with unauthorized services or products, (c) as part of any domain name or electronic address maintained on the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, (d) in any social networking site, or (e) in any other manner not expressly authorized in writing by Franchisor. Regional Director agrees to give such notices of trademark and service mark registration as Franchisor specifies and to use and obtain such fictitious or assumed name registrations as may be required by Franchisor or under applicable law. Regional Director further agrees that no service mark other than "BIG AIR TRAMPOLINE PARK and LOGO™" or such other Marks as may be specified by Franchisor shall be used in the marketing, promotion or operation of the RD Business.

9.3. License to Use Name. Regional Director has the right to use the trade name "BIG AIR TRAMPOLINE" in the operation of its RD Business, but none of the words "BIG" and/or "AIR" and/or "TRAMPOLINE" may be used in the legal name of the entity used to conduct the RD Business. Regional Director may not register or attempt to register in its own name any trade name using the words "BIG" and/or "AIR" and/or "TRAMPOLINE". When this Agreement expires or is terminated, Regional Director must execute any assignment or other documents Franchisor requires to transfer to Franchisor any rights Regional Director possesses in a trade name utilizing "BIG AIR TRAMPOLINE PARK and LOGO™" or any other Mark Franchisor owns.

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9.4. Discontinuance of Use of Marks. If it becomes advisable at any time, in Franchisor's sole discretion, for Franchisor or Regional Director to modify or discontinue use of any Mark or use one or more additional or substitute trade or service marks, Regional Director agrees to comply, at its own expense, with Franchisor's directions to do so within a reasonable time after receiving notice.

9.5. Notification of Infringements and Claims. Regional Director shall, within three (3) days, notify Franchisor of any apparent infringement of, or challenge to, Regional Director's use of any Mark, or claim by any person of any right in any Mark, and Regional Director shall not communicate with any person other than Franchisor or its counsel in connection with any such matter. Regional Director may not settle any claim without Franchisor's written consent. Franchisor shall have sole discretion to take such action as it deems appropriate and the right to control, exclusively, any litigation, U.S. Patent and Trademark Office proceeding or any other administrative proceeding arising out of any such infringement, challenge or claim or otherwise relating to any Mark. Regional Director agrees to execute any and all instruments and documents, render such assistance and perform such acts as, in the opinion of Franchisor or Franchisor's counsel, may be necessary or advisable to protect and maintain Franchisor's interests in the Marks.

10. CONFIDENTIAL INFORMATION

10.1. Confidential Information. Franchisor possesses certain proprietary, confidential information consisting of the methods, techniques, formats, specifications, procedures, information, systems, methods of business management, sales and promotion techniques and knowledge of the experience in the operation and franchising of Big Air Trampoline Businesses ("**Confidential Information**"). Franchisor shall disclose the Confidential Information to Regional Director in the RD Initial Training Program, the RD Manual and in guidance furnished to Regional Director during the Initial Term and any Interim Period thereof. Regional Director has not acquired any interest in the Confidential Information, other than the right to utilize it in the RD Development Area in the execution of Regional Director's duties hereunder during the Initial Term of this Agreement and any Interim Period, and Regional Director acknowledges that the Confidential Information is proprietary, includes Trade Secrets of Franchisor and is disclosed to Regional Director solely on the condition that Regional Director agrees, and Regional Director (and its shareholders, partners, members and managers if Regional Director is a corporation, partnership or limited liability company) does hereby agree, that Regional Director: (a) shall not use the Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Confidential Information during and after the Initial Term of this Agreement; (c) shall not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by Franchisor to prevent unauthorized use or disclosure of the Confidential Information. Regional Director agrees that Franchisor shall have the perpetual right to use and authorize other Franchisees and regional directors to use, and Regional Director shall fully and promptly disclose to Franchisor, all ideas, concepts, methods and techniques relating to the development and operation of a Big Air Trampoline Business or Regional Director's activities howsoever conceived or developed by Regional Director or its employees or the Franchisee serviced by Regional Director during the Initial Term of this Agreement or any Interim Period. Regional Director acknowledges that any such ideas, concepts, methods and techniques shall be

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the property of Franchisor and Franchisor may utilize or disclose such information to franchisees or other agents as it determines to be appropriate.

10.2. Non-Disclosure and Non-Competition Agreement. Franchisor reserves the right to require Regional Director to have each of its shareholders, officers, directors, partners, employees, Regional Operating Manager, members and managers, anyone Regional Director may send to the RD Initial Training Program, and if Regional Director is an individual, Regional Director's spouse, to execute a Non-Disclosure and Non-Competition Agreement in a form attached to this Agreement as **Attachment V**.

10.3. Ownership of Business Records. Regional Director acknowledges and agrees that Franchisor owns all Business Records with respect to customers, suppliers, and other service professionals of, and related to, the franchised RD Business including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, phone numbers, e-mail addresses, franchise marketing records, customer purchase records, and all other records contained in the database, and all other Business Records created and maintained by Regional Director. Regional Director further acknowledges and agrees that, at all times during and after the termination, expiration or cancellation of this Agreement, Franchisor may access such Business Records, and may utilize, transfer, or analyze such Business Records as Franchisor determines to be in the best interest of the System, in Franchisor's sole discretion.

11. EXCLUSIVE RELATIONSHIP

11.1. Exclusive Relationship. Franchisor has entered into this Agreement with Regional Director on the condition that Regional Director will deal exclusively with Franchisor insofar as any business defined below as a Competitive Business. Franchisor acknowledges that Regional Director may perform similar services for other franchise systems or engage in unrelated business activities, however, without violating the terms of this Agreement. If Regional Director is engaged in any other business activities, Regional Director shall disclose such business activities to Franchisor in writing prior to signing this Agreement. Regional Director acknowledges and agrees that Franchisor would be unable to protect its Confidential Information and would be unable to encourage a free exchange of ideas and information among regional directors and Franchisor if regional directors were permitted to hold interests in any Competitive Business. Regional Director therefore agrees that, during the Initial Term or any Interim Period hereof, neither Regional Director, Regional Director's shareholders, members or partners who participate in the management of Regional Director, nor Regional Director's spouse, and, if applicable, the Regional Operating Manager, shall:

(a) Have any direct or indirect interest as a disclosed or beneficial owner in a "**Competitive Business**", which shall be defined as a business operating or granting franchises or licenses to others to operate, a business deriving more than ten percent (10%) of its gross receipts from providing indoor trampoline recreation and party activities, including trampolines, foam pits, rock climbing walls and other elements, and the sale of related items;

(b) Perform services as a director, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business, wherever located or operating;

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(c) Divert or attempt to divert any business related to, or any customer or account of, the RD Business, Franchisor's business or any other regional director's Franchisees or other franchisee operating a Big Air Trampoline Business, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Franchisor, another regional director, or any franchisee licensed by Franchisor, to any Competitive Business by any direct inducement or otherwise; or

(d) Directly or indirectly solicit or employ any person who is employed by Franchisor, another regional director, or a Franchisee.

Notwithstanding the foregoing, (i) Regional Director shall not be prohibited from owning securities in a Competitive Business if such securities are listed on a stock exchange or traded on the over-the-counter market and represent five percent (5%) or less of that class of securities issued and outstanding; (ii) any Big Air Trampoline Businesses in good standing governed by a Franchise Agreement between Regional Director or its affiliate and Franchisor shall be excluded from the definition of Competitive Business; and (iii) Regional Director will not be deemed to be operating a Competitive Business, as that term is defined above, if Regional Director temporarily operates a Big Air Trampoline Business that had either been sublet to a Franchisee under an approved Sublease or had been assigned to a Franchisee under an approved Assignment, for a period of not more than ninety (90) consecutive days following the default by the Franchisee under the terms of its Sublease or Assignment. If Regional Director operates any Big Air Trampoline Business for a period longer than ninety (90) consecutive days, then Franchisor will have the right to require that Regional Director sign Franchisor's then-current form of Franchise Agreement to govern the operation of such Big Air Trampoline Business.

12. OPERATING STANDARDS

12.1. Standards of Service. Regional Director shall at all times give prompt, courteous and efficient service to Franchisees in the RD Development Area. Regional Director shall, in all dealings with such Franchisees, prospective franchisees and the public, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct.

12.2. Compliance with Laws and Good Business Practices. Regional Director shall secure and maintain in force all required licenses, permits and certificates relating to Regional Director's activities hereunder and shall operate in full compliance with all applicable laws, ordinances and regulations. Regional Director acknowledges being advised that many jurisdictions have enacted laws concerning advertising, sale, renewal, termination and continuing relationship between parties to a Franchise Agreement, including without limitation, laws concerning disclosure requirements. Regional Director agrees promptly to become aware of, and to comply with, all such laws and legal requirements in force in the RD Development Area and to utilize only such forms of Store Disclosure Document that Franchisor has approved for use in the applicable jurisdiction.

12.3. Accuracy of Information. Before it markets or solicits prospective franchisees, Regional Director shall, each time, take reasonable steps to confirm that the information provided by or prepared by Regional Director and included in any written materials, agreements and other documents related to the offer or sale of franchises is true, correct and not misleading at the time of such offer or sale, and the offer or sale of such franchise will not at the time be contrary to or in

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violation of any applicable state law relating to the registration of the Store Disclosure Document. Franchisor shall provide Regional Director with any changes to its disclosure documents and other agreements on a timely basis, and shall, upon request, provide Regional Director with confirmation that the information contained in any written materials, agreements or documents being used by Regional Director are true, correct and not misleading, except for information specifically relating to disclosures regarding Regional Director. If Regional Director notifies Franchisor of an error in any information in Franchisor's documents, Franchisor shall have a reasonable period of time to attempt to correct any deficiencies, misrepresentations or omissions in such information.

12.4. Notification of Litigation. Regional Director shall notify Franchisor in writing within five (5) days of the commencement of any action, suit, arbitration, proceeding or investigation, and of the issuance of any order, writ, injunction, award or decree, by any court, agency or other governmental instrumentality which names Regional Director, its Regional Operating Manager, or otherwise concerns the operation or financial condition of Regional Director, the RD Business or any Franchisee.

12.5. Ownership and Management of Business. The RD Business shall at all times be under the direct, day-to-day, supervision of Regional Director or a Regional Operating Manager designated by Regional Director and approved in writing by Franchisor. The Regional Operating Manager shall not be required to own an equity interest in the RD Business. Regional Director shall at all times during the Initial Term of this Agreement and any Interim Period own and control the RD Business. Upon the request of Franchisor, Regional Director shall promptly provide satisfactory proof of such ownership. Regional Director represents that the Statement of Ownership, attached to this Agreement as **Attachment II**, is true, complete, and accurate and not misleading. Regional Director shall promptly provide Franchisor with written notification if the information contained in the Statement of Ownership changes at any time during the Initial Term of this Agreement or any Interim Period and shall comply with the applicable transfer provision contained in Section 14. If Regional Director is not an individual, all individuals owning more than a five percent (5%) equity interest in Regional Director, as well as the Regional Operating Manager, shall execute the Guaranty and Assumption of Regional Director's Obligations attached hereto as **Attachment III** and incorporated herein by this reference.

12.6. Replacement of Regional Operating Manager. In the event that the Regional Operating Manager leaves Regional Director's employment or is terminated for any reason, Regional Director shall hire a replacement Regional Operating Manager within 60 days of the day that the former Regional Operating Manager must attend the required initial training no later than 30 days from the date such replacement Regional Operating Manager begins working for Regional Director.

12.7. Conflicting Interests. Regional Director shall at all times faithfully, honestly and diligently perform its obligations hereunder and continuously exert its best efforts to promote, enhance and service Big Air Trampoline Businesses in the RD Development Area. Regional Director shall not engage in any other business or other activity, directly or indirectly, including operating a Big Air Trampoline Business, which requires any significant management responsibility, time commitments, or otherwise may conflict with Regional Director's obligations hereunder, without the prior written approval of Franchisor, which approval may be withheld by Franchisor in Franchisor's sole discretion.

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12.8. Insurance. Regional Director shall at all times during the Initial Term of this Agreement and any Interim Period maintain in force, at Regional Director's sole expense, insurance for the RD Business of the types, in the amounts, and under such terms and conditions as Franchisor may from time to time reasonably prescribe in the RD Manual or otherwise. All of the required insurance policies shall name Franchisor as an additional insured, contain a waiver of the insurance company's right of subrogation against Franchisor, and provide that Franchisor will receive thirty (30) days' prior written notice of termination, expiration or cancellation of any such policy. Franchisor reserves the right to require Regional Director to participate in Franchisor's Group Errors and Omissions insurance policy and require Regional Director to pay its pro rata share of such insurance coverage.

12.9. Proof of Insurance Coverage. Regional Director shall provide proof of insurance to Franchisor prior to commencement of operations of its RD Business. This proof shall include a provision requiring the insurer to inform Franchisor in the event any policies lapse or are cancelled. Franchisor has the right to change the minimum amount of insurance Regional Director is required to maintain by giving Regional Director prior reasonable notice. Noncompliance with the insurance provisions set forth herein shall be deemed a breach of this Agreement; in the event of any lapse in insurance coverage, in addition to all other remedies, Franchisor shall have the right to demand that Regional Director cease operations of the RD Business until coverage is reinstated, or, in the alternative, Franchisor may, but is not obligated to, pay any delinquencies in premium payments and charge the same back to Regional Director.

12.10. Restrictions on Services and Products. Regional Director is prohibited from offering or selling any services or products not authorized by Franchisor as being a part of the System. Regional Director shall purchase all products, equipment, services, supplies and materials required for the operation of the RD Business from suppliers designated or authorized by Franchisor. Under no circumstances shall Regional Director sell, transfer, deliver, or distribute any Products to any third party, including other Big Air Trampoline regional directors, Big Air Trampoline franchisees, licensees, authorized retailers, or other retail or wholesale vendors, without the advanced written permission of Franchisor, which may be granted or denied in Franchisor's sole discretion. Franchisor reserves the right to receive rebates, commissions or other consideration from purchases made by Regional Director from suppliers, distributors or manufacturers authorized or designated by Franchisor. Franchisor shall have the right, in Franchisor's sole discretion, to use such rebates, commissions or other consideration in any way Franchisor chooses without any obligation to share or remit any portion of such rebates, commissions or other consideration to Regional Director.

12.11. Advertising in RD Development Area. Beginning thirty (30) days after the Effective Date, Regional Director shall spend monthly an amount equal to Twenty Dollars ($20) per one hundred thousand (100,000) people living in the RD Development Area on advertising and/or open house events for prospective franchisees in the RD Development Area ("**Monthly Advertising Requirement**"). The Monthly Advertising Requirement is set forth in the attached **Attachment I**. Regional Director shall submit to Franchisor (a) copies of all franchisee sales-related advertising materials used by Regional Director during the Sales Quarter, (b) visual or auditory proof of placement of such franchise sales-related advertising materials during the Sales Quarter, and (c) an accounting of the amounts spent on advertising within thirty (30) days following the end of the second Sales Quarter after the Effective Date and within thirty (30) days

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after the end of each Sales Quarter thereafter. In addition to the required amount spent on local advertising, Franchisor reserves the right to require Regional Director to participate in a maximum of two (2) franchise trade shows each year, such trade shows to be selected by Franchisor. Regional Director agrees to list its RD Business telephone numbers in the white pages and in the classified telephone directories, as directed by Franchisor, in the RD Development Area.

12.12. Advertising and Promotional Materials. Regional Director shall purchase the Initial Franchise Sales Material from Franchisor. Thereafter, Regional Director may elect to purchase sales and promotional materials from an alternate supplier approved by Franchisor. Prior to their use by Regional Director, samples of all advertising and promotional materials not prepared or previously approved by Franchisor shall be submitted to Franchisor for approval. Regional Director shall not use any advertising or promotional materials that Franchisor has disapproved. Regional Director acknowledges and understands that certain states require the filing of franchise sales advertising materials with the appropriate state agency within prescribed time frames prior to dissemination to prospective franchisees. Regional Director agrees to fully and timely comply with such filing requirements at Regional Director's own expense unless such advertising has been previously filed with the state by Franchisor. Franchisor may charge Regional Director for the costs incurred by Franchisor in printing advertising and marketing materials supplied by Franchisor to Regional Director at Regional Director's request, or for expenses incurred by Franchisor to file Regional Director's proposed advertising material with the appropriate state authority.

12.13. Accounting, Bookkeeping and Records. Regional Director shall maintain at its RD Business premises all original invoices, receipts, checks, contracts, licenses, acknowledgement of receipt forms and bookkeeping and business records as Franchisor may require from time to time. Regional Director shall furnish to Franchisor, within one hundred twenty (120) days after the end of Regional Director's fiscal year, a balance sheet and profit and loss statement for the RD Business for such year (or monthly or quarterly statement if required by Franchisor, in which case such statements shall also reflect year-to-date information). In addition, upon request of Franchisor, within ten (10) days after such returns are filed, exact copies of federal and state income, sales and any other tax returns and such other forms, records, books and other information as Franchisor may periodically require regarding the RD Business shall be furnished to Franchisor. Regional Director shall maintain all records and reports of the RD Business conducted pursuant to this Agreement for at least two (2) years after the date of termination of expiration of this Agreement.

12.14. Reports. Regional Director shall, as often as required by Franchisor, deliver to Franchisor a written report of the RD Business activities during such period as required in Sections 8.4 and 8.6, in such form and in such detail as Franchisor may from time to time specify, including information about efforts to solicit prospective Franchisees, the status of pending real estate transactions and the status of the Big Air Trampoline Businesses in the RD Development Area. Regional Director shall, as often as required by Franchisor, during the Initial Term of this Agreement and any Interim Period, deliver to Franchisor the quality, service and environment inspection reports required in Section 8.6 for each Franchisee in the RD Development Area, in such form and in such detail as Franchisor may from time to time specify.

12.15. Computer and Communication Requirements. Regional Director, at its expense, shall purchase or lease, and thereafter maintain, such computer hardware, software, firmware, required dedicated telephone and power lines, modem(s), printer(s), and other computer-related

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accessories or peripheral equipment as Franchisor specifies in the RD Manual or otherwise in writing. Regional Director's computer systems shall have the capacity to electronically exchange information, messages, and other data with other computers, by such means (including, but not limited to, the Internet), and using such protocols (e.g. TCP/IP), as Franchisor may reasonably prescribe in the RD Manual or otherwise in writing. Franchisor shall have the right from time to time and at any time to retrieve data and information from Regional Director's computer system; and to use such information for any purpose both during and after this Agreement. Regional Director shall keep its computer system in good maintenance and repair and, at its expense, shall promptly install such additions, changes, modifications, substitutions, and/or replacements to the computer hardware, software, firmware, telephone and power lines, and other computer-related facilities, as Franchisor directs from time to time in the RD Manual. Regional Director shall not update, modify, enhance, or upgrade any computer hardware or software without Franchisor's written consent, which shall not be unreasonably withheld. Regional Director shall be solely responsible for protecting Regional Director's computer, electronic and communication systems from viruses, computer hackers, and other computer-related and technology-related problems, and Regional Director hereby releases Franchisor from any and all claims it may have as the result of viruses, hackers, or other computer-related or technology-related problems.

13. INSPECTIONS AND AUDITS

13.1. Inspections and Audits. To determine whether Regional Director is complying with this Agreement, Franchisor or its designee shall have the right at any time during normal business hours, and with twenty-four (24) hours prior notice to Regional Director, to enter the premises in which Regional Director is then keeping its business records and inspect, and conduct an audit of, the Business Records, bookkeeping and accounting records, invoices, payroll records, time cards, check stubs, bank deposits, receipts, sales tax records and returns and other Business Records and documents of the RD Business. Regional Director and its employees shall fully cooperate with representatives of Franchisor in making, conducting, supervising or observing any such inspection or audit. Without any liability to Regional Director, Franchisor may confiscate any materials that Franchisor, in its reasonable judgment, determines to be either illegal or in violation of this Agreement. Franchisor shall have the right to observe Regional Director and its employees rendering services, to confer with Regional Director's employees and customers, and to generally review the business operations for compliance with the standards and procedures set forth in the RD Manual.

14. TRANSFERS

14.1. Transfers by Franchisor. Regional Director acknowledges that Franchisor maintains a staff to manage and operate the System and that staff members can change from time to time. Regional Director represents that it has not signed this Agreement in reliance on any shareholder, director, officer, or employee remaining with Franchisor in that capacity. Franchisor may change its ownership or form or assign this Agreement and any other agreement without restriction at any time and thereby be released from any further liability or obligations to Regional Director.

14.2. Transfers by Regional Director. Regional Director agrees that the rights and duties created by this Agreement are personal to Regional Director (or its shareholders, partners or members if Regional Director is a corporation, partnership or limited liability company) and that

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Franchisor has entered into this Agreement in reliance upon Franchisor's perceptions of the individual or collective character, skill, aptitude, attitude, business ability and financial capacity of Regional Director (or its shareholders, members, managers or partners). Accordingly, without the prior written consent of Franchisor, neither this Agreement (or any interest therein), nor any part or all of the ownership of Regional Director may be transferred. Any unauthorized transfer shall constitute a breach of this Agreement and be void and of no effect. As used in this Agreement, the term "**Transfer**" shall mean and include the voluntary, involuntary, direct or indirect assignment, sale, gift or other disposition by Regional Director (or any of its owners) of any interest in: (1) this Agreement; (2) the ownership of Regional Director; or (3) the assets of the RD Business. Regional Director acknowledges and agrees that any proposed assignment must be of Regional Director's entire right, title and interest in this Agreement and the RD Development Territory and that Regional Director may not attempt to retain any development rights for any reason after approval of such Transfer by Franchisor without Franchisor's express written permission, which may be granted or denied in Franchisor's sole discretion; provided, however, the parties agree that this provision shall apply to a Transfer requested by Regional Director in accordance with Section 14.4.

14.3. Conditions for Approval of Transfer. Prior to the first anniversary date of this Agreement, this contract may not be sold or otherwise Transferred. Thereafter, Franchisor may, in its sole discretion, approve a proposed Transfer only if Regional Director (and its owners) are in full compliance with all the terms of this Agreement. The proposed transferee and its owners must be individuals of good moral character and otherwise meet Franchisor's then applicable standards for regional directors. If the Transfer is of this Agreement and the RD Business, or a Controlling Interest (as defined below) in Regional Director, or is one of a series of transfers (regardless of the time period over which such transfers occur) which in the aggregate transfer this Agreement, assets of the RD Business or a Controlling Interest in Regional Director, all of the following conditions must be met before or concurrently with the effective date of the Transfer:

(a) The transferee has sufficient business experience, aptitude and financial resources to act as a regional director, agrees to be bound by all the terms and conditions of this Agreement (unless Franchisor exercises its option under Section 14.3(e) to require the transferee to sign its then current form of regional director agreement), and, with its Regional Operating Manager, must have completed Franchisor's RD Initial Training Program and Franchisee Training Program to Franchisor's satisfaction;

(b) Regional Director has paid all amounts owed to Franchisor or its affiliates and third party creditors and submitted to Franchisor all required reports and statements;

(c) Regional Director or the transferee has paid Franchisor a transfer fee ("**Transfer Fee**") in an amount equal to Twenty-Five Thousand Dollars ($25,000);

(d) Regional Director (and its transferring owners) executes a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates and their respective shareholders, officers, directors, employees and agents;

(e) The transferee executes a Regional Director Agreement in the form then-currently offered by Franchisor, the term of which will end on the expiration date of this Agreement and the terms of which may differ materially from any and all of the terms

contained in this Agreement, and which shall supersede this Agreement in all respects. The transferee will not be required to pay any additional Initial Regional Director Fee;

(f) Franchisor approves the material terms and conditions of such transfer, including, without limitation, that the price and terms of payment are not so burdensome as to affect adversely the transferee's business as a regional director of Franchisor;

(g) If Regional Director (and the transferring owners) finances any part of the sale price of the transferred interest, Regional Director and its owners agree that all obligations of the transferee under any promissory notes, agreements or security interests shall be subordinate to the transferee's obligations to pay fees, and other amounts due to Franchisor and its affiliates and otherwise to comply with this Agreement; and

(h) Regional Director (and its transferring owners) executes a non-competition covenant in favor of Franchisor and the transferee with terms and the same as those set forth in Section 16.5.

A person will be deemed to have a "**Controlling Interest**" in Regional Director if that person has the right to vote twenty-five percent (25%) or more of the voting securities or other forms of ownership interest of a corporation, partnership, or other form of entity, to receive twenty-five (25%) or more of the net profits of any such entity, or is otherwise able to direct or cause direction of that entity's management or policies.

14.4. Transfer to an Entity. If Regional Director is an individual in full compliance with this Agreement, Regional Director may transfer this Agreement to an entity controlled by Regional Director with Franchisor's prior written approval. The Transfer Fee described in Section 14.3(c) will be waived by Franchisor and all owners of such entity shall sign a Guaranty and Assumption of Regional Director's Obligations attached hereto as **Attachment III**.

14.5. Franchisor's Approval of Transfer. Franchisor has thirty (30) days from the date of written notice to approve or disapprove, in writing, of Regional Director's proposed Transfer. Written notice shall mean and include all documentation necessary to evaluate the transferee. Regional Director acknowledges that the proposed transferee shall be evaluated for approval by Franchisor based on the same criteria as is currently being used to assess new regional directors of Franchisor and that such proposed transferee shall be provided, if appropriate, with such disclosures as may be required by state or federal law. Franchisor may review all information regarding the RD Business that Regional Director gives the transferee and give the transferee copies of any reports that Regional Director has given Franchisor or Franchisor has made regarding the RD Business.

14.6. Death or Disability of Regional Director. Upon the death or permanent disability of Regional Director (or the majority shareholder of Regional Director if Regional Director is a legal entity), the personal representative of such person shall transfer the entire right, title, and interest in this Agreement or such interest in Regional Director to an approved third party, which may include any heir or legatee that otherwise satisfies Franchisor's standards and qualification for new Franchisees. Such disposition of this Agreement or such interest (including, without limitation, transfer by bequest or inheritance, provided such transfer is in accordance with the requirements of this Section 14.6) shall be completed within a reasonable time, not to exceed

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six (6) months from the date of death or permanent disability (unless extended by probate proceedings), and shall be subject to all the terms and conditions applicable to transfers contained in this Section. Franchisor shall have the right, in Franchisor's sole discretion, to operate the RD Business, or to appoint a representative or designee to operate the RD Business, in the RD Development Area for a period of up to one hundred eighty (180) days, or until such time as Regional Director's interest shall have been transferred to an approved third party, whichever occurs first. Franchisor or the appointed representative shall be entitled to retain all revenues, and shall pay all expenses from the operation of the RD Business, without the right to seek or require reimbursement by Regional Director's estate or personal representative, during the period of operation of the RD Business. Failure to transfer the interest in this Agreement or such interest in Regional Director within said period of time shall constitute a breach of this Agreement and shall entitle Franchisor to terminate this Agreement without further notice or the opportunity to cure. For purposes hereof, the term "**Permanent Disability**" shall mean a mental or physical disability, impairment or condition that prevents Regional Director or the Regional Operating Manager from performing the essential functions of Regional Director.

14.7. Right of First Refusal. In the event Regional Director (or, if applicable, an equity owner) wishes to sell, transfer, assign or otherwise dispose of any interest in this Agreement, a Controlling Interest in any entity that owns it, or all or a substantial portion of the assets of the RD Business to a third party purchaser, Regional Director agrees to grant to Franchisor a thirty (30) day right of first refusal to purchase such rights, interest or assets on either (1) the same terms and conditions as are contained in the written offer to purchase submitted to Regional Director by a bona fide proposed purchaser, or (2) at the same sales price offered, paid over twelve (12) equal monthly installments; however, in either event, the following additional terms and conditions shall apply:

(a) Regional Director shall notify Franchisor of such offer by sending a written notice to Franchisor, enclosing a copy of the written offer signed by the bona fide proposed purchaser;

(b) The thirty (30) day right of first refusal period will run concurrently with the period in which Franchisor has to approve or disapprove the proposed transferee;

(c) Such right of first refusal arises for each proposed Transfer and any material change in the terms or conditions of the proposed Transfer, even if to the same bona fide proposed purchaser, shall be deemed a separate offer for which a new thirty (30) day right of first refusal shall be given to Franchisor;

(d) If the consideration or manner of payment offered by a third party is such that Franchisor may not reasonably be required to furnish the same, then Franchisor may purchase the interest that is proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the cash consideration, an independent appraiser shall be designated by Franchisor, whose determination will be binding upon the parties. All expenses of the appraiser shall be paid for equally between Franchisor and Regional Director; and

(e) If Franchisor chooses not to exercise its right of first refusal, Franchisee shall be free to complete the sale, transfer or assignment, subject to compliance with

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Sections 14.3 and 14.5. Absence of a reply to Regional Director's notice of a proposed sale within the thirty (30) day period is deemed a waiver of such right of first refusal but not a waiver of the required compliance with Sections 14.3 and 14.5.

14.8. Transfers of Prime Lease or Sublease Interest. In the event of a proposed Transfer, as that term is defined in Section 14.2, of all or any portion of Regional Director's interest in a Prime Lease or a Sublease or an Assignment, Regional Director agrees that Section 14 of this Agreement will apply to such proposed Transfer (other than the Transfer Fee), and agrees to be bound by such provisions with respect to the Transfer.

14.9. Franchisor's Resale Assistance. Regional Director may, at any time, request Franchisor's assistance in locating a buyer for the RD Business. Franchisor may, at Franchisor's option, provide such assistance in accordance with the policies and procedures set forth in the RD Manual. Franchisor reserves the right to charge Regional Director a fee ("**Resale Marketing Fee**") to cover Franchisor's reasonable costs and expenses (including the time committed by Franchisor's employees) incurred in providing such assistance. If Franchisor elects to assist Regional Director in finding a buyer for the RD Business in any way, Franchisor makes no promises or commitments to Franchisee that a buyer will be located or that any one will be willing to purchase the RD Business at a price that is acceptable to Franchisee. Franchisor reserves the right to reject any proposed sale based on Franchisor's determination, in Franchisor's sole discretion, that the purchase price or purchase terms agreed to between Franchisee and any prospective buyer is excessive or will not enable the buyer to succeed as a regional director in the System, and by requesting Franchisor's assistance Regional Director waives any liability claims it may have against Franchisor for such rejection.

15. TERM AND EXPIRATION

15.1. Term. The primary term of this Agreement ("**Initial Term**") is for a period of ten (10) years from the Effective Date, unless sooner terminated as provided herein.

15.2. Successor Term. At the end of the Initial Term, Regional Director shall have the option to extend its rights to operate the RD Business for one (1) additional ten (10) year term ("**Successor Term**"), so long as Regional Director:

(a) At least sixty (60) days prior to expiration of the Initial Term, executes the form of the Regional Director Agreement then in use by Franchisor ("**Successor Regional Director Agreement**"); which agreement may contain terms that are materially different from those in this Agreement; however, the commission percentages and definition of the RD Development Area will not be altered;

(b) Has complied with all provisions of this Agreement during the preceding term. "**Compliance**" shall mean, at a minimum, that Regional Director has not received any written notification from Franchisor of a breach hereunder more than three (3) times during the Initial Term regardless of whether such breach was cured by Regional Director;

(c) Is not in default or under notification of breach of this Agreement at the time it gives notice under Section 15.4;

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(d) Executes a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, and their respective shareholders, officers, directors, employees and agents arising out of or relating to this Agreement;

(e) Has met its Development Quotas in the Initial Term and has agreed on a new Development Quota for the Successor Term in accordance with Section 15.3; and

(f) Upon execution of a Successor Regional Director Agreement, Regional Director pays the successor regional director fee ("**Successor RD Fee**") equal to the sum of Three Hundred Dollars ($300) multiplied by the number of Franchise Agreements that have been signed in the RD Development Area from the Effective Date of this Agreement until the date that Regional Director has given Franchisor written notice under Section (a). The Successor RD Fee, once paid, will not be subject to change for any reason.

15.3. New Development Quota.

(a) In addition to any other requirements for the extension of Regional Director's rights to operate the RD Business imposed on Regional Director by Franchisor, in Franchisor's sole discretion, Regional Director's rights to operate the RD Business may only be extended if Regional Director and Franchisor have agreed on a new Development Quota for the Successor Term at least ninety (90) days prior to expiration of the Initial Term.

(b) In the event that Franchisor and Regional Director are unable to agree on a new Development Quota for the Successor Term within the time frame set forth in Section 15.2, the parties agree to submit the matter to arbitration before and in accordance with the rules of the American Arbitration Association in order to determine a new Development Quota. The decision of the arbitrator shall be non-appealable, conclusive and binding on all parties. The arbitration fee shall be borne equally by Franchisor and Regional Director. Each party shall be responsible for any other expenses incurred by that party in association with such arbitration, including attorney and expert witness fees, notwithstanding provisions of Section 18 to the contrary. The arbitration shall be held in Ladera Ranch, California.

(c) In the event that Regional Director is not satisfied with the decision of the arbitration, Regional Director shall have fifteen (15) days from the date that the arbitration decision is rendered to waive its options to extend its rights to operate the RD Business.

(d) If Regional Director has notified Franchisor of its intent to extend its rights to operate the RD Business as provided in Section 15.4, and so long as a demand for arbitration has been filed prior to the expiration of the Initial Term and the parties are diligently pursuing such arbitration, this Agreement shall automatically be extended until fifteen (15) days following the date that the arbitration award is rendered.

15.4. Exercise of Regional Director's Option to Extend Rights to Operate RD Business. Regional Director may exercise its option to extend its rights to operate the RD Business by giving written notice of such exercise to Franchisor not more than one hundred eighty (180) days, or less than one hundred twenty (120) days, prior to the expiration of the original term.

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15.5. Conditions of Refusal. Franchisor shall not be obligated to offer Regional Director the extension of Regional Director's rights to operate the RD Business upon the expiration of this Agreement if Regional Director fails to comply with any of the above conditions for the extension of Regional Director's rights to operate the RD Business. Upon expiration, the terms of Section 15.2 may apply. In such event, except for failure to execute the then-current regional director agreement, Franchisor shall give Regional Director notice of expiration, and such notice shall set forth the reasons for such refusal to offer the extension of Regional Director's rights to operate the RD Business. Upon the expiration of this Agreement, Regional Director shall comply with the provisions of Section 16 and 17.4.

15.6. Interim Period. If Regional Director does not sign the Successor Regional Director Agreement prior to the expiration of this Agreement and continues to accept the benefits of this Agreement after the expiration of this Agreement, then at the option of Franchisor, this Agreement may be treated either as (a) expired as of the date of expiration with Regional Director then operating without a franchise to do so and in violation of Franchisor's rights; or (b) continued on a month-to-month basis ("**Interim Period**") until one party provides the other with written notice of such party's intent to terminate the Interim Period, in which case the Interim Period will terminate thirty (30) days after receipt of the notice to terminate the Interim Period. In the latter case, all obligations of Regional Director shall remain in full force and effect during the Interim Period as if this Agreement had not expired, and all obligations and restrictions imposed on Regional Director upon expiration of this Agreement shall be deemed to take effect upon termination of the Interim Period.

16. TERMINATION AND ALTERNATIVE REMEDY

16.1. By Regional Director. Regional Director may terminate this Agreement at any time during the Initial Term hereof with ninety (90) days advance written notice to Franchisor.

16.2. By Franchisor. Franchisor shall have the right to terminate this Agreement effective upon delivery of written notice of termination to Regional Director without any payment to Regional Director, unless otherwise noted below (subject to any state laws to the contrary, where state law shall prevail) if Regional Director (or any of its shareholders, members, owners, managers, or partners, or the Regional Operating Manager):

(a) Fails to satisfactorily complete the RD Initial Training Program as provided in Section 6.1;

(b) Has made any material misrepresentation or omission in its application to be a regional director or in operating as a regional director;

(c) Fails to:

(i) meet the Development Quota set forth in **Attachment I** ("**Deficient Sales Quarter**"); and

(ii) the total number of Big Air Trampoline Business franchises sold in the Deficient Sales Quarter, combined with the previous three (3) Sales Quarters, do not equal or exceed the total number of Big Air Trampoline Business franchises

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agreed to be sold as set forth in the Development Quota, **Attachment I**, for that same period.

(d) Fails to comply with Regional Director's quarterly inspection obligation set forth in Section 8.6 of this Agreement and does not correct such failure within thirty (30) days after written notice of such failure to comply is delivered to Regional Director;

(e) Fails to satisfy the quarterly marketing expenditure requirement set forth in Section 12.13 of this Agreement and does not correct such failure within thirty (30) days after written notice of such failure to comply is delivered to Regional Director;

(f) Fails to comply with any other provision of this Agreement, or any mandatory specification, standard or operating procedure prescribed by Franchisor and does not correct such failure within thirty (30) days after written notice of such failure to comply is delivered to Regional Director;

(g) Surrenders, transfers control of or makes an unauthorized transfer of this Agreement or an ownership interest in Regional Director or abandons or fails actively to operate the RD Business contemplated hereunder;

(h) Is convicted by a trial court of or pleads no contest to a felony, or to any other crime or offense that is, in the opinion of Franchisor, likely to adversely affect the goodwill associated with the Marks, or engages in any conduct that may adversely affect the reputation of Big Air Trampoline Businesses or the goodwill associated with the Marks;

(i) Is declared bankrupt or insolvent or voluntarily institutes a bankruptcy proceeding under the Bankruptcy Code or is adjudicated bankrupt as a result of an involuntary petition in bankruptcy being filed against it. (This provision may not be enforceable under federal bankruptcy law, 11 U.S.C. §§ 101 et seq.);

(j) Abandons or ceases to operate the RD Business for a period of thirty (30) consecutive days or any shorter period that indicates an intent by Regional Director to discontinue operation of the RD Business unless precluded from doing so by an event beyond Regional Director's reasonable control (other than for financial reasons) or abandons any Premises of a Big Air Trampoline Business owned by Regional Director for more than ten (10) consecutive days;

(k) Has received three (3) notices of default from Franchisor within a twelve (12) month period, regardless of whether the defaults were cured by Regional Director;

(l) Defaults under the terms and conditions of any Prime Lease or Sublease or Assignment and fails, upon request from Franchisor, to assign all or a portion of Regional Director's interest in such Prime Lease and any related Sublease or Assignment, to Franchisor, within five (5) days of Franchisor's notifying Regional Director of such request. If Regional Director fails to assign all of its interest(s) as requested by Franchisor within five (5) days of Franchisor's notification, Franchisor may act as Attorney-in-Fact with respect to such assignment and Regional Director hereby irrevocably appoints

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Franchisor to act as its Attorney-in-Fact for such assignment, which appointment is coupled with an interest. In the event that any such leasehold interest is assigned to Franchisor, all funds held by Regional Director on behalf of a Franchisee under a Sublease or an Assignment, including but not limited to all security, damage or other deposits, shall be transferred to Franchisor immediately;

(m) Defaults under the terms of any other agreement between Regional Director and Franchisor, including but not limited to any Franchise Agreement governing the operation of any Big Air Trampoline Business, wherever located;

(n) Fails to comply with any requirement under the federal or state franchise laws, including, but not limited to, communicating in written, verbal, or other form to any prospective franchisee any information or presentation that states or suggests a specific level or range of potential or actual sales, income, gross or net profits, product costs, labor costs, or other operating costs unless that information or presentation is identical to that contained in Franchisor's Disclosure Document and other disclosure documents; or

(o) Fails to pay any amounts due Franchisor or its affiliates within ten (10) days after receiving notice that such fees or amounts are overdue.

16.3. Rights and Obligations of Regional Director Upon Termination or Expiration. Upon termination of this Agreement, whether pursuant to Section 16.1, 16.2 or upon expiration of this Agreement pursuant to Section 15, Regional Director agrees:

(a) To pay Franchisor within fifteen (15) days after the effective date of termination or expiration of this Agreement, such fees, amounts owed for purchases by Regional Director from Franchisor or its affiliates, interest due to any of the foregoing and all other amounts owed to Franchisor or its affiliates which are then unpaid;

(b) To refrain from, directly or indirectly at any time or in any manner (except with respect to Big Air Trampoline Business franchises owned and operated by Regional Director) identifying itself or any business as a current regional director or authorized agent of Franchisor or its affiliates, use any Mark, any colorable imitation thereof or other indicia of a Big Air Trampoline Business in any manner or for any purpose or utilize for any purpose any trade name, trademark or service mark or other commercial symbol that suggests or indicates a connection or association with Franchisor or its affiliates;

(c) To immediately deliver to Franchisor all past and present franchise sales leads and records and all contracts, acknowledgments or receipt, and other information and records related to Franchisees of Franchisor in the RD Development Area;

(d) To immediately deliver to Franchisor all advertising materials, the RD Manual, the Big Air Trampoline Business Operations Manual, all other manuals, forms, Disclosure Documents, franchise sales brochures and other materials containing any Mark or otherwise identifying or relating to the sale of service of Big Air Trampoline Businesses;

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(e) To refrain from communicating, in any manner, with Franchisees concerning Franchisor or obligations arising from this Agreement or any Franchise Agreement, except as expressly authorized by Franchisor;

(f) To take such action as may be required to cancel all fictitious or assumed names or equivalent registrations relating to Regional Director's use of any Mark;

(g) To notify the telephone company and all telephone directory publishers of the termination or expiration of Regional Director's right to use any telephone number, any regular, classified or other telephone directory listings associated with any Mark, and any Internet address, and to authorize transfer thereof to Franchisor or its designee. Regional Director acknowledges that, as between it and Franchisor, Franchisor has the sole rights to and interest in all telephone, telecopy or facsimile machine numbers, directory listings and Internet addresses associated with any Mark. Regional Director authorizes Franchisor, and hereby irrevocably appoints Franchisor and any of its officers as Regional Director's Attorney-in-Fact, which appointment is coupled with an interest to direct the telephone company, all telephone directory publishers, and all Internet service providers to transfer any telephone, telecopy or facsimile machine numbers, directory listings and Internet addresses relating to the RD Business to Franchisor at its direction, should Regional Director fail or refuse to do so, and the telephone company, all telephone directory publishers, and all Internet service providers may accept such direction or this Agreement as conclusive evidence of Franchisor's exclusive rights in such telephone numbers, directory listings, and Internet addresses and Franchisor's authority to direct their transfer. Such appointment is evidenced by **Attachment IV**; and

(h) Furnish Franchisor, within thirty (30) days after the effective date of termination or expiration, with evidence satisfactory to Franchisor of Regional Director's compliance with the foregoing obligations.

16.4. Confidential Information. Regional Director agrees that, upon termination or expiration of this Agreement, Regional Director shall immediately cease to use any Confidential Information disclosed pursuant to this Agreement or as a result of its relationship with Franchisor in any business or otherwise (except in connection with the operation of a Big Air Trampoline Business pursuant to a Franchise Agreement with Franchisor) and return to Franchisor all copies of the RD Manual, the Big Air Trampoline Business Operations Manual, and any other confidential materials that have been loaned to Regional Director by Franchisor.

16.5. Covenant Not to Compete. During the Initial Term of this Agreement, any Interim Period and upon termination or expiration of this Agreement, Regional Director (and its shareholders, officers, directors, owners, members, managers or partners, and the spouses of these individuals and Regional Director (collectively "**Bound Parties**")) agrees that, for the greater of (i) a period of two (2) years commencing on the effective date of termination or expiration, or (ii) the period of time after the termination or expiration during which Regional Director is receiving any commissions pursuant to Section 5.12, neither Regional Director nor any Bound Party shall have any direct or indirect interest (through an immediate family member of Regional Director or any Bound Party or otherwise) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent or in any other capacity in any Competitive Business located in any RD Development Area in which Franchisor or its affiliates or

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regional directors conduct business at the time of termination. The restrictions of this Section shall not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent five percent (5%) or less of the number of shares of that class of securities issued and outstanding. Regional Director and each Bound Party expressly acknowledge that they possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section will not deprive them of their personal goodwill or ability to earn a living.

16.6. No Further Right to Payment. Upon expiration or termination of this Agreement, Regional Director remains liable to Franchisor for all amounts due to Franchisor on the date of termination. Regional Director shall have no further right to receive payment of Sales Services Commissions, Royalty Commissions, Transfer Commissions, or Product Commissions from Franchisor, except for those Sales Services Commissions, Transfer Commissions, Commissions Royalty Commissions, or Product Commissions that have been fully earned by Regional Director up through the date of such termination and except for those commissions described in Section 5.9, if applicable. For purposes of this Agreement, "**Fully Earned**" Sales Service Commissions shall mean commissions due to franchise sales for which all conditions described in Section 5.1 have been met or fulfilled for the purchase of a franchise for a Big Air Trampoline Business to be located within the RD Development Area by Regional Director. "**Fully Earned**" Royalty Commissions, Transfer Commissions and Product Commissions shall mean those Royalty Commissions and Product Commissions accrued up through the date of termination that are otherwise owed to Regional Director. Franchisor shall have the right to immediately assume control of and manage all franchise deals in the RD Development Area and to receive all Royalty Commissions from Franchisees in the RD Development Area and cease paying Product Commissions to Regional Director. Any fully earned Sales Services Commissions, Transfer Commissions, Royalty Commissions or Product Commissions due to Regional Director will be paid by Franchisor in accordance with the provisions of Section 5.

16.7. Continuing Obligations. All obligations of Franchisor and Regional Director and the Bound Parties that expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied or by their nature expire.

16.8. State and Federal Law. The parties acknowledge that in the event that the terms of this Agreement regarding termination or expiration are inconsistent with applicable state or federal law, such law shall govern Regional Director's rights regarding termination or expiration of this Agreement.

16.9. Alternative Remedy – Forfeited Commissions. In the event Franchisor elects not to terminate this Agreement in accordance with the terms of this Section 16, Franchisor has the right to cease payment of all Commissions owed ("**Forfeited Commissions**") to Regional Director under the terms of this Agreement until such time as Regional Director has cured all defaults to Franchisor's satisfaction. Regional Director acknowledges and agrees that once Franchisor has ceased making Commission payments to Regional Director as the result of Regional Director's failure or refusal to cure one or more defaults, Regional Director waives all claims to such Forfeited Commissions and shall not be entitled to recover any Forfeited Commissions even if Regional Director ultimately satisfies all of Franchisor's requirements to cure such defaults. Upon

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successful cure of all defaults, Regional Director shall once again be entitled to receive Commission payments due under the terms of this Agreement.

17. RELATIONSHIP OF THE PARTIES

17.1. Relationship of the Parties. It is understood and agreed by the parties that this Agreement does not create either a fiduciary relationship or a franchise relationship between them, that the parties are independent contractors and that Franchisor appoints Regional Director as its special agent for a particular purpose and that nothing in this Agreement is intended to make either party a general agent, subsidiary, joint venturer, partner, employee or servant of the other for any purpose. Regional Director shall conspicuously identify itself in all dealings with Franchisees, prospective Franchisees, lessors, contractors, suppliers, public officials and others as the owner of its own business under a Regional Director Agreement with Franchisor, and shall place such other notices of independent ownership required by Franchisor on signs, forms, stationery, advertising and other materials.

17.2. Payment of Third-Party Obligations. Neither Franchisor nor Regional Director shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other or represent that their relationship is other than franchisor and special agent, and neither Franchisor nor Regional Director shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder, nor shall Franchisor be obligated for any damages to any person or property directly or indirectly arising out of the operations of Regional Director's business, unless (and then only to the extent) caused by Franchisor's negligent or willful action or failure to act.

17.3. Independent Contractors. Regional Director may delegate its duties hereunder to independent contractors provided that Regional Director receives written approval from Franchisor prior to any such delegation of duties and complies with all state laws requiring broker registration for such persons. Franchisor reserves the right at any time, and in Franchisor's sole discretion, to withdraw the approval of any independent contractor engaged by Regional Director to fulfill its duties and obligations under this Agreement and Regional Director agrees to terminate its relationship with the independent contractor immediately upon the receipt of written notice from Franchisor.

17.4. Indemnification. Regional Director agrees to indemnify, defend, and reimburse Franchisor and its affiliates, and their respective stockholders, directors, officers, employees, agents and assignees ("**Indemnified Parties**") for, and hold the Indemnified Parties harmless against, any loss, liability, taxes or damages (actual or consequential) and all reasonable costs and expenses of defending any claim brought against any of them or any action in which any of them is named as a party (including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses) which any of them may suffer, sustain or incur by reason of, arising from or in connection with any acts, omissions or activities of Regional Director, Regional Operating Manager, or any of its employees or independent contractors. Regional Director's duty to indemnify shall also include all damages caused or alleged to be caused in whole or in part by any negligent act or omission, whether active or passive, of the Indemnified Parties; however, Regional Director shall not be obligated to indemnify with respect to the sole negligence or willful misconduct of the Indemnified Parties. Each Indemnified Party shall have the right to defend any

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such claim against it at Regional Director's expense and agree to settlements or take any other remedial, corrective or other actions. This indemnity shall continue in full force and effect, subsequent to and notwithstanding the expiration or termination of this Agreement.

18. DISPUTES

18.1. Governing Law/Consent to Venue and Jurisdiction. Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §§ 1051 et seq.) or other federal law, this Agreement shall be interpreted under the laws of the State of California and any dispute between the parties, whether arising under this Agreement or from any other aspect of the parties' relationship, shall be governed by and determined in accordance with the substantive laws of the State of California, which laws shall prevail in the event of any conflict of law, except that the parties expressly agree that the provisions of the California Franchise Relations Law, California Franchise Investment Law, or any other California law providing specific protection to Franchisees residing in the State of California, shall not apply to any Regional Director that operates an RD Business in a RD Development Area outside the State of California. Regional Director and Franchisor have negotiated regarding a forum in which to resolve any disputes that may arise between them and have agreed to select a forum in order to promote stability in their relationship. Therefore, if a claim is asserted in any legal proceeding involving Regional Director or any Bound Party and Franchisor, the parties agree that the exclusive venue for disputes between them shall be in the District Court for the City of Ladera Ranch, California, or the United States District Court for the Central District of California, and the parties each waive any objection they may have to the personal jurisdiction of or venue in such courts.

18.2. Waiver of Jury Trial. Franchisor, Regional Director and the Bound Parties each waive their right to a trial by jury. Regional Director, the Bound Parties, and Franchisor acknowledge that the parties' waiver of jury trial rights provides the parties with the mutual benefit of uniform interpretation of this Agreement and any dispute arising out of this Agreement or out of the parties' relationship created by this Agreement. Regional Director, the Bound Parties and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit.

18.3. Limitation of Claims. Regional Director and the Bound Parties agree not to bring any claim asserting that any of the Marks are generic or otherwise invalid. Any claims between the parties must be commenced within one (1) year from the occurrence of the facts giving rise to such claim, or such claim shall be barred. The parties understand that such time limit may be shorter than otherwise allowed by law. Regional Director and the Bound Parties agree that their sole recourse for claims arising between the parties shall be against Franchisor or its successors and assigns. Regional Director and the Bound Parties agree that the shareholders, directors, officers, employees and agents of Franchisor and its affiliates (other than Regional Director) shall not be personally liable nor named as a party in any action between Franchisor and Regional Director or any Bound Party. The parties further agree that, in connection with any such proceeding, each must submit or file any claim that would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedure) within the same proceeding as the claim in which it relates. Any such claim, which is not submitted or filed as described above, will be forever barred. The parties agree that any proceeding will be conducted on an individual, not a class-wide basis, and that a proceeding between Franchisor and Regional Director or the Bound Parties may not be consolidated with any other proceeding between Franchisor and any other

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person or entity. No party will be entitled to an award of punitive or exemplary damages (provided that this limitation shall not apply to statutory penalties such as those set forth in 15 U.S.C. § 1117 (a)). No previous course of dealing shall be admissible to explain, modify, or contradict the terms of this Agreement. No implied covenant of good faith and fair dealing shall be used to alter the express terms of this Agreement.

19. MISCELLANEOUS PROVISIONS

19.1. Invalidity. If any provision of this Agreement is held invalid by any tribunal in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision shall be deemed part of this Agreement as though originally included. The remaining provisions of this Agreement shall not be affected by such modifications.

19.2. Modification. No amendment, waiver or modification of this Agreement shall be effective unless it is in writing and signed by the party or parties against whom such amendment or waiver is to be enforced. Regional Director acknowledges that Franchisor may modify its standards and specifications and operating and marketing techniques set forth in the RD Manual unilaterally under any conditions and to the extent in which Franchisor deems necessary to protect, promote, or improve the Marks and the quality of the System.

19.3. Attorneys' Fees. In the event of any dispute between the parties to this Agreement, including any dispute involving an officer, director, employee or managing agent of a party to this Agreement, in addition to all other remedies, the non-prevailing party will pay the prevailing party all amounts due and all damages, costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in any legal action or other proceeding as a result of such dispute, plus interest at the lesser of two percent (2%) per month or the highest rate allowable by law, accruing from the first date such dispute was submitted to any dispute resolution process including mediation, arbitration or litigation.

19.4. Injunctive Relief. Nothing herein shall prevent Franchisor or Regional Director from seeking injunctive relief in appropriate cases to prevent irreparable harm.

19.5. No Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by Regional Director or Franchisor shall be considered to imply or constitute a further waiver by Franchisor or Regional Director of the same or any other condition, covenant, right, or remedy.

19.6. Review of Agreement. Regional Director acknowledges that it had a copy of this Agreement in its possession for a sufficient period of time to thoroughly examine its provisions and understand its obligations, during which time Regional Director has had the opportunity to submit the same for review and advice by a professional, such as an attorney or an accountant, of Regional Director's choosing prior to freely executing this Agreement.

19.7. Entire Agreement. This Agreement (which includes the Attachments expressly incorporated) contains the entire agreement between the parties and supersedes any and all prior agreements concerning the subject matter covered by this Agreement. Regional Director agrees and understands that Franchisor shall not be liable or obligated for any oral representations or

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commitments made prior to the execution hereof or for claims of negligent or fraudulent misrepresentation and that no modifications of this Agreement shall be effective except those in writing and signed by both parties. Franchisor does not authorize and will not be bound by any representation of any nature other than those expressed in this Agreement; provided, however, nothing in this Section 19.7 shall be construed to disclaim the representations made by Franchisor in Franchisor's disclosure document provided to Regional Director in connection with this Agreement. Regional Director further acknowledges and agrees that no representations have been made to it by Franchisor regarding projected sales volumes, market potential, revenues, profits of the RD Business, or operational assistance other than as stated in this Agreement or in any disclosure document provided in connection with this Agreement. Regional Director acknowledges and agrees that any delegation of Franchisor's duties and obligations to Regional Director does not assign or confer any right under any Franchise Agreement (unless entered into between Regional Director and Franchisor) upon Regional Director, and Regional Director is not a third party beneficiary of any Franchise Agreement between Franchisor and a Franchisee who is not also Regional Director. Any policies that Franchisor adopts and implements from time to time are subject to change, are not a part of this Agreement, and are not binding on Franchisor.

19.8. Notices. Whenever this Agreement requires notice, it shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the other party at the addresses set forth below, unless written notice is given of a change of address.

All notices to Franchisee shall be conclusively deemed to have been received by Franchisee upon the delivery or attempted delivery of such notice to Franchisee's address listed herein, or such changed address.

Notices to Franchisor:	Big Air Franchising, LLC 999 Corporate Drive #215 Ladera Ranch, CA 92694 Attn: President
With a Copy to: (which shall not constitute notice)	Kevin P. Hein, Esq. Alexius LLC 1509 York Street, Suite 300 Denver, CO 80206
Notices to Franchisee:	BA Holdings INC PO Box 171592 Spartanburg, SC 29301

19.9. ACKNOWLEDGEMENT. BEFORE SIGNING THIS AGREEMENT, REGIONAL DIRECTOR SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. REGIONAL DIRECTOR ACKNOWLEDGES THAT:

(a) THE SUCCESS OF THE RD BUSINESS VENTURE INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON REGIONAL DIRECTOR'S ABILITY AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE RD BUSINESS, AND

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IN WITNESS WHEREOF, the parties hereto have executed, sealed and delivered this Agreement in counterparts on the date first mentioned above.

FRANCHISOR:

BIG AIR FRANCHISING, LLC, a California limited liability company

By: _____

Kevin Oddkirk

[Printed name]

Title: _____

Date: _____

REGIONAL DIRECTOR:

BA Holdings Inc.

[Printed name]

By: _____

Dustin Pelletier

[Printed name]

Title: Member

Date: 4/1/15

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ATTACHMENT I

RIDER TO
REGIONAL DIRECTOR AGREEMENT
BETWEEN BIG AIR FRANCHISING, LLC
AND
BA HOLDINGS, INC.

DATED APRIL 1, 2018

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ATTACHMENT I
RIDER
TO REGIONAL DIRECTOR AGREEMENT
BETWEEN BIG AIR FRANCHISING, LLC AND
BA Holdings Inc

Dated APRIL 1, 2018

1. ***RD Development Area.*** The RD Development Area referred to in Section 1.14 of the Agreement shall be the following geographic area:

South Carolina
31326, 31312, 31407, 31302, 31322, 31408, 31405, 31419, 31406, 31324, 31421, 31401, 31415, 31409, 31404, 31410, 31411, 31328, 31809, 30907,30813, 30909, 30904, 30901, 30905, 30906, 30815, 30802, 30814, 30808, 30805

(a) Total Population: 5,709,438.

(b) Initial Regional Director Fee: $250,000.00. (See Attachment I-A for calculation).

(c) Monthly Advertising Requirement: $1,140.00

2. ***Development Quotas.*** Regional Director shall satisfy the following cumulative Development Quotas by the last day of each Sales Quarter during the Initial Term of this Agreement:

Year	Sales Quarter	Date Sales Quarter Ends	Big Air Trampoline Businesses Sold in the RD Development Area	Big Air Trampoline Businesses Open and Operating in the RD Development Area
2018	First	0	0	0
	Second	0	0	0
	Third	0	0	0
	Fourth	1	1	0
2019	First	1	1	0
	Second	1	1	0
	Third	1	1	0
	Fourth	2	2	1
2020	First	2	2	1
	Second	2	2	1
	Third	3	3	1
	Fourth	3	3	2
2021	First	3	3	2
	Second	3	3	2
	Third	3	3	2

Year	Sales Quarter	Date Sales Quarter Ends	Big Air Trampoline Businesses Sold in the RD Development Area	Big Air Trampoline Businesses Open and Operating in the RD Development Area
	Fourth	4	4	3
2022	First	4	4	3
	Second	4	4	3
	Third	4	4	3
	Fourth	5	5	4
2023	First	5	5	4
	Second	5	5	4
	Third	5	5	4
	Fourth	6	6	5
2024	First	6	6	5
	Second	6	6	5
	Third	6	6	5
	Fourth	6	6	6

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The first Sales Quarter commences on the first day of the Sales Quarter for which minimums have been indicated above.

FRANCHISOR:

BIG AIR FRANCHISING, LLC, a California limited liability company

By: _____

Kevin Odekirk
[printed name]

Title: _____

Date: _____

REGIONAL DIRECTOR:

BA Holdings Inc.
[printed name]

By: _____

Dustin Pelletier
[printed name]

Title: Member

Date: 4/1/18

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ATTACHMENT II

TO
REGIONAL DIRECTOR AGREEMENT

STATEMENT OF OWNERSHIP

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ATTACHMENT II
TO REGIONAL DIRECTOR AGREEMENT

STATEMENT OF OWNERSHIP

Regional Director: BA Holdings, Inc.

Trade Name (if different from above):

_____

Form of Ownership
(Check One)

___ Individual ___ Partnership X Corporation ___ Limited Liability Co. ___ Other (explain)

_____

_____

If a Partnership, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.

If a Corporation, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

If a Limited Liability Company, give the state and date of formation, the name and address of the manager, list the names and addresses of every member and the percentage of membership interest held by each member.

BA Holdings Inc., SC — Dustin Pelletier 100%

PO Box 11512
Spartanburg, SC 29304

Regional Director acknowledges that this Statement of Ownership applies to the RD Business authorized under the Regional Director Agreement. Use additional sheets if necessary. Any and all changes to the above information must be reported to Franchisor in writing.

4/1/18
Date

Name

ATTACHMENT III

TO
REGIONAL DIRECTOR AGREEMENT

GUARANTY AND ASSUMPTION OF REGIONAL DIRECTOR'S OBLIGATIONS

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ATTACHMENT III
TO REGIONAL DIRECTOR AGREEMENT

GUARANTY AND ASSUMPTION OF REGIONAL DIRECTOR'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the above Regional Director Agreement ("**Agreement**") by **Big Air Franchising, LLC** a California limited liability company ("**Franchisor**"), each of the undersigned ("**Guarantors**") personally and unconditionally (1) guarantees to Franchisor and its affiliates and their successors and assigns, for the Initial Term of the Agreement and thereafter as provided in the Agreement, that Regional Director, as defined in the Agreement ("**Regional Director**"), shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and (2) agrees personally to be bound by, and to be personally liable for the breach of, each and every provision in the Agreement.

1. **Waiver**. Each of the undersigned waives:

(a) Acceptance and notice of acceptance by Franchisor and its affiliates of the foregoing undertakings;

(b) Notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed;

(c) Protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed;

(d) Any right he or she may have to require that an action be brought against Regional Director or any other person as a condition of liability; and

2. **Consents**. Each of the undersigned consents and agrees that:

(a) His or her direct and immediate liability under this guaranty shall be joint and several;

(b) He or she shall render any payment or performance required under the Agreement upon demand if Regional Director fails or refuses punctually to do so;

(c) Such liability shall not be contingent or conditioned upon pursuit by Franchisor or its affiliates of any remedies against Regional Director or any other person;

(d) Such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor or its affiliates may from time to time grant to Regional Director 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 Initial Term of the Agreement and any Interim Period; and

(e) He or she shall be bound by the restrictive covenants and confidentiality provisions contained in Sections 10 and 11 and Sections 16.4 and 16.5 of the Agreement, and the indemnification provisions contained in Section 17.4 of the Agreement; and

(f) The provisions contained in Section 18 and the costs and attorney's fees provision contained in Section 19.3 of the Agreement shall govern this Guaranty and such provisions are incorporated into this Guaranty by this reference.

IN WITNESS WHEREOF, each of the undersigned has affixed his or her signature, effective as of the _____ day of _____ 20____.

Percentage of Ownership Interest in Regional Director	**GUARANTOR(S)**
100%	Dustin Pelletier [Print Name] [Signature] 11 Ridgewood Dr Greenville SC 29615 [Address] 864-414-6300 [Telephone Number]
	[Print Name] [Signature] [Address] [Telephone Number]

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Percentage of Ownership Interest in Regional Director	GUARANTOR(S)
_____	_____ [Print Name] _____ [Signature] _____ _____ _____ [Address] _____ [Telephone Number]
_____	_____ [Print Name] _____ [Signature] _____ _____ _____ [Address] _____ [Telephone Number]
_____	_____ [Print Name] _____ [Signature] _____ _____ _____ [Address] _____ [Telephone Number]

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ATTACHMENT IV

TO
REGIONAL DIRECTOR AGREEMENT

COLLATERAL ASSIGNMENT OF TELEPHONE NUMBERS, TELEPHONE LISTINGS, AND INTERNET ADDRESSES

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ATTACHMENT IV
TO BIG AIR FRANCHISING, LLC
REGIONAL DIRECTOR AGREEMENT

COLLATERAL ASSIGNMENT OF TELEPHONE NUMBERS, TELEPHONE LISTINGS, AND INTERNET ADDRESSES

This Assignment is entered into this 1st day of April, 2018, in accordance with the terms of that certain Big Air Regional Director Agreement ("**Regional Director Agreement**") between BA Holdings, INC. ("**Regional Director**") and Big Air Franchising, LLC, a California limited liability company ("**Franchisor**"), executed concurrently with this Assignment, under which Franchisor granted Regional Director the right to own and operate as a Big Air Regional Director located in See Attachment I ("**RD Development Area**").

FOR VALUE RECEIVED, Regional Director hereby assigns to Franchisor (1) those certain telephone numbers and regular, classified or other telephone directory listings (collectively, the "**Addresses, Numbers and Listings**") and (2) those certain Internet Web site addresses ("**URLs**") associated with Franchisor's trade and service marks and used from time to time in connection with the operation of RD Business at the address provided above. This Assignment is for collateral purposes only and, except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment, unless Franchisor shall notify the telephone company and the listing agencies with which Regional Director has placed telephone directory listings (all such entities are collectively referred to herein as "**Telephone Company**") and Regional Director's Internet service provider ("**ISP**") to effectuate the assignment pursuant to the terms hereof.

Upon termination or expiration of the Regional Director Agreement (without the extension of Regional Director's rights to operate the RD Business), Franchisor shall have the right and is hereby empowered to effectuate the assignment of the Addresses, Numbers and Listings and the URLs, and, in such event, Regional Director shall have no further right, title or interest in the Addresses, Numbers and Listings and the URLs, and shall remain liable to the Telephone Company and the ISP for all past due fees owing to the Telephone Company and the ISP on or before the effective date of the assignment hereunder.

Regional Director agrees and acknowledges that as between Franchisor and Regional Director, upon termination or expiration of the Regional Director Agreement, Franchisor shall have the sole right to and interest in the Addresses, Numbers and Listings and the URLs, and Regional Director appoints Franchisor as Regional Director's true and lawful attorney-in-fact to direct the Telephone Company and the ISP to assign the same to Franchisor, and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Regional Director shall immediately notify the Telephone Company and the ISP to assign the Addresses, Numbers and Listings and the URLs to Franchisor. If Regional Director fails to promptly direct the Telephone Company and the ISP to assign the Addresses, Numbers and Listings and the URLs to Franchisor, Franchisor shall direct the Telephone Company and the ISP to effectuate the assignment contemplated hereunder to Franchisor. The parties agree that the

Telephone Company and the ISP may accept Franchisor's written direction, the Regional Director Agreement or this Assignment as conclusive proof of Franchisor's exclusive rights in and to the Addresses, Numbers and Listings and the URLs upon such termination or expiration and that such assignment shall be made automatically and effective immediately upon Telephone Company's and ISP's receipt of such notice from Franchisor or Regional Director. The parties further agree that if the Telephone Company or the ISP requires that the parties execute the Telephone Company's or the ISP's assignment forms or other documentation at the time of termination or expiration of the Regional Director Agreement, Franchisor's execution of such forms or documentation on behalf of Regional Director shall effectuate Regional Director's consent and agreement to the assignment. The parties agree that at any time after the date hereof they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration of the Regional Director Agreement.

ASSIGNEE:

BIG AIR FRANCHISING, LLC, a California limited liability company

By: _____

Kevin Odekirk
[Printed Name]

Its: President

ASSIGNOR:

REGIONAL DIRECTOR

BG Holdings Inc

By: _____

Dustin Pelletier
[Printed Name]

Its: Member

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ATTACHMENT V

TO
REGIONAL DIRECTOR AGREEMENT

NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

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ATTACHMENT V
REGIONAL DIRECTOR AGREEMENT

NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

This Non-Disclosure and Non-Competition Agreement ("**Agreement**") is made and entered into the 1st day of April, 2018 by and between **Big Air Franchising, LLC**, a California limited liability company ("**Company**"), and BA Holdings, INC ("**Regional Director Affiliate**"), an individual residing at P.O. Box 171592, Spartanburg SC 29301.

RECITALS

A. The Company has developed a system for the operation of a business offering an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related products ("**Franchise Business**"). The Franchise Business and the Regional Director Business (as defined below) are operated under the Company's trademark "BIG AIR TRAMPOLINE PARK and LOGO™" and other service marks, trademarks, logo types, architectural designs, trade dress and other commercial symbols (collectively "**Marks**");

B. The Company has developed methods for establishing, operating and promoting Regional Director Businesses pursuant to the Company's distinctive business format, plans, methods, data, processes, supply systems, marketing systems, formulas, techniques, designs, layouts, operating procedures, Marks and information and know-how of the Company ("**Confidential Information**") and such Confidential Information as may be further developed from time to time by the Company;

C. The Company and its affiliates have established substantial goodwill and an excellent reputation with respect to the quality of the Franchise Business facilities and other products and services available, which goodwill and reputation have been and will continue to be of major benefit to the Company;

D. Regional Director Affiliate desires to become involved with the Company in the capacity of an officer, partner, director, agent, employee, Regional Operating Manager, or as a beneficial owner of the BA Holdings, INC ("**Regional Director**"), or is an immediate family member of a principal owning Regional Director, and will become privileged as to certain Confidential Information, and Regional Director Affiliate may or may not have signed the Regional Director Agreement or the Guaranty and Assumption of Regional Director's Obligations Agreement; and

E. Regional Director Affiliate and the Company have reached an understanding with regard to non-disclosure by Regional Director Affiliate of Confidential Information and with respect to non-competition by Regional Director Affiliate with the Company and other franchisees of the Company. Regional Director Affiliate agrees to the terms of this Agreement as partial consideration for the Company's willingness to allow Regional Director Affiliate to engage in a business relationship with Company or a franchisee of the Company or a regional director of the Company using the Company's Confidential Information.

NOW THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Regional Director Affiliate and the Company, intending legally to be bound, agree as follows:

1. Confidential Information. Regional Director Affiliate and the Company acknowledge that the Confidential Information which is developed and utilized in connection with the operation of Regional Director is unique, exclusive property and a trade secret of the Company. Regional Director Affiliate acknowledges that any unauthorized disclosure or use of the Confidential Information would be wrongful and would cause irreparable injury and harm to the Company. Regional Director Affiliate further acknowledges that the Company has expended a great amount of effort and money in obtaining and developing the Confidential Information, that the Company has taken numerous precautions to guard the secrecy of the Confidential Information, and that it would be very costly for competitors to acquire or duplicate the Confidential Information.

2. Customer Lists and Operations Manuals as Trade Secrets. Regional Director Affiliate acknowledges and agrees that the Confidential Information, including "**Trade Secrets**", as used in this Agreement, also includes, without limitation, formulas, lists of customers, supplier information and any and all information contained in the Company's RD Manual and Franchise Operations Manual, which may be provided as one or more separate manuals, written instructional guides, CD Rom, or other communications from the Company, which may be changed or supplemented from time to time, and any information of whatever nature that gives the Company and its affiliates an opportunity to obtain an advantage over its competitors that do not have access to, know or use such lists, written materials, formulas or information.

3. Non-Disclosure of Confidential Information. Regional Director Affiliate shall not at any time, publish, disclose, divulge or in any manner communicate to any person, firm, corporation, association, partnership or any other entity whatsoever or use, directly or indirectly, for its own benefit or for the benefit of any person, firm, corporation or other entity other than for the use of the Company, the Regional Director Business, or the Franchise Business, any of the Confidential Information of the Company or its affiliates.

4. Non-Competition Covenant. Regional Director acknowledges that, in addition to the license of the Marks hereunder, Franchisor has also licensed commercially valuable information which comprises and is a part of the System, including without limitation, proprietary processes, operations, marketing and related information and materials and that the value of this information derives not only from the time, effort and money which went into its compilation, but from the usage of the same by all regional directors and franchisees of the Company using the Marks and System. Regional Director Affiliate therefore agrees that other than the Regional Director Business licensed under a Regional Director Agreement, neither Regional Director nor any member of Regional Director Affiliate's immediate families, will during the Initial Term of this Agreement or any Interim Period:

(a) have any direct or indirect controlling interest as a disclosed or beneficial owner in a Competitive Business, as defined in the Regional Director Agreement;

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(b) perform services as a director, partner, officer, manager, employee, consultant, representative, agent or otherwise for a Competitive Business; or

(c) divert or attempt to divert any business related to, or any customer or account of the Regional Director Business, the Company's business, the business of any affiliate of the Company or any franchisee's business, by direct inducement or otherwise, or divert or attempt to divert the employment of any employee of Company or another regional director or franchisee licensed by Company, to any Competitive Business by any direct inducement or otherwise.

(d) without the Company's express written permission, which may be granted or denied in the Company's sole discretion, become an exclusive distribution for any third-party vendor or obtain exclusive distribution rights for any non-Products.

5. Post-Termination Covenant Not to Compete. Upon termination or expiration of this Agreement for any reason, Regional Director Affiliate agrees that, for a period of 2 years commencing on the effective date of termination or expiration, or the date on which Regional Director Affiliate ceases to conduct business with Regional Director, whichever is later, Regional Director Affiliate will not have any direct or indirect interest (through any immediate family member of Regional Director Affiliate or its owners or otherwise) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent or in any other capacity in any Competitive Business, located or operating within a 50-mile radius of Regional Director's Development Area, except to the extent Regional Director Affiliate continues to operate one or more Big Air Trampoline Businesses pursuant to one or more separate Franchise Agreements for so long as that Franchise Agreement or those franchise agreements remain in place. The restrictions of this Section will not be applicable to the ownership of shares of a class of securities listed on a stock exchange or traded on the over-the-counter market that represent 5% or less of the number of shares of that class of securities issued and outstanding. Regional Director Affiliate expressly acknowledges that he or she possess skills and abilities of a general nature and have other opportunities for exploiting such skills. Consequently, enforcement of the covenants made in this Section will not deprive him or her of his or her personal goodwill or ability to earn a living.

6. Injunction. Regional Director Affiliate hereby acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, the Company shall be authorized and entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief in addition to any other rights or remedies to which the Company may be entitled. Regional Director Affiliate agrees that the Company may obtain such injunctive relief, without posting a bond or bonds totaling $500 or more, but upon due notice, and Regional Director Affiliate's sole remedy in the event of the entry of such injunctive relief shall be dissolution of such injunctive relief, if warranted, upon a hearing duly had; provided, however, that all claims for damages by reason of the wrongful issuance of any such injunction are hereby expressly waived by Regional Director Affiliate.

7. Reasonableness of Restrictions. Regional Director Affiliate acknowledges and agrees that the restrictions set forth in this Agreement are reasonable and necessary for the protection of the Confidential Information and that any violation of this Agreement would cause

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substantial and irreparable injury to Company, and that Company would not have entered into a business relationship with Regional Director Affiliate or this Agreement without receiving Regional Director Affiliate's unrestricted promise to preserve the confidentiality of the Confidential Information. In any litigation concerning the entry of any requested injunction against Regional Director Affiliate, Regional Director Affiliate, for value, voluntarily waives such defenses as Regional Director Affiliate might otherwise have under the law of the jurisdiction in which the matter is being litigated relating to any claimed "prior breach" on the part of the Company; it being specifically understood and agreed between the parties that no action or lack of action on the part of the Company will entitle or permit the Regional Director Affiliate to disclose any such Confidential Information in any circumstances.

8. Effect of Waiver. The waiver by Regional Director Affiliate or the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Regional Director Affiliate and the Company and their respective heirs, executors, representatives, successors and assigns.

10. Entire Agreement. This instrument contains the entire agreement of Regional Director Affiliate and the Company relating to the matters set forth herein. It may not be changed verbally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

11. Governing Law. This instrument shall be governed by and construed under the laws of the state of California.

12. Jurisdiction and Venue. In the event of a breach or threatened breach by Regional Director Affiliate of this Agreement, Regional Director Affiliate hereby irrevocably submits to the jurisdiction of the state and federal courts of California, and irrevocably agrees that venue for any action or proceeding shall be in the state and federal courts of California. Both parties waive any objection to the jurisdiction of these courts or to venue in the state and federal courts of California. Notwithstanding the foregoing, in the event that the laws of the state where the Regional Director Affiliate resides prohibit the aforesaid designation of jurisdiction and venue, then such other state's laws shall control.

13. Severability. If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason, by any court of competent jurisdiction, government authority or otherwise, such holding, declaration or pronouncement shall not affect adversely any other provisions of this Agreement which shall otherwise remain in full force and effect.

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

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in any such action or proceeding, such costs, expenses and attorneys' fees shall be included as part of such judgment.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

COMPANY:

BIG AIR FRANCHISING, LLC,
a California limited liability company

By: _____

Title: President

Date: 6/21/18

REGIONAL DIRECTOR AFFILIATE:

By: _____

Dustin Pelletier
[Printed Name]

Date: 4/1/18

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EXHIBIT 3

BIG AIR FRANCHISING, LLC

EXHIBIT B

FRANCHISE AGREEMENT

Franchise #: 1703

Franchisee: BA Greenville, LLC

Date: October 7, 2017

Territory: 29658, 29693, 29691, 29686, 29675, 29696, 29643, 29676, 29679, 29672, 29678, 29665, 29689, 29685, 29633, 29632, 29682, 29631, 29634, 29630, 29656, 29667, 29625, 29626, 29677, 29684, 29670, 29671, 29657, 29622, 29623, 29659, 29655, 29635, 29624, 29628, 29621, 29641, 29640, 29642, 29697, 29661, 29683, 29673, 29617, 29627, 29611, 29613, 29669, 29620, 29639, 29690, 29614, 29654, 29692, 29370, 29601, 29638 ,29644, 29384, 29616, 29607, 29351, 29602, 29687, 29647, 29360, 29603, 29662, 29648, 29325, 29604, 29680, 29606, 29615, 29646, 29608, 29650, 29610, 29612, 29695, 29645, 29609, 29651, 29605, 29652, 29332, 29688, 29653, 29636, 29681, 29649

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ATTACHMENTS:

A. Territory, Initial Franchise Fee, and Training Fee
B. Guaranty and Assumption of Franchisee's Obligations
C. Statement of Ownership
D. EFT Authorization
E. Collateral Assignment of Telephone Numbers, Telephone Listings and Internet Addresses

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made this 7th day of October, 2017 day of, by and between **BIG AIR FRANCHISING, LLC**, a California limited liability company, located at 999 Corporate Drive #215, Ladera Ranch, California 92694 ("**Franchisor**") and **BA Greenville, LLC** located at 11 Ridgewood Drive, Greenville, SC 29615 ("**Franchisee**").

RECITALS

WHEREAS, Franchisor has developed a comprehensive system for the operation of a business offering an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related Products ("**Big Air Trampoline Business**").

WHEREAS, the Big Air Trampoline Businesses are operated under a business format per a unique system with high standards of service, including valuable know-how, information, Trade Secrets, Confidential Information, training methods, standards, designs, methods of trademark usage, copyrights, sources and specifications, confidential electronic and other communications, methods of Internet usage, and research and development ("**System**").

WHEREAS, the distinguishing characteristics of the System include the trademark "BIG AIR TRAMPOLINE PARK and LOGO™" and other trademarks and trade names, confidential operating procedures, confidential Operations Manual, standards and specifications for equipment, services and products, methods of service, management and marketing programs and sales techniques and strategies. All of these distinguishing characteristics may be changed, improved, and further developed by Franchisor from time to time. They are Franchisor's Confidential Information and Trade Secrets and are designated by and identified with the Marks described in this Agreement.

WHEREAS, Franchisor continues to use, develop and control the use of the Marks in order to identify for the public the source of services and products marketed under the System, and which represent the System's high standards of quality, service and customer satisfaction.

WHEREAS, Franchisee acknowledges the benefits to be derived from being identified with the System, and also recognizes the value of the Marks and the continued uniformity of image to Franchisee, Franchisor, and other franchisees of Franchisor.

WHEREAS, Franchisee acknowledges the importance to the System of Franchisor's high and uniform standards of quality, service and customer satisfaction, and further recognizes the necessity of opening and operating a Big Air Trampoline Business in conformity with the System.

WHEREAS, Franchisee recognizes that in order to enhance the value of the System and goodwill associated with it, this Agreement places detailed obligations on Franchisee, including strict adherence to Franchisor's reasonable present and future requirements regarding the types of products sold, services offered, advertising used, operational techniques, marketing and sales strategies and related matters.

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WHEREAS, Franchisee is aware of the foregoing and is desirous of obtaining the right to use the System and in association therewith, the right to use the Marks, and wishes to be assisted, trained, and franchised to operate a Big Air Trampoline Business pursuant to the provisions and within the Territory specified in this Agreement, subject to the terms and conditions contained in this Agreement.

The parties therefore agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

(a) "**Agreement**" - means this agreement, attachments, and all instruments in amendment hereof.

(b) "**Affiliate**" - means any person or entity that controls, is controlled by, or is in common control with, Franchisor or Franchisee.

(c) "**Big Air Trampoline Business**" - means the business operations conducted or to be conducted by Franchisee consisting of selling and providing an indoor trampoline recreation and party center featuring trampolines, foam pits, rock climbing walls and other elements and the sale of related Products using Franchisor's System and in association with the Marks.

(d) "**Big Air Trampoline Facility**" means the retail store front, commercial or industrial facility, or other approved location from which Franchisee sells Products and provides Services in connection with the Big Air Trampoline Business.

(e) "**Confidential Information**" - means all knowledge, know-how, standards, methods and procedures related to the establishment and operation of the System and includes all records pertaining to customers, suppliers, and other service providers of, and/or related in any way to, Franchisee's Big Air Trampoline Business including, without limitation, all databases (whether in print, electronic or other form), all names, addresses, phone numbers, e-mail addresses, customer purchase records, manuals, promotional and marketing materials, marketing strategies and any other data which Franchisor designates as confidential.

(f) "**Construction Oversight Services**" – means all services provided by Franchisor relating to the review and approval of construction plans for the Big Air Trampoline Facility and prior to the date Franchisee is authorized to open the Big Air Trampoline Facility for business. The Construction Oversight Services are more fully defined in the Operations Manual and may be modified periodically by Franchisor in Franchisor's sole discretion.

(g) "**Convention Fee**" means the fee Franchisee pays Franchisor to attend conferences, meetings, seminars and/or workshops.

(h) "**Franchisor's System**" or "**System**" - means the standards, systems, concepts, identifications, methods, and procedures developed or used by Franchisor, or which may hereafter be developed or used by Franchisor, for the sales and marketing of Franchisor's Services and Products.

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(i) "**Franchise**" - shall mean the business operations conducted or to be conducted using Franchisor's System and in association therewith the Marks.

(j) "**Gross Revenues**" - means the total of all receipts derived from all sales of products and services at your Big Air Trampoline Business, including sales made away from your Big Air Trampoline Facility, insurance claims for lost profits to the extent a claim is paid by the insurer, and all other products and services sold or performed by or for you or your Big Air Trampoline Business or by means of the business conducted under this Agreement, whether the receipts are evidenced by cash, credit, checks, gift certificates, scrip, coupons, services, property or other means of exchange. Gross Revenues do not include:

(i) the amount of any tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount of any such tax is shown separately and in fact paid by Franchisee to the appropriate governmental authority; and

(ii) all customer refunds, valid discounts and coupons, and credits made by the Big Air Trampoline Business (exclusions will not include any reductions for credit card user fees, returned checks or reserves for bad credit or doubtful accounts).

Gross Revenues shall be deemed received by Franchisee at the time the Services or Products from which they were derived are delivered or rendered or at the time the relevant sale takes place, whichever occurs first, regardless of whether final payment (e.g., collection on a customer's personal check) actually has been received by Franchisee. Gross Revenues consisting of property, Products or Services shall be valued at the retail prices applicable and in effect at the time that they are received.

(k) "**Lease**" - means any agreement (whether oral or written) under which the right to occupy a Big Air Trampoline Facility has been obtained, and any amendment made thereto from time to time, including without limitation, any offer to lease, license or lease agreement. Franchisee acknowledges and agrees that before any Lease will be accepted by Franchisor, the Lease must incorporate the terms of the Lease Addendum attached to this Agreement as **Attachment F**.

(l) "**Marks**" - shall mean the trademarks "BIG AIR TRAMPOLINE PARK and LOGO™" to the extent of Franchisor's rights to same, together with such other trade names, trademarks, symbols, logos, distinctive names, service marks, certification marks, logo designs, insignia or otherwise which may be designated by Franchisor from time to time as part of the System for use by Franchisees, and not thereafter withdrawn.

(m) "**Operations Manual**" - means, but is not limited to, collectively, all directives, books, pamphlets, bulletins, memoranda, order forms, packing slips, invoices, letters, e-mail, Internet or intranet data, or other publications, documents, software programs, video tapes, transmittances or communications, in whatever form (including electronic form) prepared by or on behalf of Franchisor for use by franchisees generally or for Franchisee in particular, setting forth information, advice and standards, requirements, marketing information and procedures,

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operating procedures, instructions or policies relating to the operation of the Big Air Trampoline Business or the operation of franchises, as same may be added to, deleted or otherwise amended by Franchisor from time to time. The form and content of the Operations Manual maintained by Franchisor shall prevail in the event of any dispute regarding the form of or content of the Operations Manual between Franchisor and Franchisee.

(n) "**Products**" - means all supplies, material, equipment, and ancillary items sold, leased, prepared or otherwise dealt with in connection with the Big Air Trampoline Business and associated with the Marks.

(o) "**Site Selection Assistance**" – means all services provided by Franchisor relating to the selection and authorization of Franchisee's Big Air Trampoline Facility. Franchisor's Site Selection Assistance is more fully defined in the Operations Manual, and Franchisor has the right to modify the site selection services offered by Franchisor periodically in Franchisor's discretion.

(p) "**Services**" - means the sale and provision of indoor trampoline recreation and party center services featuring trampolines, foam pits, rock climbing walls and other elements, conducted or otherwise dealt with in connection with the Big Air Trampoline Business and associated with the Marks.

(q) "**Trade Secret(s)**" shall mean information, including any formula, pattern, compilation, program, device, method, training technique or process related to the System that both derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1. COVENANTS, REPRESENTATIONS, AND WARRANTIES OF FRANCHISEE

Franchisee covenants, represents and warrants as follows and acknowledges that Franchisor is relying upon such covenants, representations and warranties in making its decision to enter into this Agreement.

1.1 Franchisee acknowledges that it has received, has had ample time to read, and has read this Agreement, and all related agreements with Franchisor. Franchisee acknowledges that Franchisor has advised it to obtain independent legal and accounting advice with respect to this Agreement and the transactions arising out of this Agreement. Franchisee further acknowledges that it has had an adequate opportunity to be advised by legal, accounting and other professional advisors of its own choosing regarding all pertinent aspects of the Big Air Trampoline Business, Franchisor and this Agreement.

1.2 Franchisee has, or has made firm arrangements to acquire funds to commence, open and operate the Big Air Trampoline Business and it is financially and otherwise able to accept the risks attendant upon entering into this Agreement.

1.3 All statements made by Franchisee in writing in connection with its application for this franchise were, to the best of its knowledge, true when made and continue to be true as of the date of this Agreement.

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1.4 There are no material financial obligations of Franchisee, whether actual or contingent, which are outstanding as of the date of this Agreement other than those disclosed to Franchisor by Franchisee in writing.

1.5 Franchisee is not a party to nor subject to any court or administrative order or action of any governmental authority which would limit or interfere in any way with the performance by Franchisee of its obligation hereunder.

1.6 Franchisee is not a party to any litigation or legal proceedings other than those which have been disclosed to Franchisor by Franchisee in writing.

1.7 Franchisee represents that it is not a party to nor subject to agreements that might conflict with the terms of this Agreement and agrees not to enter into any conflicting agreements during the Term or any Successor Terms.

1.8 Franchisee agrees and acknowledges that it has not been induced to enter into this Agreement in reliance upon, nor as a result of, any statements, representations, warranties, conditions, covenants, promises or inducements, whatsoever, whether oral or written, and whether directly related to the contents hereof or collateral thereto, made by Franchisor, its officers, directors, agents, employees or contractors except as provided herein. Franchisee acknowledges that the Franchise has been granted in reliance upon the information supplied to Franchisor in Franchisee's application for a Franchise.

1.9 Franchisee and its owners agree to comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its owners certify, represent, and warrant that none of their property or interests is subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and its owners are not otherwise in violation of any of the Anti-Terrorism Laws.

(a) Franchisee and its owners certify that none of them, their respective employees, or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (which can be accessed at *http://www.treasury.gov/offices/enforcement/ofac/legal/eo/13224.pdf*). Franchisee agrees not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex.

(b) Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee, its owners, their employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.

(c) Franchisee is solely responsible for ascertaining what actions it must take to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that its indemnification responsibilities set forth in this Agreement pertain to its obligations under this Section 1.9.

(d) Any misrepresentation under this Section or any violation of the Anti-Terrorism Laws by Franchisee, its owners, agents, its employees shall constitute

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grounds for immediate termination of this Agreement and any other agreement Franchisee has entered with Franchisor or any of Franchisor's affiliates.

(e) "**Anti-Terrorism Laws**" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control and any government agency outside the U.S.) addressing or in any way relating to terrorist acts and/or acts of war.

2. GRANT OF LICENSE.

2.1 Subject to all the terms and conditions of this Agreement, Franchisor hereby grants to Franchisee, and Franchisee accepts, for the term of this Agreement, the right and license ("**License**") to:

(a) Operate one Big Air Trampoline Business upon the terms and conditions of this Agreement in one territory described in **Attachment A** ("**Territory**");

(b) Use the Marks and the System; and

(c) Offer and market ONLY Franchisor's approved Services and Products, unless Franchisor approves in writing (such approval to be in Franchisor's sole and absolute discretion) Franchisee's request to offer and market complementary and non-competing services or products.

2.2 The License does not include the right to sell Products to any vendor who would in turn sell to consumers.

2.3 Franchisee recognizes that variations and additions to the System may be required from time to time in order to preserve and/or enhance the System. Therefore, Franchisor expressly reserves the right to add to, subtract from, revise, modify or change from time to time the System or any part thereof, and Franchisee agrees to promptly accept and comply with any such addition, subtraction, revision, modification or change and to make such reasonable expenditures as may be necessary to comply pursuant to Section 8.

2.4 Franchisee recognizes that the rights that are granted to Franchisee are for the specific Territory, defined in Section 4.1 below and no other, and cannot be transferred to an alternate Territory, without the prior written approval of Franchisor, which approval may be granted or withheld in Franchisor's sole discretion.

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3. TERM OF THE AGREEMENT AND LICENSE

3.1 This Agreement and the License granted shall become effective on the date this Agreement is executed by Franchisor and shall continue until midnight on the day before the tenth anniversary of the date the Big Air Trampoline Facility opened for business ("**Term**"), subject, however, to termination in accordance with the provisions of this Agreement. When the initial Term expires, Franchisee shall have the option at Franchisor's sole and absolute discretion to extend Franchisee's rights to operate the Big Air Trampoline Business for one additional term ("**Successor Term**") of 10 years. Franchisee must pay the Successor Franchise Fee set forth in Section 3.4(b) and otherwise comply with the requirements set forth in this Section 3.

3.2 Franchisor may refuse to renew this Agreement and License if Franchisee has:

(a) Failed to remedy any breach of this Agreement specified by Franchisor in a written notice to Franchisee as per Sections 17.1, 17.2 or 17.3; or

(b) Committed and received notice of two or more breaches of this Agreement in the 24 months prior to the end of the Term, even if such breaches were timely remedied; or

(c) Franchisee has failed to give Franchisor a written notice of intent to renew no less than six months or more than nine months prior to expiration of the Term; or

(d) Franchisee is not current in payment obligations to Franchisor or to Franchisee's Lessor, suppliers, or trade creditors.

3.3 If Franchisee opts to extend its rights to operate the Big Air Trampoline Business at the end of the Term, and Franchisor consents to such extension, Franchisee shall execute a new Franchise Agreement ("**Successor Franchise Agreement**") and all other agreements in the form then being used by Franchisor in granting new franchises. Franchisor reserves the right to change any term(s) of the Franchise Agreement form to be signed by Franchisee at the time Franchisee extends its rights to operate the Big Air Trampoline Business (except as specified below). There shall not, however, be another Initial Franchise Fee charged at the time Franchisee signs the Successor Franchise Agreement. IN FRANCHISOR'S SOLE DESCRETION, FRANCHISEE MAY BE DEEMED TO HAVE IRREVOCABLY DECLINED TO EXTEND ITS RIGHTS TO OPERATE THE FRANCHISE (AND ITS OPTION SHALL THEREUPON TERMINATE) IF IT FAILS TO EXECUTE AND RETURN TO FRANCHISOR THE SUCCESSOR FRANCHISE AGREEMENT AND OTHER DOCUMENTS REQUIRED BY FRANCHISOR WITHIN 30 DAYS AFTER THEIR DELIVERY TO FRANCHISEE, OR FAILS TO COMPLY IN ANY OTHER WAY WITH THE PROVISIONS OF THIS SECTION 3.

3.4 As additional conditions to renewal, in Franchisor's sole discretion, Franchisee may be required to:

(a) Execute a general release of all claims Franchisee may have against Franchisor, its officers, directors, members, shareholders, agents, Affiliates, and employees, whether in their corporate and/or individual capacities. This release shall

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include all claims arising under any federal, state, or local law, rule, or ordinance arising out of or concerning this Agreement (to the fullest extent permitted by law) and shall be in a form satisfactory to Franchisor. Franchisee's failure or refusal to sign such a release in the form presented by Franchisor shall be deemed to be a rejection by Franchisee of its option to extend its rights to operate the Big Air Trampoline Business;

(b) Pay the successor franchise fee ("**Successor Franchise Fee**") of 25% of the then-current Initial Franchise Fee, which is due and payable to Franchisor at the time of signing the renewal Franchise Agreement;

(c) Upgrade the computer system used in operations of the Big Air Trampoline Business to Franchisor's current standards;

(d) Comply with all other provisions contained in the Operations Manual, as modified periodically by Franchisor in Franchisor's sole discretion;

(g) Provide proof of current licenses, insurance and permits.

3.5 If Franchisee does not sign a new Franchise Agreement prior to the expiration of this Agreement and continues to accept the benefits of this Agreement after the expiration of this Agreement, then at the option of Franchisor, this Agreement may be treated either as (i) expired as of the date of expiration with Franchisee then operating without a franchise to do so and in violation of Franchisor's rights; or (ii) continued on a month-to-month basis ("**Interim Period**") until one party provides the other with written notice of such party's intent to terminate the Interim Period, in which case the Interim Period will terminate 30 days after receipt of the notice to terminate the Interim Period. In the latter case, all obligations of Franchisee shall remain in full force and effect during the Interim Period as if this Agreement had not expired, and all obligations and restrictions imposed on Franchisee upon expiration of this Agreement shall be deemed to take effect upon termination of the Interim Period.

4. TERRITORY

4.1 During the Term and for so long as Franchisee is in compliance with all of its obligations hereunder, except as otherwise provided in this Agreement, and subject to Franchisor's reservation of rights as set forth in Section 4.2 and as provided in Section 4.4 **below**, neither Franchisor nor any Affiliate will establish or license another person or entity to establish a Big Air Trampoline Business using the Marks licensed to Franchisee within the Territory encompassed by the boundaries set forth in **Attachment A**, attached hereto and incorporated herein by reference. Except as otherwise specifically provided in this Agreement, this Agreement does not restrict Franchisor or its Affiliates and does not grant rights to Franchisee to pursue any of Franchisor's or its Affiliates other business concepts other than the Big Air Trampoline Business.

4.2 Franchisee acknowledges that the Franchise granted hereunder is non-exclusive and that Franchisor and its Affiliates retain the exclusive right, among others:

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(a) to use, franchise and/or license others to use, the Marks and System for the operation of Big Air Trampoline Businesses at any location other than in the Territory, regardless of proximity to the Territory;

(b) to offer the Services or Products, or grant others the right to offer the Services or Products, whether using the System and /or Marks or other trademarks or service marks, through alternative channels of distribution, including without limitation, television, catalog sales, wholesalers, retail outlets or other distribution outlets (other than Big Air Trampoline Businesses), or by Internet commerce (e-commerce), mail order or otherwise, whether inside or outside the Territory;

(c) to use, license and/or franchise the use of trademarks or service marks other than the Marks, whether in alternative channels of distribution or at any location including the Territory, in association with operations that are similar to or different than the Big Air Trampoline Business;

(d) to use, license and/or franchise the Marks and the System in connection with the provision of other services and products or in alternative channels of distribution such as those described in 4.2(b), at any location including the Territory;

(e) to any websites utilizing a domain name incorporating one or more of the words "**Big**", "**Air**", "**Trampoline**", and/or "**Park**" or similar derivatives thereof. Franchisor retains the sole right to market on the Internet and use the Marks on the Internet, including all use of websites, domain names, URL's, directory addresses, metatags, linking, advertising, and co-branding and other arrangements. Franchisee may not independently market on the Internet, or use any domain name, address, locator, link, metatag, or search technique, with words or symbols similar to the Marks or otherwise establish any presence on the Internet without Franchisor's prior written approval. Franchisor intends that any Franchisee website be accessed only through Franchisor's home page. Franchisee will provide Franchisor with content for Franchisor's Internet marketing, and will sign Internet and intranet usage agreements, if any. Franchisor retains the right to approve any linking or other use of its website;

(f) to acquire businesses that are the same as or similar to the Big Air Trampoline Business and operate such businesses regardless of where such businesses are located, including inside the Territory and to be acquired by any third party which operates businesses that are the same as or similar to the Big Air Trampoline Business regardless of where such businesses are located, including inside the Territory;

(g) to acquire and convert to the System any businesses offering services and products related to operating indoor recreation centers for children, families, teens and young adults including such businesses operated by competitors or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned and whether located inside or outside of the Territory; and

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(h) to implement multi-area marketing programs which may allow Franchisor or others to solicit or sell customers anywhere. Franchisor reserves the right to issue mandatory policies to coordinate such multi-area marketing programs.

4.3 Franchisee may be granted, at Franchisor's sole discretion, express permission to market to and solicit customers in an unsold territory adjacent to Franchisee's Territory ("**Adjacent Territory**"); provided that Franchisee agrees that when the Adjacent Territory is granted to another franchisee by Franchisor, Franchisee will, upon receipt of written notice from Franchisor, cease all its sales and service efforts within the Adjacent Territory and return all customer and prospect lists to Franchisor within 10 days of such notice. Franchisee shall pay the Royalty Fee, National and Promotions Fees, and Individual Advertising Expense for sales made to all customers coming from an Adjacent Territory.

4.4 Notwithstanding Franchisor's exclusive right to sell Products and Services on the Internet in accordance with Section 4.2(b), if Franchisor sells Products or Services that Franchisee is required to sell and provide pursuant to this Agreement using the Marks to a customer located in Franchisee's Territory, Franchisor or its supplier or distributor, in Franchisor's sole discretion, may provide Franchisee with a credit against future Royalty Fees or National Marketing and Promotions Fees due to Franchisor in an amount to be determined by Franchisor, in its sole discretion.

4.5 Franchisor will use commercially reasonable efforts to grant only one license to a franchisee per 250,000 people (or incremental portion thereof) residing in a designated geographical location ("**Population Limit**"). Franchisor will use the most recent population information available in the U.S. Census Data, or other population statistical sources of Franchisor's choosing to determine populations. Franchisor reserves the right to change, modify, or delete the Population Limit in its sole discretion. Franchisee acknowledges that in most cases, Franchisee's Territory will not exceed a radius of 50 miles surrounding Franchisee's Big Air Trampoline Facility. Franchisor reserves the right to establish the boundaries of the Territory using zip codes, geographical elements or a straight radius line in Franchisor's sole discretion. Franchisee acknowledges that it has not and will not rely on this Section 4.5 for any purposes. Franchisee acknowledges and agrees that once the Territory has been established, it will not be changed regardless of any increase or decrease of the population in the Territory.

5. FEES.

5.1 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state or municipal taxes, as a non-recurring initial franchise fee ("**Initial Franchise Fee**") to Franchisor upon the execution of this Agreement. The Initial Franchise Fee shall be paid by means of cashier's check, money order or wire transfer. The Initial Franchise Fee shall be deemed to have been fully earned by Franchisor when paid. The Initial Franchise Fee is non-refundable once paid.

5.2 Franchisee shall pay the sum set forth on **Attachment A** plus, if due and payable, all applicable federal, state and municipal taxes as a non-recurring and non-refundable training fee ("**Training Fee**") to Franchisor upon execution of this Agreement. The Training Fee shall be paid by means of cashier's check, money order or wire transfer. The Training Fee entitles

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Franchisee to receive the initial training for Franchisee or its Designated Manager and two additional people. If Franchisee elects to have additional attendees, Franchisee will pay Franchisor its then current fee for each additional person to attend the initial training ("**Initial Training for Additional Person(s)**")

5.3 Franchisee shall pay to Franchisor a royalty fee ("**Royalty Fee**") equal to 6% of Gross Revenue for such month or partial month.

5.4 The Royalty Fee shall be payable to Franchisor on or before the 10th day of each month for the preceding calendar month and shall be payable through the entire Term of this Agreement; provided, however, that Franchisor reserves the right to require that Royalties be paid as often as weekly upon advanced written notice to Franchisee. Franchisee shall pay the Royalty Fee monthly or in such other frequency as Franchisor may in its sole discretion require upon written notice to Franchisee by Franchisor. Franchisee shall not subordinate to any other obligation its obligation to pay the Royalty Fee or any other fee or charge due Franchisor or any Affiliate of Franchisor under this Agreement. Each Royalty Fee payment will be accompanied by a report as set forth in Section 5.4(a).

(a) Each Royalty Fee payment shall be, without exception, accompanied by a statement of the previous month's Gross Revenues on a form approved and provided to Franchisee by Franchisor. **Each failure to include a fully completed statement of the previous month's Gross Revenues with the Royalty Fees payable to Franchisor when due shall constitute a material breach of this Agreement.**

(b) Franchisor reserves the right to require Franchisee to remit fees and other amounts due to Franchisor hereunder via electronic funds transfer ("**EFT**") or other similar means utilizing a Franchisor approved computer system or otherwise. The EFT Authorization is attached to the Franchise Agreement as **Attachment D.** If Franchisor notifies Franchisee to use such payment method, Franchisee agrees to comply with procedures specified by Franchisor and/or perform such acts and deliver and execute such documents, including authorization for direct debits from Franchisee's business bank operating account, as may be necessary to assist in or accomplish payment by such method. Under this procedure Franchisee shall authorize Franchisor to initiate debit entries and/or credit correction entries to a designated checking or savings account for payments of fees and other amounts payable to Franchisor and any interest charged due thereon. Franchisee shall make funds available to Franchisor for withdrawal by electronic transfer no later than the due date for payment therefore. If Franchisee has not timely reported the Gross Revenues to Franchisor for any reporting period, then Franchisor shall be authorized, at Franchisor's option, to debit Franchisee's account in an amount equal to (a) the fees transferred from Franchisee's account for the last reporting period for which a report of the Gross Revenues was provided to Franchisor as required hereunder; or (b) the amount due based on information retrieved from Franchisor approved computer system.

6. ACCOUNTING, RECORDS, AUDITS AND LATE PAYMENT CHARGES

6.1 Franchisee shall keep such complete records of its Big Air Trampoline Business as a prudent and careful businessperson would normally keep. Franchisee must use the

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accounting system and the pre-formatted template required by Franchisor, if any. Franchisee shall keep its financial books and records as Franchisor may from time to time direct in the Operations Manual or otherwise, including retention of all invoices, order forms, payroll records, cash register tapes, check records, bank deposit receipts, sales tax records, refunds, cash disbursements, journals and general ledgers. Franchisee shall advise Franchisor of the location of all original documents and shall not destroy any records without the written consent of Franchisor.

6.2 Franchisee shall prepare on a current basis, complete and accurate records concerning all financial, marketing and other operating aspects of the Big Air Trampoline Business conducted under this Agreement. Franchisee shall maintain an accounting system which accurately reflects all operational aspects of the Big Air Trampoline Business including uniform reports as may be required by Franchisor. Franchisee's records shall include tax returns, daily reports, statements of Gross Revenues (to be prepared each month for the preceding month), profit and loss statements (to be prepared at least quarterly by an independent Certified Public Accountant), and balance sheets (to be prepared at least annually by an independent Certified Public Accountant).

6.3 Franchisee shall also submit to Franchisor current financial statements and other reports as Franchisor may reasonably request to evaluate or compile research and performance data on any operational aspect of the Big Air Trampoline Business. Franchisee shall submit Individual Advertising Expense statements to Franchisor once each quarter, in Franchisor's sole discretion, beginning July 1 of each year. On or before April 15 of each year, Franchisee shall provide Franchisor with a copy of its federal tax return for the previous tax year.

6.4 The records required under this Section 6 pertain only to Franchisee's operation of the Big Air Trampoline Business. Franchisor has no right to inspect, audit or copy the records of any unrelated business activity Franchisee may have. Franchisee shall keep the books and records of the Big Air Trampoline Business separate from the records of any unrelated business activity or personal activity.

6.5 From the date Franchisee and Franchisor sign this Agreement until three years after the end of the Term of this Agreement, including any Successor Terms, Franchisor or Franchisor's authorized agent shall have the right to request, receive, inspect and audit any of the records referred to above wherever they may be located. Franchisor agrees to do inspections and audits at reasonable times. Franchisee agrees to keep all records and reports for seven years from the date such records are created. Should any inspection or audit disclose a deficiency in the payment of any Royalty Fee, National Marketing and Promotions Fee (as defined in Section 11.4) or other amounts required to be paid under this Agreement, Franchisee shall immediately pay the deficiency to Franchisor, without prejudice to any other remedy of Franchisor under this Agreement. In addition, if Franchisee (1) fails to furnish required reports or supporting records on a timely basis for two or more consecutive reporting periods, (2) fails to have the books and records available for an audit after receiving reasonable, advanced notice from Franchisor, (3) otherwise fails to cooperate with Franchisor's requested audit, or (4) the deficiency for any audit period discloses a deficiency in the amount of any Royalty Fee, National Marketing and Promotions Fee or other amounts due by 2% or more, Franchisee will also immediately pay to Franchisor the entire cost of the inspection or audit including travel, lodging, meals, salaries and

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other expenses of the inspecting or auditing personnel. For the purposes of this Section 6.5, an audit period will be each fiscal year. Should the audit disclose an overpayment of any Royalty Fees, National Marketing and Promotions Fees, or other amounts due, Franchisor shall credit the amount of the overpayment to Franchisee's payments of Royalty Fees, and National Marketing and Promotions Fees next falling due.

6.6 If Franchisee's records and procedures are insufficient to permit a proper determination of Gross Revenues, Franchisor shall have the right to either require Franchisee to deliver to Franchisee an estimate, made by Franchisor, of Gross Revenues for the period under consideration and Franchisee shall immediately pay to Franchisor any amount shown thereby to be owing on account of the Royalty Fee, National Marketing and Promotions Fee and other sums due on account of any understatement. Any such estimate shall be final and binding upon Franchisee.

6.7 To encourage prompt payment and to cover the costs and expenses involved in handling and processing late payments Franchisee shall also pay, upon demand, a late interest charge equal to the lesser of (i) 1.5% per month; or (ii) the highest legal rate permitted by applicable law, whichever is lower, on all payments due to Franchisor during the period of time said payments are due and unpaid. Each failure to pay Royalty Fees, National Marketing and Promotions Fees, and other amounts payable to Franchisor when due shall constitute a material breach of this Agreement. Franchisee acknowledges that this Section 6.7 shall not constitute Franchisor's agreement to accept such payments after same are due or a commitment by Franchisor to extend credit to, or otherwise finance Franchisee's operation of the Big Air Trampoline Business. Further, Franchisee acknowledges that failure to pay all such amounts when due shall, notwithstanding the provisions of this Section 6.7, constitute grounds for termination of this Agreement, as provided in this Agreement.

6.8 Any report of Franchisor's auditor rendered from time to time pursuant to this Section 6, shall be final and binding upon all of the parties hereto.

6.9 Franchisee hereby authorizes Franchisor to make reasonable inquiries of Franchisee's bank, suppliers and trade creditors concerning the Big Air Trampoline Business and hereby directs such persons and companies to provide to Franchisor such information and copies of documents pertaining to the Big Air Trampoline Business as Franchisor may request.

6.10 Franchisee acknowledges and agrees that Franchisor owns all business records ("**Business Records**") with respect to customers and other service professionals of, and/or related to, the Big Air Trampoline Business including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, telephone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other Business Records created and maintained by Franchisee. Franchisee further acknowledges and agrees that, at all times during and after the termination, expiration or cancellation of this Agreement, Franchisor may access such Business Records, and may utilize, transfer, or analyze such Business Records as Franchisor determines to be in the best interest of the System, in Franchisor's sole discretion.

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6.11 To encourage prompt delivery of all Business Records, Certificates of Insurance, Gross Revenue statements and any other documentation or record that may be requested by Franchisor under this Agreement, Franchisee shall pay, upon demand, a late report fee in the amount of $250.00 per record or document requested if Franchisee fails to deliver such record or document when due.

6.12 If Franchisee pays the Royalty Fee or any other sums due to Franchisor under this Agreement with a check returned for non-sufficient funds more than one time in any calendar year, in addition to all other remedies which may be available, Franchisor shall have the right to require that Royalty Fee payments and any other sums due to Franchisor under this Agreement be made by certified or cashier's checks. If Franchisee fails to pay the Royalty Fee or any other sums due to Franchisor under this Agreement by the due date two times during the Term or any Successor Terms, in addition to all other remedies which may be available, Franchisor reserves the right to require, in its sole discretion, that Franchisee pay the Royalty Fee or any other sums due to Franchisor under this Agreement weekly.

6.13 Franchisee agrees that, during the Term and for three years after the expiration and termination of this Agreement, Franchisee shall supply to Franchisor Franchisee's home address and telephone number.

7. SERVICES AND ASSISTANCE

7.1 The Initial Franchise Fee and Royalty Fee are paid for the License, which includes the use of the Marks, the System and the use of Franchisor's Trade Secrets and Confidential Information provided pursuant to this Agreement and for certain services rendered by Franchisor.

7.2 Franchisor shall offer Franchisee initial and continuing services, as Franchisor deems necessary or advisable in furthering Franchisee's Big Air Trampoline Business and the business of the System as a whole and in connection with protecting the Marks and goodwill of Franchisor. Failure by Franchisor to provide any particular service, either initial or continuing, shall not excuse Franchisee from any of its obligations under this Agreement.

7.3 Currently, initial services provided by Franchisor (or its designee) prior to Franchisee opening the Big Air Trampoline Business shall include:

(a) Designating Franchisee's Territory as stipulated in Section 4 and in **Attachment A.**

(b) Furnishing Franchisee with specifications and required supplier information for all initial and replacement equipment, tools, inventory, computer system and supplies required for the operation of Franchisee's Big Air Trampoline Business as stipulated in Section 9.

(c) Furnishing Franchisee with Site Selection Assistance during the time Franchisee searches for a location for the Big Air Trampoline Facility.

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(d) Authorizing in writing Franchisee's proposed Big Air Trampoline Facility in accordance with Section 7.4.

(e) Furnishing Franchisee with Construction Oversight Services during the construction of the Big Air Trampoline Facility.

(f) Approximately 90 days prior to the Projected Opening Date set forth on **Attachment A** or Franchisee's receipt of all required licenses, permits, and certifications, which ever comes later, provide Franchisee, or if Franchisee is an entity, a person designated to manage the Big Air Trampoline Business ("**Designated Business Manager**") and two additional person, without extra charge, with an initial training program. The initial training program shall be for seven calendar days in Laguna Hills, California (or other location designated by Franchisor). The training program may include a discussion of the System, techniques, procedures, methods of training and operation, advertising, sales techniques, promotional ideas, marketing plans, customer relations, patron safety, instructions on quality standards and practical experience in the operation of a Big Air Trampoline Business. You must pay for airfare, lodging, meals, ground transportation, salaries and benefits and any other personal expenses for yourself and additional attendees which are incurred to attend training.

(g) Loaning Franchisee during the Term (including any Successor Terms) one copy of Franchisor's confidential Operations Manual containing mandatory and suggested specifications, standards, operating procedures and rules prescribed from time to time by Franchisor as further stipulated in this Section 7, and containing information relative to other obligations of Franchisee hereunder. Specifications, standards and operating procedures prescribed from time to time by Franchisor in the Operations Manual or otherwise communicated to Franchisee in writing shall constitute provisions of this Agreement as if fully set forth herein. Franchisee shall operate the Big Air Trampoline Business strictly in accordance with the Operations Manual. Failure to comply with the standards set forth in the Operations Manual shall constitute a material breach of this Agreement. Franchisor reserves the right to provide the Operations Manual and updates to the Operations Manual in electronic form or other form determined by Franchisor. Franchisor shall have the right to add to, delete, and otherwise modify, the Operations Manual from time to time to reflect changes in authorized Products and Services, business image or the operation of the Big Air Trampoline Business; provided, however, no such addition or modification shall alter Franchisee's fundamental status and rights under this Agreement. Some of the revisions to the Operations Manual may include changes with respect to: (i) sales and marketing strategies; (ii) equipment and supplies; (iii) accounting and reporting systems and forms; (iv) insurance requirements; (v) operating procedures; (vi) Services; (vii) Products; (viii) Construction Oversight Services; and (ix) Site Selection Assistance.

(i) Franchisee covenants to accept, implement and adopt any such modifications at its own cost, except as provided in Section 8.7 of this Agreement. Franchisee shall keep its Operations Manual with replacement pages and insertions as instructed by Franchisor.

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(ii) Franchisee hereby acknowledges that the Operations Manual is loaned to Franchisee and shall at all times remain the sole and exclusive property of Franchisor, and upon termination of this Agreement for any reason whatsoever, Franchisee shall forthwith return the Operations Manual together with all copies of any portion of the Operations Manual which Franchisee may have made, to Franchisor. If Franchisee looses or destroys any printed Operations Manual, Franchisor may charge a Lost Operations Manual Fee in the amount of $500.

(h) Providing Franchisee with a set of letterhead, business cards, and other start-up materials determined by Franchisor each at no charge. Additional copies of letterhead, business cards and other start-up materials after the initial inventory may be provided at Franchisee's expense.

(i) Franchisor will provide pre-opening and grand opening assistance for a minimum of seven calendar days during the first week of operations of Franchisee's Big Air Trampoline Business. If Franchisee desires additional opening or additional on-site assistance, Franchisor may charge Franchisee a reasonable fee for such services ("**Additional On-Site Assistance**"), and Franchisee shall reimburse Franchisor for the additional food, lodging, and transportation expenses incurred by Franchisor during the additional time period.

7.4 Franchisee is solely responsible for locating a site using the services from which to operate the Big Air Trampoline Facility and negotiating a Lease for the property. Franchisor may require Franchisee use its designated real estate services supplier. As part of the Site Selection Assistance, Franchisor or its designee will provide assistance to Franchisee in analyzing a location and in negotiating the business terms of a Lease. Franchisor (or its designee) will analyze a location by examining population density, census data, demographic and income characteristics, proximity of the proposed location to other Big Air Trampoline Businesses, or any other criteria as set forth in Section 8.3(b) or the Operations Manual. The Big Air Trampoline Facility site is subject to Franchisor's written authorization, which may be granted or denied in Franchisor's sole discretion. Franchisee agrees that the location of the Big Air Trampoline Facility is a factor in the potential success of the Big Air Trampoline Business and Franchisor may reject any location in its sole discretion. However, Franchisee agrees that Franchisor's assistance in no way constitutes a representation or warranty with respect to the success or viability of the property or the Lease. Franchisee acknowledges that Franchisor's authorization of the Big Air Trampoline Facility site indicates only that Franchisor believes that the site falls within acceptable criteria established by Franchisor as of the approval date. Once Franchisee's Big Air Trampoline Facility is open for business, Franchisee may only relocate the Big Air Trampoline Facility by complying with Franchisor's relocation procedures as set forth in the Operations Manual.

7.5 Currently, the services provided by Franchisor (or its designee) to Franchisee after Franchisee opens the Big Air Trampoline Business are as follows:

(a) Making a representative reasonably available to speak with Franchisee on the telephone during normal business hours, as Franchisor determines is necessary, to discuss Franchisee's operational issues and support needs.

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(b) Franchisor may hold periodic meetings to discuss sales techniques, new Product and Service developments, bookkeeping, training, accounting, inventory control, Big Air Trampoline Facility safety and maintenance issues, performance standards, advertising programs, merchandising procedures and other topics. Franchisee must pay a Convention Fee, if any, and all its travel and living expenses to attend. These meetings are held in Laguna Hills, California or at a location chosen by Franchisor in Franchisor's discretion and, except as set forth in Section 7.5(c), Franchisee's attendance is strongly encouraged but not required for these periodic meetings.

(c) Franchisor may also hold an annual conference to discuss sales techniques, new Services and Products, training techniques, bookkeeping, accounting, performance standards, advertising programs, merchandising procedures and other topics. Franchisee must pay the Convention Fee, if any, and all personal travel and living expenses and must attend these annual conferences which are held in Laguna Hills, California or at a location chosen by Franchisor.

(d) Informing Franchisee of mandatory specifications, standards and procedures for the operations of the Big Air Trampoline Business.

(e) Researching new Products, Services, and methods of doing business, from time to time, and providing Franchisee with information concerning developments of this research. If Franchisee requests that Franchisor add a specific element or product to the System, Franchisor may charge a product research fee.

(f) Maintaining the National Marketing and Promotions Fund and using these funds to develop promotional and advertising programs and public relations coverage for Big Air Trampoline Businesses.

(g) Providing marketing plans and advertising materials to Franchisee in the form of an arts graphics package included in the Operations Manual and Franchisee Portal and as further stipulated in Section 11.

(h) A representative of Franchisor may, in its sole discretion, provide additional assistance. There may be additional charges for this additional assistance. If Franchisor provides additional assistance, Franchisor and Franchisee must agree in advance on the charges for the visit and the length of the visit.

(i) Establishing and managing one or more Local Advertising Cooperatives in accordance with Section 11, if any.

7.6 If Franchisee believes Franchisor has failed to adequately provide pre-opening services to Franchisee as provided in this Agreement in Sections 7.3 and 7.5, Franchisee shall notify Franchisor in writing within 30 days following the opening of the Big Air Trampoline Business. Absent the timely provision of such notice to Franchisor, Franchisee shall be deemed to conclusively acknowledge that all pre-opening and opening services required to be provided by Franchisor were sufficient and satisfactory in Franchisee's judgment.

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7.7 Franchisor is not obligated to perform services set forth in this Agreement to Franchisee's particular level of satisfaction, but as a function of Franchisor's experience, knowledge and judgment. Franchisor does not represent or warrant that any other services will be provided to Franchisee, other than as set forth in this Agreement. To the extent any other services, or any specific level or quality of service is expected, Franchisee must obtain a commitment to provide such service or level of service in writing signed by an authorized officer of Franchisor, otherwise Franchisee acknowledges and agrees that Franchisor shall not be obligated to provide any other services or specific level or quality of services.

8. FRANCHISEE'S DUTIES, OBLIGATIONS AND OPERATING STANDARDS

8.1 Franchisee shall, consistent with the terms of this Agreement, diligently develop the Big Air Trampoline Business and use its best efforts to market and promote the required Services and Products.

8.2 Subject to the terms of this Agreement, Franchisee shall open the Big Air Trampoline Facility for business on or before the projected opening date ("**Projected Opening Date**") set forth on **Attachment A**, but in no event more than 12 months from the effective date of this Agreement, unless Franchisee obtains Franchisor's express written permission to extend the Projected Opening Date, which permission may be granted or denied in Franchisor's sole discretion.

8.3 Franchisee shall complete the construction of Franchisee's Big Air Trampoline Facility, and shall maintain the Big Air Trampoline Facility, in accordance with the following requirements:

(a) Franchisee shall, at Franchisee's sole cost and expense, complete the interior build-out and install all equipment, furniture, fixtures, and security cameras as specified by Franchisor in the Operations Manual, and required by this Agreement.

(b) Franchisee may purchase or lease the required real property and improvements from any source upon terms approved by Franchisor in writing. Franchisee must obtain Franchisor's approval regarding location of the Big Air Trampoline Facility within 180 days of the execution of this Agreement. If Franchisee does not obtain approval from Franchisor of the site, which may be withheld in Franchisor's sole discretion, within 12 months after the effective date of the Franchise Agreement Franchisor may elect to terminate this Agreement in Franchisor's sole discretion. Franchisee must deliver to Franchisor any traffic, competition and demographic or similar location information relating to any proposed site that Franchisor reasonably requests for review at least 20 days before any proposed Lease signing date. Franchisee must deliver to Franchisor, within 60 days of Franchisor approving the site, a copy of the proposed Lease, in a form acceptable to Franchisor, and such Lease must incorporate the terms of the Lease Addendum attached to this Agreement as **Attachment F**. Notwithstanding anything herein to the contrary, Franchisor may, in its sole discretion, extend the time periods set forth in this Section 8.3(b).

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(c) Subject to the terms of this Section, Franchisee must at all times comply with Franchisor's standards, specifications, processes, procedures, requirements and instructions regarding the Big Air Trampoline Facility's physical facilities, including the layout of the equipment, furnishings, fixtures, and activity, party, and waiting rooms. Franchisee must maintain the Big Air Trampoline Facility and any parking areas in good and safe condition, as specified in the Operations Manual. Franchisee must remodel or upgrade the Big Air Trampoline Facility and/or Computer System at is sole cost and expenses in accordance with Franchisor's standards as set forth in the Operations Manual, which may be modified by Franchisor at any time in Franchisor's discretion.

(d) Franchisee shall apply for all required operating permits and licenses within 120 days after Franchisee signs the Lease for the Big Air Trampoline Facility.

8.4 Subject to the terms of this Agreement, including Subsections 7.3(g)(i) and (ii), during the Term, Franchisee shall strictly comply with all present and future standards, specifications, processes, procedures, requirements, and instructions of Franchisor regarding the operation of the Big Air Trampoline Business and must comply with the following requirements:

(a) Prior to opening the Big Air Trampoline Business, Franchisee or Franchisee's Designated Business Manager must attend and successfully complete all initial programs at least 60 days prior to Franchisee's scheduled opening date. Franchisee shall be responsible for travel, meals, personal expenses and living expenses incurred by itself or the Designated Business Manager, and additional persons that participate in the initial training program.

(b) Franchisee or its Designated Business Manager must attend mandatory annual conferences at such locations as Franchisor may reasonably designate, and Franchisee will pay all salary and other expenses of each person attending, including any conference fees, travel expenses, meals, living expenses and personal expenses. If Franchisee fails to attend an annual conference for any reason, Franchisor shall be entitled to use the accumulated Convention Fee paid by Franchisee for any purpose in Franchisor's sole discretion. The Convention Fee is non-refundable for any reason once paid.

(c) Subject to Section 8.7, any additional required Service or Product introduced into the System by Franchisor must be offered for sale on a continuing basis at the Big Air Trampoline Business at the time and in the manner required by Franchisor. Franchisor will provide at least 30 days prior written notice of any new required Service or Product introduced into the System. All equipment, facilities, vehicles, products, supplies, tools and other items necessary to add the newly required Services or Products must be acquired, installed, and utilized at the time and in the manner required by Franchisor. The marketing of new Services and Products must begin at the Big Air Trampoline Business as reasonably required by Franchisor.

(d) No service or product, except approved Services or Products, may be offered for sale from the Big Air Trampoline Facility or in the Territory, unless

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Franchisee receives the prior written consent of Franchisor (which may be granted or denied in Franchisor's sole discretion).

(e) Only advertising and promotional materials, services, equipment, tools, inventory, products, signage, supplies, and uniforms that meet Franchisor's standards and specifications shall be used at the Big Air Trampoline Business. Advertising and promotional materials, tools, services, equipment, inventory, products, signage, supplies and uniforms produced or approved by Franchisor for use by Franchisee may be used only in the manner and during the period specified by Franchisor.

(f) Equipment, tools, Services, Products, inventory, supplies, signage, uniforms and other items must be added, eliminated, substituted and modified at the Big Air Trampoline Business as soon as possible in accordance with changes in Franchisor's specifications and requirements.

(g) The Big Air Trampoline Business and everything related to the Big Air Trampoline Business must be maintained in good condition and must be kept clean, neat and sanitary. All maintenance, repairs and replacements reasonably requested by Franchisor or required in connection with the Big Air Trampoline Business must be promptly made including, but not limited to, regular maintenance and replacement of trampolines and climbing equipment. All employees must be clean and neat in appearance and wear appropriate Big Air Trampoline attire at all times.

(h) No alterations of the Big Air Trampoline Business materially affecting the image of the Big Air Trampoline Business may be made except at Franchisor's request or approval, and any alterations must strictly conform to specifications and requirements established or approved by Franchisor.

(i) The Big Air Trampoline Business and the Services provided and Products sold by Franchisee must comply with all applicable federal, state, and local laws, ordinances, rules, regulations and other requirements applicable to the care and safety of children, including securing all necessary licenses and complying with all licensing requirements and regulations, if any. Franchisee must obtain all business licenses and permits required by federal, state and local laws, ordinances, rules and regulations before operating its Big Air Trampoline Business. If Franchisee does not obtain all required permits and licenses and other certifications necessary to operate its Big Air Trampoline Business within nine months after Franchisee's execution of the Franchise Agreement, Franchisor may terminate this Franchise Agreement.

(j) The employees, equipment, tools, supplies, inventory, products, and other items on hand at the Big Air Trampoline Business, must be at all times sufficient to efficiently meet the anticipated volume of business and to ensure the safety and security of Franchisee's patrons.

(k) Franchisee shall maintain a competent, conscientious, and trained staff, and shall take such steps as are necessary to ensure that its employees preserve good customer relations; render competent, prompt, courteous, and knowledgeable service, and

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meet such minimum standards as Franchisor may establish from time to time in the Operations Manual or otherwise in writing. Franchisee shall conduct background checks on all employees as required by the terms of the Operations Manual. Franchisee shall be solely responsible for all employment decisions and functions of the Big Air Trampoline Business, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, record keeping, supervision, and discipline of employees, regardless of whether Franchisee has received advice from Franchisor on these subjects.

(l) All debts and taxes arising in connection with the Big Air Trampoline Business, except those duly contested in a bona fide dispute, must be paid when due.

(m) Franchisee will use its best efforts to ensure customer satisfaction; use good faith in all dealings with customers, potential customers, referral sources, suppliers and creditors; respond to customer complaints in a courteous, prompt and professional manner; use its best efforts to promptly and fairly resolve customer disputes in a mutually agreeable manner; and take such actions as Franchisor deems necessary or appropriate to resolve customer disputes.

(n) Franchisee will operate the Big Air Trampoline Business a minimum of six days a week, except that Franchisee may be closed on Thanksgiving Day, Christmas Day, New Year's Day, any other legal holiday authorized by Franchisor in the Operations Manual or in writing, in Franchisor's discretion, or any day that Franchisee is authorized to close by Franchisor in writing, in Franchisor's discretion.

(o) Franchisee shall, at Franchisor's request, accept debit cards, credit cards, stored value gift cards, or other non-cash systems specified by Franchisor to enable customers to purchase the Products and Services offered by the Big Air Trampoline Business. Franchisee shall acquire, at its expense, all necessary hardware and software used in connection with these non-cash systems.

(p) Franchisee shall comply with all terms and pay all fees that may be due under a software license agreement including a licensing fee ("**POS Licensing Fee**") of $200.00 per month and a technology support fee ("**Technology Support Fee**") of $300 per month, or such other amount as Franchisor determines in Franchisor's sole discretion, for any software Franchisee is required to use in the operation of its Big Air Trampoline Business as prescribed by Franchisor. The POS Licensing Fee and Technology Support Fee may be payable to one or more software vendors or to Franchisor, in Franchisor's discretion, and payment will be on such terms and at such times as determined by Franchisor in Franchisor's sole discretion.

(q) Franchisee shall promptly pay to Franchisor any amount equal to all taxes levied or assessed, including, but not limited to, unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipts taxes, taxes on Royalties, or any similar taxes or levies imposed upon or required to be collected or paid by Franchisor by reason of the furnishing or products, intangible property (including trademarks or trade names) or services by Franchisor to

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Franchisee through the sale, license or lease of property or property rights provided by this Agreement.

(r) In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with the procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Big Air Trampoline Facility, or any improvements thereon.

(s) Franchisee shall comply with the advertising requirements set out in Section 11.

(t) Franchisee will not use any materials that are false or misleading.

(u) Franchisee will ensure that all advertising, labeling, packaging and other materials associated with the Services and Products fully conforms to all applicable laws and regulations.

(v) Franchisee will have the Big Air Trampoline Facility inspected for safety compliance ("**Safety Inspection**") no less than on an annual basis.

(w) Franchisee will conduct its business operations in accordance with all applicable laws and regulations, including but not limited to, consumer protection laws and regulations and children's privacy and safety laws. Franchisee will control the quality of the Services and Products to avoid quality problems or product liability claims that could reflect adversely on Franchisee or Franchisor in the minds of consumers.

8.5 In prescribing standards, specifications, processes, procedures, requirements or instructions under Section 8.4 or any other provision of this Agreement, Franchisor will provide guidance to Franchisee, as required in Franchisor's sole discretion, in determining the prices to be charged by Franchisee for Services or Products. Franchisor shall not have control over the day-to-day managerial operations of the Big Air Trampoline Business, and Franchisee shall be free to establish its own prices; provided, however, Franchisor shall have the right to set maximum resale prices as part of any national or regional promotion or multi-area marketing plan.

8.6 Franchisor and Franchisor's representatives will have the right during business hours to inspect the Big Air Trampoline Business and all other facilities used for providing Services and selling approved Products. Franchisor and Franchisor's representatives will have the right to observe the manner in which Franchisee is rendering its Services and conducting its operations of the Big Air Trampoline Business. Franchisor and Franchisor's representatives will have the right to discuss with Franchisee, or other personnel Franchisee may designate, all matters that may pertain to compliance with this Agreement and with Franchisor's standards, specifications, requirements, instructions and procedures and Franchisor may video tape or take photographs of Franchisee's safety training, maintenance procedures and techniques as it relates to the Big Air Trampoline Business. Franchisor and Franchisor's representatives will have the

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right to have any of Franchisor's required Services rendered by any employee at the Big Air Trampoline Business. Franchisee shall in all respects cooperate with Franchisor's rights under this Section 8.6; provided that Franchisor's exercise of these rights shall not unreasonably interfere with Franchisee's conduct of the Big Air Trampoline Business.

8.7 Franchisee will not be required to offer or sell new Services or Products as set out in Section 8.4(c) if Franchisee demonstrates to Franchisor's reasonable satisfaction that:

(a) A substantial capital improvement not contemplated by this Agreement or in the Operations Manual is required, thereby resulting in a material hardship to Franchisee; or

(b) A material reduction in sales or profitability would result therefrom. For the purposes of this Subsection 8.7(b), a 40% decrease in sales from the average sales in the prior 12 months would be considered a material reduction in sales, and a 30% reduction in profitability from the average profitability during the previous 12 months would be considered a material reduction in profitability.

8.8 Franchisor may require Franchisee's compliance with the provisions of this Section 8 even if it does not require such compliance by all franchisees.

8.9 If Franchisee is an individual, Franchisee must directly supervise the Big Air Trampoline Business. If Franchisee is a corporation or other business entity, or if Franchisee has, in Franchisor's sole judgment, insufficient experience in a business similar to the franchise or experience in business management in general, then Franchisee shall nominate a Designated Business Manager having the required experience who shall have direct responsibility for all operations of the Big Air Trampoline Business. Any change in the Designated Business Manager will be subject to Franchisor's approval, in Franchisor's sole discretion.

8.10 Franchisee shall become a member of such trade associations or other organizations which, in the reasonable opinion of Franchisor, are useful in the operation of the Big Air Trampoline Business. Franchisee shall have the option to become a member of all benefit programs which are offered from time to time by Franchisor to all of its franchisees. The costs of participating in such trade associations, organizations, and benefit programs shall be borne by Franchisee and its employees (if applicable to the employees). Nothing in this Section 8.10 limits Franchisee's freedom to join any franchise or franchisees association of its choosing.

8.11 Franchisee shall at all times have sufficient computer skills to operate Franchisee's computer, understand how to utilize any software Franchisor requires to be used in the Big Air Trampoline Business, and to access email and the Internet. If Franchisor determines that Franchisee requires additional computer training, Franchisor will notify Franchisee in writing regarding the nature of the additional training required, and Franchisee will have 90 days to complete such training at a local computer training school at Franchisee's sole cost and expense. Franchisor reserves the right to designate the computer training school which Franchisee must attend. At the end of the training program, Franchisee shall present a certificate reasonably acceptable to Franchisor establishing that Franchisee passed the training course.

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Franchisee's failure to seek additional training or to pass the course shall constitute a default of this Agreement.

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

8.13 Franchisee shall acquire, maintain, and upgrade hardware, software, information processing and communication systems, and Internet and other network access providers, as prescribed in the Operations Manual and as modified periodically by Franchisor in Franchisor's sole discretion. Franchisee shall comply with any separate software or other license agreements that Franchisor or its designee use in connection with the System. Franchisee shall utilize Franchisor's required software, proprietary database management and intranet system, when available, as the exclusive means for tracking and maintaining customer, vendor, and related information, and for such other uses as prescribed by Franchisor periodically in the Operations Manual, in Franchisor's sole discretion. Monthly sales and royalty reporting may occur through mandatory software including the automatic draft via electronic transfer of Royalty Fees and National Marketing and Promotions Fees.

8.14 Franchisee shall at all times maintain an active email account and shall check the account at least once each day. If available, Franchisee shall maintain an email account on Franchisor's proprietary database management and intranet system.

8.15 Franchisee may not open its Big Air Trampoline Business until: (1) Franchisor notifies Franchisee in writing that all of Franchisee's obligations have been fulfilled; (2) the initial training program has been completed to Franchisor's satisfaction; (3) all amounts due to Franchisor have been paid; (4) Franchisor has been furnished with copies of all insurance policies and certificates required by Section 12, or other documentation of insurance coverage and payment of premiums that Franchisor may request, in Franchisor's discretion; (5) Franchisee notifies Franchisor that all approvals and conditions set forth in this Agreement have been met; (6) Franchisee has obtained all necessary permits and licenses; (7) Franchisee has provided Franchisor with a fully executed copy of the Lease for Franchisee's Big Air Trampoline Facility negotiated in accordance with the terms of Section 8.3(b), and (8) Franchisee has ordered, received and installed all equipment, supplies, inventory, tools, products, uniforms and computer hardware and software required by Franchisor ("**Computer System**"). Franchisee shall begin operating the Big Air Trampoline Business immediately after Franchisor determines that the Big Air Trampoline Business is ready for opening.

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9. PURCHASE OF EQUIPMENT, INVENTORY AND SUPPLIES

9.1 Franchisee must purchase all Products, services, equipment, tools, inventory, supplies and hardware and software from Franchisor's designated or approved suppliers, manufacturers and distributors. The standards and specifications for equipment, Computer System, inventory, tools, signage, supplies, Big Air Trampoline Facilities, Services and Products required by Franchisor shall be maintained in the Operations Manual. Franchisor has the right to require Franchisee to discontinue purchasing any Products, services, equipment, tools, inventory, supplies and/or Computer System from a designated or approved supplier, manufacturer or distributor and may designate or approve new suppliers, manufacturers or distributors at any time in Franchisor's sole discretion.

9.2 Franchisee acknowledges and agrees that Franchisor may receive from designated or approved suppliers of Franchisee's Products, services, equipment, tools, inventory, supplies and hardware and software, periodic volume rebates or other revenue or consideration as a result of Franchisee's purchases. Franchisee further acknowledges and agrees that Franchisor shall be entitled to keep for its own use and account such rebates and revenue.

9.3 The names and addresses of Franchisor's required or approved suppliers, manufacturers and distributors shall be maintained in the Operations Manual. Franchisor reserves the right to approve all of the Products, supplies, Services, equipment, tools, inventory, hardware and software used in connection with Franchisee's Big Air Trampoline Business.

9.4 Franchisee may request that Franchisor approve or designate a new supplier by following the procedures, and paying all required fees and expenses for approval, as set forth in the Operations Manual and modified periodically by Franchisor in Franchisor's discretion. Franchisor will not unreasonably withhold the approval of a supplier; however, in order to make such determination, Franchisor may require that samples from a proposed new supplier be delivered to Franchisor for testing and approval prior to use. Franchisor reserves the right to require that Franchisee pay or reimburse Franchisor for the reasonable cost of investigation in determining whether such products, services, materials, forms, items or supplies satisfy Franchisor's specifications.

10. MARKS, COPYRIGHTED WORKS AND OWNERSHIP OF IMPROVEMENTS.

10.1 Franchisee acknowledges and agrees that:

(a) Franchisor is the owner or exclusive licensee of all right, title and interest, together with all the goodwill of the Marks. Franchisee further acknowledges that the Marks designate the origin or sponsorship of the System, the Big Air Trampoline Business, and the Products and Services, and that Franchisor desires to protect the goodwill of the Marks and to preserve and enhance the value of the Marks. In the event that Franchisee acquires any rights, title or interest in the Marks, Franchisee agrees to assign and hereby assigns all such rights, title or interest to Franchisor.

(b) All right, title and interest in and to all materials, including but not limited to, all artwork and designs, created by Franchisor, and used with the Marks or in association with the Big Air Trampoline Business ("**Copyrighted Materials**") are the

property of Franchisor. Additionally, all Copyrighted Materials created by Franchisee or any other person or entity retained or employed by Franchisee are works made for hire within the meaning of the United States Copyright Act and are the property of Franchisor, who shall be entitled to use and license others to use the Copyrighted Materials unencumbered by moral rights. To the extent the Copyrighted Materials are not works made for hire or rights in the Copyrighted Materials do not automatically accrue to Franchisor, Franchisee irrevocably assigns and agrees to assign to Franchisor, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such Copyrighted Materials, which Franchisee and the author of such Copyrighted Materials warrant and represent as being created by and wholly original with the author. Where applicable, Franchisee agrees to obtain any other assignments of rights in the Copyrighted Materials from another person or entity necessary to ensure Franchisor's right in the Copyrighted Materials as required in this Section 10.1(b).

(c) Franchisee will never dispute, contest, or challenge, directly or indirectly, the validity or enforceability of the Marks or Copyrighted Materials or Franchisor's ownership of the Marks or Copyrighted Materials, nor counsel, procure, or assist anyone else to do the same, nor will it take any action that is inconsistent with Franchisor's ownership of the Marks or Copyrighted Materials, nor will it represent that it has any right, title, or interest in the Marks or Copyrighted Materials other than those expressly granted by this Agreement.

(d) Franchisor may decide, in its sole and absolute discretion, to apply to register or to register any trademarks or copyrights with respect to the Services, Products and any other products and services and the Copyrighted Materials. Failure of Franchisor to obtain or maintain in effect any such application or registration is not a breach of this Agreement. Franchisee will not, before or after termination or expiration of the Agreement, register or apply to register any of the Marks or any trademark, service mark or logo confusingly similar thereto or any Copyrighted Materials, anywhere in the world.

(e) Upon Franchisor's request, Franchisee will cooperate fully, both before and after termination or expiration of this Agreement and at Franchisor's expense, in confirming, perfecting, preserving, and enforcing Franchisor's rights in the Marks and Copyrighted Materials, including but not limited to, executing and delivering to Franchisor such documents as Franchisor reasonably requests for any such purpose, including but not limited to, assignments, powers of attorney, and copies of commercial documents showing sale and advertising of the Services and Products and other products and services. Franchisee hereby irrevocably appoints Franchisor as its attorney-in-fact for the purpose of executing such documents.

(f) All usage of the Marks by Franchisee and any goodwill established by Franchisee's use of the Marks shall inure to the exclusive benefit of Franchisor. This Agreement does not confer any goodwill or other interests in the Marks to Franchisee upon expiration or termination of the Agreement.

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(g) **FRANCHISOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE USE, EXCLUSIVE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE MARKS OR COPYRIGHTED MATERIALS.**

10.2 Franchisee acknowledges and agrees that:

(a) Franchisee's right to use the Marks and Copyrighted Materials are derived solely from this Agreement. Franchisee may only use the Marks and Copyrighted Materials in its operation of the Big Air Trampoline Business and only incompliance with this Agreement and all applicable standards, specifications, and operating procedures prescribed by Franchisor in the Operations Manual and elsewhere from time to time during the Term and any Successor Term. Franchisee will make every effort consistent to protect, maintain, and promote the Marks as identifying the System and only the System.

(b) Any unauthorized use of the Marks or Copyrighted Materials by Franchisee constitutes a breach of this Agreement and an infringement of the rights of Franchisor and in and to the Marks and Copyrighted Materials.

(c) Franchisee will not use any Marks or portion of any Marks as part of a corporate or trade name, or with any prefix, suffix or other modifying words, terms, designs or symbols, or in any modified form. Franchisee shall obtain such fictitious or assumed name registrations as may be required by Franchisor or under applicable law.

(d) In order to preserve the validity and integrity of the Marks and Copyrighted Materials licensed herein and to assure that Franchisee is properly employing the same in the operation of its Big Air Trampoline Business, Franchisor or its agents shall have the right of entry and inspection of Franchisee's Big Air Trampoline Business and operating procedures pursuant to Section 8.6.

(e) Franchisee will safeguard and maintain the reputation and prestige of the Marks and Copyrighted Materials and will not do anything that would tarnish the image of or adversely affect the value, reputation or goodwill associated with the Marks. Franchisee will not do anything that would dilute, directly or indirectly, the value of the goodwill attached to the Marks, nor counsel, procure or assist anyone else to do the same.

(f) Franchisee will use the Marks and Copyrighted Materials only in lettering, logos, print styles, forms, and formats, including but not limited to, advertising and promotional materials, invoices, signage, business checks, business cards, stationery, and promotional items such as clothing, hats, pens, mugs, etc., which have been approved by Franchisor in accordance with this Agreement, and promptly follow instructions regarding the Marks and Copyrighted Materials as provided in the Operations Manual and otherwise given by Franchisor from time to time.

(g) Franchisee will use the following copyright notice at least once on each piece of advertising, promotional, or other material used in connection with the Products and Services:

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(h) Franchisee will use the Marks with a superscript "®" or "™", as specified by Franchisor, unless and until advised by Franchisor to use a different notice.

10.3 Franchisee acknowledges and agrees that:

(a) If, in Franchisor's reasonable determination, the use of Marks or Copyrighted Materials in connection with the Services, Products, other products and services or the Big Air Trampoline Business will infringe or potentially infringe upon the rights of any third party, weakens or impairs Franchisor's rights in the Marks or Copyrighted Materials, or it otherwise becomes advisable at any time in Franchisor's sole discretion for Franchisor to modify or discontinue use of the Marks or Copyrighted Materials then upon notice from Franchisor, Franchisee will immediately terminate or modify such use in the manner prescribed by Franchisor. Franchisor may require Franchisee to use one or more additional or substitute trade names, trademarks, service marks or other commercial symbols or copyrighted materials. Franchisor shall reimburse Franchisee for the tangible out-of-pocket cost of compliance with this requirement (such as the cost of printing new letterhead and business cards), but Franchisee will have no rights of damages, offset, or right to terminate this Agreement as a result thereof and Franchisor shall have no liability or obligation whatsoever with respect to Franchisee's modification or discontinuance of any Marks or Copyrighted Materials.

(b) Franchisee shall notify Franchisor within three days after receiving notice of any claim, demand or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Marks or any colorable imitation thereof or the Copyrighted Materials. Upon receipt of timely notice of an action, claim or demand against Franchisee relating to the Marks or Copyrighted Materials, Franchisor shall have the sole right, but not the duty, to defend any such action. Franchisor shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Marks or Copyrighted Materials and shall exercise such right in the sole discretion of Franchisor. Franchisor shall control all actions but not be obligated to take any action. In any defense or prosecution of any litigation relating to the Marks, Copyrighted Materials or components of the System undertaken by Franchisor, Franchisee shall cooperate with Franchisor, execute any and all documents, and take all actions as may be desirable or necessary in the opinion of Franchisor's counsel, to carry out such defense or prosecution. At Franchisor's option, Franchisee will join in any action, in which case Franchisor shall bear all the out-of-pocket costs of Franchisee for such participation. If Franchisee joins in an action, then the recovery, if any, from such legal action shall be first applied to the total expenses associated therewith and then split equally between Franchisor and Franchisee.

10.4 All provisions of this Agreement applicable to the Marks and Copyrighted Materials apply to any and all additional trademarks, service marks, commercial symbols and copyrighted materials authorized for use by and licensed to Franchisee by Franchisor after the date of this Agreement.

10.5 If Franchisee, during the Term of the franchise relationship, or any Interim Period or Successor Term, conceives or develops any improvements or additions to the System, Copyrighted Materials, website or any other documents or information pertaining to or relating to the System or the Big Air Trampoline Business, or any new trade names, trade and service marks, logos, or commercial symbols related to the Big Air Trampoline Business or any advertising and promotional ideas or inventions related to the Big Air Trampoline Business (collectively, the "**Improvements**") Franchisee shall fully disclose the Improvements to Franchisor, without disclosure of the Improvements to others, and shall obtain Franchisor's written approval prior to using such Improvements. Any such Improvement may be used by Franchisor and all other franchisees without any obligation to Franchisee for royalties or other fees. Franchisee shall assign and does hereby assign to Franchisor, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. Franchisor, at its discretion, may make application for and own copyrights, patents, trade names, trademarks and service marks relating to any such Improvement and Franchisee shall cooperate with Franchisor in securing such rights. Franchisor may also consider such Improvements as the property and Trade Secrets of Franchisor. In return, Franchisor shall authorize Franchisee to utilize any Improvement that may be developed by other franchisees and is authorized generally for use by other franchisees.

11. ADVERTISING AND PROMOTION

11.1 Franchisee acknowledges that local advertising is required to advise the public of the Big Air Trampoline Business. For the first 30 days prior to Franchisee's Projected Opening Date ("**Start-Up Advertising and Promotions Period**") and continuing through the first 60 days after Franchisee opens Franchisee's Big Air Trampoline Business, Franchisee will spend a total of Sixty Thousand Dollars ($60,000.00) on promotional advertising, marketing, and public relations efforts within the Territory ("**Start-Up Advertising and Promotions Expense**"). Of the Start-Up Advertising and Promotions Expense, at least Ten Thousand Dollars ($10,000) will be spent on promotional advertising, marketing and public relations efforts within the Territory on Franchisee's grand opening. Upon the expiration of the Start-Up Advertising and Promotions Period, and during the remaining Term, Franchisee shall spend a minimum of the greater of 2% of the Gross Revenues for the preceding month or $5,000 per month ("**Individual Advertising Expense**") for advertising and promotion within the Territory. Franchisee may not advertise outside its Territory without Franchisor's approval, which may be granted or withheld in Franchisor's sole discretion. Franchisee will receive dollar-for-dollar credit up to 2% of Gross Revenues for the preceding month against this obligation for all contributions that Franchisee makes to a Local Advertising Cooperative in accordance with Section 11.10. Expenditures that Franchisee incurs for any of the following shall not qualify as local advertising for purposes of this Section 11.1, unless approved in advance by Franchisor: (a) salaries, expenses or benefits of any employees of Franchisee, including expense for attendance at advertising meetings or activities; (b) in-store materials consisting of furniture or equipment; or (c) seminar and educational costs and expenses of Franchisee's employees. Franchisee shall also be responsible for paying its pro rata share of a classified directory listing and/or Yellow Pages advertisement to be placed by Franchisor, or at Franchisor's option, Franchisee or the Local Advertising Cooperative, on behalf of all Big Air Trampoline Facilities in the market. If Franchisee operates the only Big Air Trampoline Facility in the market, Franchisee shall be responsible for full payment of the classified directory advertising. Franchisee shall be entitled to apply any

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payment made for classified directory advertising toward Franchisee's Individual Advertising Expense obligation.

11.2 During the Term, Franchisee shall furnish Franchisor an accounting of Franchisee's previous month's expenditures for advertising and promotion on a form approved by Franchisor.

11.3 Franchisor will make available to Franchisee all advertising and promotion materials for the Big Air Trampoline Business which are used by Franchisor and other franchisees. Franchisee may not develop advertising materials for use in the Big Air Trampoline Business without Franchisor's approval. If Franchisor approves the advertising materials prepared by Franchisee in writing, Franchisor may make available to other franchisees such advertising and promotion materials. Franchisee must pay duplication costs of any advertising or promotion material provided by Franchisor.

11.4 Franchisor, in its sole discretion, may elect to form a national marketing and promotions fund ("**National Marketing and Promotions Fund**"). On or before the 10th day of each month, Franchisee shall remit 2% of the Gross Revenues for the preceding month or portion thereof to Franchisor ("**National Marketing and Promotions Fee**"). Franchisor may, in its sole discretion increase the National Marketing and Promotions Fee up to 3% of the Gross Revenues for the preceding month or portion thereof upon 30 days advance notice. No action taken by Franchisee shall diminish Franchisee's obligations to pay the National Marketing and Promotions Fee to the National Marketing and Promotions Fund. The National Marketing and Promotions Fee is in addition to Franchisee's obligations in Section 11.1.

11.5 Advertising materials and services will be provided to Franchisee through the National Marketing and Promotions Fund. Franchisor may occasionally provide for placement of advertising, development of promotional materials, and undertaking public relations activities on behalf of the entire System, including franchisees, or on behalf of a particular region, that may not include Franchisee, through the National Marketing and Promotions Fund. Franchisor reserves the right to use the National Marketing and Promotions Fee from the National Marketing and Promotions Fund to place advertising in national media or regional media (including broadcast, print or other media) in the future. Franchisee acknowledges that the National Marketing and Promotions Fund is intended to maximize the general brand recognition of the System. Franchisor is not obligated to expend National Marketing and Promotions Funds on Franchisee's behalf or benefit or expend National Marketing and Promotions Funds equivalent or proportionate to Franchisee's National Marketing and Promotions Fees on Franchisee's behalf or benefit.

11.6 National or regional advertising, public relations, and promotions will be started and continued by Franchisor, when, in Franchisor's sole discretion, Franchisor deems that it has accumulated sufficient moneys for that purpose. The National Marketing and Promotions Fund will be used to promote the System, Services and Products sold by Franchisees and will not be used for the purpose of selling additional franchises; provided, however, that Franchisee acknowledges and agrees that Franchisor may undertake certain activities using funds from the National Marketing and Promotions Fund that have the effect of increasing the visibility of, and interest in, the Big Air Trampoline System by prospective franchisees. Franchisor's accounting

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and marketing personnel or a representative designated by Franchisor will administer the National Marketing and Promotions Fund. The National Marketing and Promotions Fund will collect National Marketing and Promotions Fees from all franchisees and Franchisor's Affiliate-owned stores. All payments to the National Marketing and Promotions Fund must be spent on advertising, public relations, market research, trade show attendance, promotion, point-of-sale materials, point-of-sale systems, marketing of goods and services provided by Franchisor and outside vendors, including but not limited to marketing agencies, and administration of the National Marketing and Promotions Fund, including but not limited to, salaries, overhead, administrative, accounting, collection and legal costs and expenses. The National Marketing and Promotions Funds will be maintained by Franchisor in a separate account. An annual un-audited financial statement of the National Marketing and Promotions Fund, at the expense of the National Marketing and Promotions Fund, will be available 120 days after Franchisor's fiscal year end to Franchisee for review once a year upon request.

11.7 The National Marketing and Promotions Fees collected by the National Marketing and Promotions Fund are non-refundable. The National Marketing and Promotions Fund may be terminated at any time by Franchisor, in its sole discretion. In the event that the National Marketing and Promotions Fund is terminated, any remaining balance in the National Marketing and Promotions Fund will be expended as provided for in Section 11.6 or returned to Franchisee on a pro-rata basis.

11.8 Franchisee shall fully participate in all such promotional campaigns, prize contests, special offers, and other programs, national, regional, or local in nature (including the introduction of new Services, Products, new franchises or other marketing programs directed or approved by Franchisor), which are prescribed from time to time by Franchisor. Franchisee shall be responsible for the costs of such participation. In addition, Franchisee shall honor any coupons, gift certificates or other authorized promotional offers of Franchisor at Franchisee's sole cost unless otherwise specified in writing by Franchisor. Franchisee will maintain an adequate supply of marketing brochures, pamphlets and promotional materials as may be required by Franchisor from time to time. The cost for such participation will be applied to Franchisee's Individual Advertising Expense.

11.9 Franchisor (and any designee of Franchisor) will have no direct or indirect liability or obligation to Franchisee or the National Marketing and Promotions Fund or otherwise with respect to the management, maintenance, direction, administration or otherwise of the National Marketing and Promotions Fund. Franchisee and Franchisor agree that their rights and obligations with respect to the National Marketing and Promotions Fund and all related matters are governed solely by this Agreement and neither this Agreement or the National Marketing and Promotions Fund creates a trust, fiduciary relationship, or similar arrangement.

11.10 At the time the designated marketing area ("**DMA**") in which the Big Air Trampoline Facility is located encompasses Big Air Trampoline Facilities operated by at least two other franchisees or Big Air Trampoline Facility operators (including Franchisor's parent or Affiliates), the owners in the DMA will, at Franchisor's request and with Franchisor's advice and assistance, form a cooperative advertising association among themselves ("**Local Advertising Cooperative**" or "**Cooperative**") for the purpose of jointly advertising and promoting their Big

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Air Trampoline Facilities. Franchisor shall have control of all Cooperative Funds and expenditures of such funds shall require Franchisor's advanced approval.

(a) If, in connection with a Cooperative's formation or functioning, its members are unable to reach agreement with respect to any disagreement over organization, administration, "spill" policy, contribution waivers or exceptions, budget or other matters that the members cannot resolve within 45 days, the issue will be referred to Franchisor for resolution. Franchisor's decision with respect to the issue's resolution will be binding on all members of the Cooperative. In addition, Franchisor reserves the right to review each Cooperative's contribution rate on an annual basis and to disapprove a rate of less than 1% of Gross Revenues or a rate in excess of 2% of Gross Revenues. Franchisee's contributions to a Cooperative will be credited to Franchisee's Individual Advertising Expense requirements set out in Section 11.1 up to a maximum of 2% of Gross Revenues.

(b) Franchisee agrees (i) to join, participate in, and actively support any Cooperative established in the Big Air Trampoline Facility's DMA, and (ii) to make contributions to each Cooperative on the payment schedule adopted by the Cooperative's members and at the contribution rate Franchisor approves.

(c) Franchisor reserves the right to seek reimbursement from the Cooperative for reasonable administrative costs, salaries and overhead as Franchisor may incur in activities related to the implementation and administration of the Cooperative and related marketing programs.

(d) Franchisor shall have the sole right, in its discretion, to form, change, dissolve or merge any Cooperative.

11.11 Franchisor may establish and maintain an Internet website that provides information about the Big Air Trampoline System and the Products and Services that Big Air Trampoline Facilities offer. Franchisor will have sole discretion and control over the website's design and contents. Franchisor may use part of the marketing fees it collects under Section 11.4 and part of the Marketing and Promotions Fund's revenues to pay or reimburse itself for the costs of maintaining and updating the website, except that Franchisor may not use marketing fees or Marketing and Promotions Fund Contributions to pay for those components of the website that are devoted to the sale of franchises for Big Air Trampoline Businesses.

(a) The website may include a section that provides the address, telephone number and e-mail address of each Big Air Trampoline Facility in the Big Air Trampoline chain, including Franchisee's Big Air Trampoline Facility.

(b) Franchisee will not have any independent right to advertise its Big Air Trampoline Facility on the Internet.

12. INSURANCE AND INDEMNITY

12.1 Franchisee shall, upon commencement of the Term, purchase and at all times maintain in full force and effect:

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(a) Insurance policies, in such amounts and on such terms, as prescribed by the Operations Manual, issued by an insurance company acceptable to Franchisor at all times during the Term of this Agreement and any Successor Terms. Insurance coverage must include, but is not limited to, comprehensive general liability, combined single limit, automobile, bodily injury and all-risk property damage insurance and all other occurrences against claims of any person, employee, customer, agent or otherwise in an amount per occurrence of not less than such amount set forth in the Operations Manual and adjusted by Franchisor periodically in Franchisor's sole discretion, unemployment and workers compensation insurance and any other additional insurance required by the terms of any Lease or lender for the Big Air Trampoline Business. Insurance policies must insure Franchisee, Franchisor, Franchisor's Affiliates, and Franchisor's and Franchisor Affiliates' respective officers, directors, shareholders, managers, members and all other parties designated by Franchisor, as additional named insureds against any liability which may accrue against them because of the ownership, maintenance or operation by Franchisee of the Big Air Trampoline Business. The policies must also stipulate that Franchisor shall receive a 30-day prior written notice of cancellation and must contain endorsements by the insurance companies waiving all rights of subrogation against Franchisor. Original or duplicate copies of all insurance policies, certificates of insurance, or other proof of insurance (collectively, "**Certificates of Insurance**") acceptable to Franchisor, including original endorsements effecting the coverage required by this Section, shall be furnished to Franchisor together with proof of payment within 10 days of issuance thereof. Franchisee shall also furnish Franchisor with certificates and endorsements evidencing such insurance coverage within 10 days after each of the following events: (i) at all policy renewal periods, no less often than annually, and (ii) at all instances of any change to, addition to, or replacement of any insurance. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are subject to approval by Franchisor. Franchisor reserves the right to require complete, certified copies of all required insurance policies at any time in Franchisor's sole discretion. In the event Franchisee fails to obtain the required insurance and to keep the same in full force and effect, Franchisor may, but shall not be obligated to, purchase insurance on Franchisee's behalf from an insurance carrier of Franchisor's choice, and Franchisee shall reimburse Franchisor for the full cost of such insurance, along with a reasonable service charge to compensate Franchisor for the time and effort expended to secure such insurance, within five days of the date Franchisor delivers an invoice detailing such costs and expenses to Franchisee. Notwithstanding the foregoing, failure of Franchisee to obtain insurance constitutes a material breach of this Agreement entitling Franchisor to terminate this Agreement or exercise any or a combination of the other default remedies set forth in Section 17 of this Agreement. Franchisee shall also procure and pay for all other insurance required by state or federal law. Franchisor reserves the right to modify minimum insurance requirements or the types of coverage required at any time in its sole discretion by updating the Operations Manual.

(b) All public liability and property damage policies shall contain a provision that Franchisor, although named as an additional insured, shall nevertheless be entitled to recover under such policies on any loss occasioned to Franchisor or its shareholders, members, directors, managers, employees or agents.

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(c) All liability insurance policies procured and maintained by Franchisee in connection with the Big Air Trampoline Business will require the insurance company to provide and pay for attorneys to defend any legal actions, lawsuits or claims brought against Franchisee, Franchisor, Franchisor's Affiliates and their respective officers, directors, managers, members, agents, employees, and all other entities or individuals designated by Franchisor as additional insureds.

(d) Franchisee must purchase insurance policies set out in this Section 12.1 from Franchisor's designated supplier if required by Franchisor in the Operations Manual.

12.2 Franchisee shall, during the Term and any Successor Terms and after the termination or expiration of this Agreement, indemnify and defend Franchisor, its Affiliates and their respective officers, directors, managers, members, and employees, and hold them harmless against all claims, demands, losses, damages (including punitive damages), costs, suits, judgments, penalties, expenses (including reasonable attorneys' fees and amounts paid in settlement or compromise) and liabilities of any kind, whether or not ultimately determined to be meritorious (and including damages suffered by Franchisee or any of its property) (collectively, "**Damages**") for which they are held liable, or which they incur (including travel, investigation and living expenses of employees and witness fees) in any litigation or proceeding as a result of or arising out of:

(a) a breach of this Agreement, or any other agreement between the parties, or any breach of a Lease or other instrument by which the right to occupy any Big Air Trampoline Facility or any other premises used by Franchisee to operate the Big Air Trampoline Business is held, by Franchisee;

(b) any injury to, or loss of property of, any person in, or on, the Big Air Trampoline Facility or any other premises used by Franchisee to operate the Big Air Trampoline Business;

(c) Franchisee's taxes, liabilities, costs or expenses of its Big Air Trampoline Business;

(d) any negligent or willful act or omission of Franchisee, its officers, directors, managers, members, partners, employees, agents, servants, contractors or others for whom it is, in law, responsible;

(e) any violation of any federal, state or local law, ordinance or regulation imposing requirements or prohibitions on Franchisee in the operation of the Big Air Trampoline Business; and

(f) any advertising or promotional material distributed, broadcasted or in any way disseminated by Franchisee, or on its behalf unless such material has been produced, or approved in writing, by Franchisor.

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13. RELATIONSHIP

13.1 Franchisee acknowledges that it is an independent contractor and is not an agent, partner, joint venturer or employee of Franchisor and no training or supervision given by, or assistance from, Franchisor shall be deemed to negate such independence. Neither party is liable or responsible for the other's debts or obligations, nor shall either party be obligated for any damages to any person or property directly or indirectly arising out of the operation of the other party's business authorized by or conducted pursuant to this Agreement. Franchisor and Franchisee agree that no partnership, fiduciary relationship, joint venture or employment relationship exists between them. Franchisee shall conspicuously identify itself in all dealings with the public as a sole operator that is an entity separate from Franchisor and state that Franchisor has no liability for the Big Air Trampoline Business being conducted from the Big Air Trampoline Business location. It is expressly agreed that the parties intend by this Agreement to establish between Franchisor and Franchisee the relationship of franchisor and franchisee. It is further agreed that Franchisee has no authority to create or assume in Franchisor's name or on behalf of Franchisor, any obligation, express or implied, or to act or purport to act as agent or representative on behalf of Franchisor for any purpose whatsoever. Franchisee agrees that it will not hold itself out as the agent, employee, partner or co-venturer of Franchisor. All employees hired by or working for Franchisee shall be the employees of Franchisee and shall not, for any purpose, be deemed employees of Franchisor or subject to Franchisor's control. Each of the parties agrees to file its own tax, regulatory and payroll reports with respect to its respective employees and operations, saving and indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof.

13.2 Neither party hereto shall make any agreements, representations or warranties (except by Franchisor in advertising as provided herein) in the name of, or on behalf of, the other party; neither party hereto shall be obligated by, nor have any liability for, any agreements, representations or warranties made by the other (except by Franchisor in advertising as provided herein) nor shall Franchisor be liable for any damages to any person or property, directly or indirectly, arising out of the operation of Franchisee's Big Air Trampoline Business, whether caused by Franchisee's negligent or willful action or failure to act.

13.3 Franchisor shall have no liability for Franchisee's obligations to pay any third parties, including without limitation, any product vendors, or any value added, sales, use, service, occupation, excise, Gross Revenues, income, property or other tax levied upon Franchisee, Franchisee's property, the Big Air Trampoline Business or upon Franchisor in connection with the sales made or business conducted by Franchisee (except any taxes Franchisor is required by law to collect from Franchisee with respect to purchases from Franchisor).

14. RESTRICTIVE COVENANTS

14.1 Franchisee acknowledges and agrees that:

(a) Franchisee's entire knowledge of the operation of the Big Air Trampoline Business, the System, and the concepts and methods of promoting the Big Air Trampoline Business hereunder, that it has now or obtains in the future, is derived from Franchisor's Confidential Information and Trade Secrets. Franchisee further

acknowledges and agrees that all of the Confidential Information and Trade Secrets are the sole property of Franchisor, represent valuable assets of Franchisor and that Franchisor has the right to use the Confidential Information and Trade Secrets in any manner it wishes at any time.

(b) During the Term and any Successor Terms, Franchisee, and Franchisees' owners, Designated Business Managers, officers, directors, managers, members, partners, and employees who have access to the Confidential Information and Trade Secrets agree that they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information and Trade Secrets; and (4) will adopt and implement all reasonable procedures Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring employees, Designated Business Managers, training class attendees, and Franchisee owners who have access to the Confidential Information and Trade Secrets to execute such nondisclosure and noncompetition agreements as Franchisor may require periodically, and provide Franchisor, at Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(c) After the Agreement expires or is terminated, Franchisee, and Franchisees' owners, Designated Business Managers and employees who have access to the Confidential Information and Trade Secrets agree that for a period of two years after the termination or expiration of the Agreement (unless such information is a Trade Secret in which case the requirements in this Section 14.1(c) will remain in place for as long as such information constitutes a Trade Secret) they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information or Trade Secrets; and (4) will adopt and implement all reasonable procedures Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring written nondisclosure and noncompetition agreements for those individuals as Franchisor may require and provide Franchisor, at Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(d) Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to the following: (a) Confidential Information in the public domain after it was communicated to Franchisee through no fault of Franchisee, its owners, Designated Business Managers or employees; (b) Confidential Information in Franchisee's possession free of any obligation of confidence at the time it was communicated to Franchisee; or (c) the disclosure of the Confidential Information in judicial or administrative proceedings to the extent that Franchisee is legally compelled to disclose the information, if Franchisee has notified Franchisor before disclosure and used Franchisee's best efforts, and afforded Franchisor the

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opportunity, to obtain an appropriate protective order or other assurance satisfactory to Franchisor of confidential treatment for the information required to be so disclosed.

14.2 Franchisee covenants and agrees that:

(a) During the Term of this Agreement and any Successor Terms thereof, Franchisee, its owners, Designated Business Managers, officers, directors, managers, members, and partners shall not, without the prior written consent of Franchisor, either individually or in a partnership, corporation, limited liability company, joint venture or other business entity or jointly or in conjunction with any person, firm, association, syndicate or corporation, as principal, agent, shareholder, member, partner or in any manner whatsoever, carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit its name or any part thereof to be used or employed in any business operating in competition with any business operating indoor trampoline recreation and party centers featuring trampolines, foam pits, rock climbing walls and other elements and the ale of related Products, or any business similar to the Big Air Trampoline Business ("**Competitive Business**") as carried on from time to time during the Term of this Agreement, including any Successor Term.

(b) Upon termination or expiration of the Term or any Successor Term, or the transfer, sale or assignment of this Agreement by Franchisee, neither Franchisee, the Designated Business Manager nor Franchisee's owners, officers, directors, managers, members, or partners will have any direct or indirect interest (i.e. through a relative) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent, for two years, in any Competitive Business in: (1) the Territory or any other franchisee's territory; (2) within 100 miles of the Territory or any other franchisee's territory; or (3) within 100 miles of any Franchisor or Affiliate-owned Big Air Trampoline Business.

14.3 During the Term (including any Successor Term) of this Agreement and for a period of two years thereafter, Franchisee, Franchisee's owners, officers, directors, managers, members, partners, and the Designated Business Manager shall not attempt to attain an unfair advantage over other franchisees or Franchisor or any Affiliates thereof by soliciting for employment any person who is, at the time of such solicitation, employed by Franchisor, other franchisees or any Affiliates, nor shall Franchisee, Franchisee's owners, officers, directors, managers, members, partners, nor the Designated Business Manager, directly or indirectly induce or attempt to induce any such person to leave his or her employment as aforesaid.

14.4 If any person restricted by this Section 14 refuses to voluntarily comply with the foregoing obligations, the two-year period will commence with the entry of any order of a court or arbitrator enforcing this Section 14.

14.5 The parties have attempted in Section 14.2 above to limit Franchisee's right to compete only to the extent necessary to protect Franchisor from unfair competition. The parties hereby expressly agree that if the scope of enforceability of the provision of Section 14.2 is disputed at any time by Franchisee, a court or arbitrator, as the case may be, may modify Section 14.2 to the extent that it deems necessary to make such provision enforceable under applicable

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law. In addition, Franchisor reserves the right to reduce the scope of said provision without Franchisee's consent, at any time or times, effective immediately upon notice to Franchisee. Franchisee EXPRESSLY ACKNOWLEDGES THAT IT POSSESSES SKILLS AND ABILITIES OF A GENERAL NATURE AND HAS OTHER OPPORTUNITIES TO EXPLOIT SUCH SKILLS. CONSEQUENTLY, ENFORCEMENT OF THE COVENANTS SET FORTH ABOVE WILL NOT DEPRIVE FRANCHISEE OF THE ABILITY TO EARN A LIVING.

14.6 Nothing in this Section 14 shall prevent any active officer of Franchisee or member of Franchisee's family, either individually or collectively, from owning not more than a total of 5% of the stock of any company which is subject to the reporting requirements of the U.S. Securities and Exchange Act of 1934, provided that Franchisee or any member of Franchisee's family is otherwise not actively involved in the management or operation of that business and does not serve that business in any capacity other than as a shareholder.

14.7 Franchisor must be protected against the potential for unfair competition by Franchisee's use of Franchisor's training, assistance, Confidential Information and Trade Secrets in direct competition with Franchisor. Franchisee further acknowledges that Franchisor would not have entered into this Agreement or shared the Confidential Information, Trade Secrets and other information with Franchisee absent Franchisee's agreement to strictly comply with the provisions of this Section 14. Franchisee acknowledges that as a Franchisee of Franchisor, it will have access to Franchisor's Trade Secrets and Confidential Information and therefore be in a unique position to use the special knowledge gained as a franchisee. Franchisee acknowledges that a breach of the covenants contained in this Section 14 will be deemed to threaten immediate and substantial irreparable injury to Franchisor. Accordingly, Franchisee agrees that Franchisor will have the right, without prior notice to Franchisee, to obtain immediate injunctive relief without limiting any other rights or remedies and without posting a bond.

14.8 In the event that Franchisee is not an individual, this Section 14 will also apply to the officers, directors, stockholders, partners, members, trustees, beneficiaries and/or principals of Franchisee, Franchisee, and any persons controlled by, controlling or under common control with Franchisee.

15. ASSIGNMENT

15.1 Franchisee acknowledges that Franchisor's obligations under this Agreement are not personal. Franchisor shall have the absolute right, in its sole discretion and at any time, to unconditionally transfer or assign this Agreement or any of its rights or obligation under this Agreement to any person, corporation or other party.

15.2 Franchisor reserves the right to assign the franchise System to anyone, including the operator of a competing national or regional chain or franchise system. Franchisee acknowledges and agrees that Franchisor may sell its assets, the Marks or the System to any third party of Franchisor's choice; may offer its securities privately or publicly; may merge with or acquire other business entities or be acquired by another business entity; may permit and participate in any transfer or distribution of its securities in connection with a spin-off; may undertake a refinancing, recapitalization, leveraged buyout, or other economic or financial restructuring; or may terminate or cease to exist or dissolve, in any such case without

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Franchisee's consent and, provided the transferee expressly assumes and undertakes to perform Franchisor's obligations in all material respects, do so free of any responsibility or liability whatsoever to Franchisee after the transaction occurs.

15.3 With regard to any of the above sales, assignment and dispositions, Franchisee expressly and specifically waives any claims, demands, or damages against Franchisor arising from or related to the transfer of the Marks, assets or the System from Franchisor to any other party.

15.4 Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee. Accordingly, this Agreement, Franchisee's rights and interests hereunder, the property and assets owned and used by Franchisee in connection with the Big Air Trampoline Business, and any shares, stock, membership or interest in any corporation, limited liability company, or other entity having an interest in the Big Air Trampoline Business, shall not be voluntarily or involuntarily, directly or indirectly sold, pledged, assigned, transferred, shared, subdivided, sub-franchised, encumbered or transferred in any way (including, without limitation, in the event of the death of Franchisee if Franchisee is an individual), in whole or in part, in any manner whatsoever without the prior written approval of Franchisor, which approval will not be unreasonably withheld or delayed, and compliance with all terms of this Section 15. Any unauthorized sale, assignment, transfer or other conveyance, by operation of law or otherwise, or any attempt to do so, shall be deemed void and grounds for termination of this Agreement by Franchisor.

15.5 With and after each valid assignment of this Agreement pursuant to this Section 15, the assignee or assignees of Franchisee shall be deemed to be Franchisee under this Agreement and will be bound by and liable for all of Franchisee's existing and future obligations. No stockholder in any corporation, member in any limited liability company or partner in any partnership which becomes Franchisee shall have any rights under this Agreement by reason of his, her or its stock ownership, membership interest or partnership interest.

15.6 If Franchisee shall at anytime determine to sell, in whole or in part, the Big Air Trampoline Business, Franchisee shall obtain a bona fide, executed, written offer ("**Purchase Offer**") for the Big Air Trampoline Business together with all real or personal property, leasehold improvements and other assets used by Franchisee in its Big Air Trampoline Business from a responsible, arms' length, and fully disclosed purchaser and shall submit an exact copy of such Purchase Offer to Franchisor. Franchisor will have a right of first refusal to purchase the Big Air Trampoline Business as provided in Section 16.

15.7 No transfer or assignment of this Agreement will be approved by Franchisor or be effective unless and until all the following conditions are satisfied:

(a) Franchisee being then in full compliance herewith and paying to Franchisor all outstanding debts or amounts owing to Franchisor and any Affiliates or suppliers of Franchisor;

(b) the transferee executing Franchisor's then-current form of franchise agreement (which, in Franchisor's sole discretion, may have terms equal to the remainder

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of Franchisee's initial Term, or may include a new full length Term, and which may otherwise contain provisions substantially different from those contained herein, including a higher royalty and greater required expenditures for advertising and promotion than are provided hereunder, and such other documents then customarily used by Franchisor to grant franchises, but which shall not require the payment of another Initial Franchise Fee), all other documents as may be reasonably requested by Franchisor and paying to Franchisor a transfer fee ("**Transfer Fee**") in the amount of Ten Thousand Dollars ($10,000.00);

(c) Franchisee's execution of a general release of Franchisor, including its officers, directors, members, agents, and employees and Affiliates from such parties' obligations under the Agreement;

(d) the transferee is purchasing all of Franchisee's assets used in the Big Air Trampoline Business in accordance with all applicable bulk sales legislation and assuming all of the liabilities of the Big Air Trampoline Business unless such liabilities have been paid prior to the closing of the transaction of purchase and sale or unless the sale is a sale of shares in the capital stock or membership interest of Franchisee;

(e) the transferee shall be an individual, corporation, limited liability company, partnership or other business entity having adequate financial resources who shall meet all criteria established by Franchisor for franchisees. The transferee shall also complete Franchisor's then-current training program established by Franchisor for franchisees unless: (i) the transferee is a current franchisee in good standing in the System, or (ii) the transferee is or has been a Designated Business Manager for a period of one year or more of a Big Air Trampoline Business in good standing;

(f) Franchisee shall, at Franchisor's request, prepare and furnish to the transferee and/or Franchisor such financial reports and other data relating to the Big Air Trampoline Business and its operations as Franchisor deems reasonably necessary or appropriate for the transferee and/or Franchisor to evaluate the Big Air Trampoline Business and the proposed transfer. Franchisee authorizes Franchisor to confer with a proposed transferee and furnish it with information concerning the Big Air Trampoline Business and the terms and conditions of the proposed transfer, and Franchisor may do so without any liability, except for intentional misstatements made to a transferee;

(g) the parties to the proposed transaction will have entered into a binding agreement subject only to the rights of Franchisor set out in Section 16. Franchisor shall be furnished a copy of this binding agreement, and such agreement shall be subject to Franchisor's approval in writing. Franchisee must advise each prospective transferee of this provision and the other terms of this Agreement;

(h) the proposed transferee or the stockholders, partners, members or owners of a beneficial interest in a proposed corporation, partnership, limited liability company or other entity transferee, provide jointly and severally such personal guarantees as Franchisor may request, guaranteeing the proposed transferee's performance of its obligations under the agreements to be entered into;

(i) the proposed transferee shall have demonstrated to Franchisor's satisfaction that it, he or she will meet in all respects Franchisor's standards applicable to new franchisees regarding experience, personal and financial reputation and stability, willingness and ability to devote its, his or her full time and best efforts to the operation of the Big Air Trampoline Business, and any other conditions as Franchisor may reasonably apply in evaluating new franchisees. Franchisor must be provided with all information about the proposed transferee as Franchisor may reasonably require. Because of the confidential information and trade secrets available to a franchisee, no assignment to a competitor of Franchisor will be permitted; and

(j) the transferee paying all costs of Franchisor with respect to (i) the granting of its approval, as hereinbefore contemplated, including but not limited to all of its legal costs with respect to the preparation and execution of the above noted then-current form of Franchise Agreement, and all other documents then customarily used by Franchisor to grant franchises; and (ii) the transfer, including but not limited to, all professional fees (attorney's fees, broker fees, and the like), leasing expenses, brokerage commissions or fees, document preparation costs and due diligence.

15.8 Notwithstanding anything to the contrary herein contained, Franchisor shall, upon Franchisee's compliance with such requirements as may from time to time be prescribed by Franchisor (including the obtaining of all necessary approvals to the assignment of the Lease, if any, of the Big Air Trampoline Facility), consent to an assignment of Franchisee's right, title and interest in and to this Agreement, and the property and assets owned and used by Franchisee in connection therewith and any other agreement then in effect between Franchisee and Franchisor to a corporation, limited liability company or other business entity which is wholly owned and controlled by Franchisee, subject to the following (provided that such assignment shall in no way release Franchisee from any liability under this Agreement):

(a) Contemporaneously with such assignment and thereafter upon the appointment or election of any person as director, officer, partner or manager of such corporation, limited liability company or other business entity, such corporation, limited liability company, partnership or other business entity shall cause each shareholder, partner, member, manager, director(s) and officer(s) of the corporation, limited liability company, partnership or other business entity to execute a written agreement with Franchisor, personally guaranteeing full payment and performance of Franchisee's obligations to Franchisor and individually undertaking to be bound, jointly and severally, by all the terms of this Agreement or any new current form of Franchise Agreement and jointly and severally liable;

(b) No shares or interest in the capital of such corporation, limited liability company, partnership or other business entity shall be issued nor shall Franchisee directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, donate, pledge, mortgage or otherwise encumber any such shares or interest or offer or attempt to do so or permit the same to be done without Franchisor's prior written consent;

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(c) The corporation shall maintain stop transfer instructions against the transfer of shares or membership interests on its records subject to the restrictions of this Section and shall have all outstanding shares or membership interest certificates endorsed with the following legend printed conspicuously upon the face of each share or certificate:

> "*The transfer of this certificate is subject to the terms and conditions of a certain Franchise Agreement with BIG AIR FRANCHISING, LLC. Reference is made to said Franchise Agreement and to the restrictive provisions of the articles of this corporation.*"

(d) The articles of incorporation, articles of organization, operating agreement, partnership agreement, shareholder agreement, and by-laws of the corporation, limited liability company, partnership or other business entity shall provide that its objectives or business is confined exclusively to the operation of the Big Air Trampoline Business as provided for in this Agreement, and recite that the issuance and transfer of any shares, membership interest, partnership interest or other interest is restricted by the terms of this Agreement, and copies thereof shall be furnished to Franchisor upon request;

(e) Franchisor's consent to a transfer of any interest subject to the restrictions of this Section shall not constitute a waiver of any claim it may have against the assignor, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the assignee;

(f) The corporation, partnership, limited liability company or other business entity shall advise Franchisor and keep Franchisor current as to the names and addresses of the directors, officers, members, partners and shareholder of and those persons financially involved in the corporation, partnership, limited liability company or other business entity; and

(g) Franchisee agrees to devote its full time and best efforts to manage the day-to-day operations of the Big Air Trampoline Business unless it has an operational partner or Designated Business Manager approved by Franchisor.

15.9 Upon the death or permanent disability of an individual Franchisee (or the controlling shareholder, member or partner if Franchisee is a legal entity), the personal representative of such person shall transfer all right, title and interest in this Agreement or such interest in Franchisee to any approved third party, which may include an heir or legatee that otherwise satisfies Franchisor's then-current standards and qualifications for new Franchisee. Such disposition of this Agreement or such interest (including, without limitation, transfer by bequest or inheritance, provided such transfer is in accordance with the requirements of this Section 15.9) shall be completed within a reasonable time, not to exceed six months from the date of death or permanent disability (unless extended by probate proceedings), and shall be subject to all the terms and conditions applicable to transfers contained in this Section. Franchisor shall have the right, in Franchisor's sole discretion, to operate the Big Air Trampoline Facility or to appoint a representative or designee to operate the Big Air Trampoline Facility, for

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a period of up to 180 days, or until such time as Franchisee's interest shall have been transferred to an approved third party, whichever occurs first. Franchisor or the appointed representative shall be entitled to retain all revenues, and shall pay all operating expenses from the operation of the Big Air Trampoline Facility, without the right to seek or require reimbursement by Franchisee's estate or personal representative, during the period of operation of the Big Air Trampoline Facility. Failure to transfer the interest in this Agreement or such interest in Franchisee within said period of time shall constitute a breach of this Agreement and shall entitle Franchisor to terminate this Agreement without further notice or the opportunity to cure. For purposes hereof, the term "**Permanent Disability**" shall mean a mental or physical disability, impairment or condition that prevent Franchisee or Franchisee's controlling shareholder, member or partner from performing the essential functions of Franchisee.

15.10 Franchisee shall grant no security interest in any of the assets of the Big Air Trampoline Business unless the secured party agrees that in the event of any default by Franchisee under any documents related to the security interest, Franchisor shall have the right and the option to be substituted as obligor to the secured party and to cure any default of Franchisee, except that any acceleration of indebtedness due to Franchisee's default shall be void.

15.11 Franchisee shall not have the right to grant a subfranchise.

16. OPTION TO PURCHASE — RIGHT OF FIRST REFUSAL

16.1 Unless otherwise explicitly provided by this Agreement, Franchisor shall be entitled to exercise the rights provided in this Section immediately upon:

(a) The expiration without extension of Franchisee's rights to operate the Big Air Trampoline Business or the termination for any reason of the License or this Agreement;

(b) Any breach, default or other event that gives Franchisor the right to terminate the License or this Agreement, after expiration of any applicable notice and cure period; or

(c) The receipt by Franchisor of a copy of a Purchase Offer.

16.2 Upon any event described in Subsection 16.1, Franchisor shall have the option to purchase all of Franchisee's rights, title and interest in the Big Air Trampoline Business, and all its improvements, furniture, fixtures, equipment and products, and all of Franchisee's accounts, contract rights, customer and vendor lists, work in progress and other business assets.

16.3 The purchase price for assets itemized in Subsection 16.2 will be, subject to Section 16.4: (i) the current fair market value if Subsection 16.1(a) or 16.1(b) is applicable; or (ii) the price specified in the Purchase Offer received by Franchisee if Subsection 16.1(c) is applicable. If Franchisee and Franchisor cannot agree on fair market value within a reasonable time, an independent appraiser will be designated by Franchisee and Franchisor and an average of the two appraised values will be binding. Appraised values will exclude any and all

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consideration for goodwill or going concern value created by the Marks and business system licensed to Franchisee.

16.4 If Franchisor elects to exercise any option to purchase provided in this Section 16, Franchisor will have the right to set off all amounts due from Franchisee under the Franchise Agreement or any other agreements between the parties, any commissions or fees payable to any broker, agent or other intermediary and the cost of the appraisal, if any, against any payment. Franchisee shall also have the right to substitute cash for any other form of consideration specified in the Purchase Offer and to pay in full the entire purchase price at the time of closing.

16.5 Franchisor will notify Franchisee of its intention to exercise or not exercise its rights to purchase ("**Notice of Intent**") within 60 days following an event described in Subsection 16.1(a) or (b) or within 15 days following an event described in Subsection 16.1(c). The Notice of Intent will specify the assets to be purchased, and the current fair market value as determined by Franchisor if Subsection 16.1(a) or 16.1(b) is applicable. In the event Franchisor is purchasing the assets pursuant to Subsections 16.1(a) or (b), Franchisee will have 14 days following receipt of Franchisor's Notice of Intent to object to any of the prices specified therein, and any disputes over pricing shall be resolved through appraisal as specified by Subsection 16.3. If Franchisor declines to exercise its rights under this Section within the 15 or 60 day period described above, as applicable, Franchisee may thereafter sell or dispose of the Big Air Trampoline Business to any third party in the event of a sale under Subsection 16.1(a) or 16.1(b) or to the third party identified in the Purchase Offer in the event of a sale under Subsection 16.1(c), but not at a lower price nor on more favorable terms than set forth in the Purchase Offer, if any, or the Notice of Intent and subject to the prior written permission of Franchisor and satisfaction of the other conditions to assignment set forth in Section 15. If the sale to such third party purchaser is not completed within 90 days after Franchisor delivers the Notice of Intent to Franchisee, Franchisor shall again have the right of first refusal provided in this Agreement.

16.6 If Franchisor provides Franchisee with its Notice of Intent to exercise its rights under this Section 16, the purchase and sale contemplated in this Section shall be consummated as soon as possible. In the event Franchisor is purchasing the assets pursuant to Subsections 16.1(a) or (b), following the delivery of a Notice of Intent as specified in Subsection 16.5, Franchisor or Franchisor's designee shall have the immediate right to take possession of the Big Air Trampoline Business and to carry on and develop the Big Air Trampoline Business for the exclusive benefit of Franchisor or its designee.

17. DEFAULT AND TERMINATION

17.1 Franchisor shall have the right, at its option, to (i) suspend performance of certain or all of its services to Franchisee during the time period Franchisee is in default of this Agreement; or (ii) terminate this Agreement and all rights granted Franchisee hereunder (subject to the provisions of applicable state law governing franchise termination and renewal), effective upon receipt of notice by Franchisee, addressed as provided in Section 18, upon the occurrence of any of the following events:

(a) Franchisee fails or refuses to open the Big Air Trampoline Facility on or before the Projected Opening Date;

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(b) Franchisee intentionally or negligently discloses to any unauthorized person the contents of or any part of Franchisor's Operations Manual, Confidential Information or Trade Secrets of Franchisor;

(c) Franchisee voluntarily abandons the Big Air Trampoline Business for a period of five consecutive days, or any shorter period that indicates an intent by Franchisee to discontinue operation of the Big Air Trampoline Business, unless such abandonment is due to fire, flood, earthquake or other similar causes beyond Franchisee's control and not related to the availability of funds to Franchisee;

(d) Franchisee becomes insolvent or is adjudicated a bankrupt; or any action is taken by Franchisee, or by others against Franchisee under any insolvency, bankruptcy or reorganization act, or if Franchisee makes an assignment for the benefit of creditors, or a receiver is appointed for Franchisee;

(e) Any material judgment (or several judgments which in the aggregate are material) is obtained against Franchisee and remains unsatisfied or of record for 30 days or longer (unless a supersedeas or other appeal bond has been filed); or if execution is levied against Franchisee's Big Air Trampoline Business or any of the property used in the operation of the Big Air Trampoline Business and is not discharged within five days; or if the real or personal property of Franchisee's Big Air Trampoline Business shall be sold after levy thereupon by any sheriff, marshal or constable;

(f) Franchisee, the Designated Business Manager, or any owner of greater than 10% of the Franchisee entity is charged or convicted of a any felony charge, or a crime involving moral turpitude, or a felony or misdemeanor of any type against a child, or any crime or offense that is reasonably likely, in the sole opinion of Franchisor, to materially and unfavorably affect the System, Marks, goodwill or reputation thereof;

(g) Franchisee fails to pay any amounts due Franchisor or Affiliates within 10 days after receiving notice that such fees or amounts are overdue;

(h) Franchisee misuses or fails to follow Franchisor's directions and guidelines concerning use of the Marks and fails to correct the misuse or failure within 10 days after notification from Franchisor;

(i) Franchisee has received two notices of default with respect to Franchisee's obligations hereunder from Franchisor within a 12 month period, regardless of whether the defaults were cured by Franchisee;

(j) Franchisee sells, transfers or otherwise assigns the Big Air Trampoline Business, an interest in the Big Air Trampoline Business or Franchisee entity, this Agreement, or a substantial portion of the assets of the Big Air Trampoline Business owned by Franchisee without complying with the provisions of Section 15;

(k) Franchisee submits on two or more occasions during the Term a report, financial statement, tax return, schedule or other information or supporting record which

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understates its Gross Revenue by more than 2%, unless Franchisee demonstrates that such understatement resulted from inadvertent error;

(l) Franchisee fails, or refuses, to submit any report, financial statement, tax return, schedule or other information or supporting records required herein, or submits such reports more than five days late on two or more occasions during the Term or any Successor Term unless due to circumstances beyond the control of Franchisee;

(m) Franchisee sells or offers for sale any unauthorized merchandise, product or service, engages in any unauthorized business or practice or sells any unauthorized product or service under the Marks or under a name or mark which is confusingly similar to the Marks;

(n) Franchisee contests in any court or proceeding the validity of or Franchisor's ownership of the Marks or copyrighted materials;

(o) Franchisee is a corporation, limited liability company, partnership or other business entity and any action is taken which purports to merge, consolidate, dissolve or liquidate such entity without Franchisor's prior written consent;

(p) Franchisee or its Designated Business Manager fails to successfully complete Franchisor's training or re-training course(s);

(q) Franchisee receives from Franchisor during the Term and any Successor Term three or more notices of default regardless whether such notices of default relate to the same or different defaults, or whether such defaults have been remedied by Franchisee; or

(r) Any misrepresentation under Section 1.9 or any violation of Anti-Terrorism Laws by Franchisee, its Designated Business Manager, its owners, officers, directors, managers, members, partners, agents or employees.

17.2 Franchisor shall have the right, at its option, to (i) suspend performance of certain or all of its services to Franchisee during the time period Franchisee is in default of this Agreement; (ii) reduce the size of Franchisee's Territory, as determined by Franchisor in Franchisor's discretion, or (iii) terminate this Agreement (subject to any state laws to the contrary, where state law shall prevail), effective upon 30 days written notice to Franchisee, if Franchisee breaches any other provision of this Agreement and fails to cure the default during such 30 day period. In that event, this Agreement will terminate without further notice to Franchisee, effective upon expiration of the 30-day period. Defaults shall include, but not be limited to, the following:

(a) Franchisee fails to maintain the then-current operating procedures and standards established by Franchisor as set forth herein or in the Operations Manual or otherwise communicated to Franchisee;

(b) Franchisee fails, refuses or neglects to obtain Franchisor's prior written approval or consent as required by this Agreement;

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(c) Franchisee fails or refuses to comply with the then-current requirements of the Operations Manual;

(d) Franchisee, or any partnership, joint venture, limited liability company, corporation or other business entity in which Franchisee has a controlling equity interest or which has a controlling interest in Franchisee, defaults under any term of the Lease of the Big Air Trampoline Facility or any other premises used by Franchisee to operate the Big Air Trampoline Business, any other franchise agreement with Franchisor or any other agreement material to the Big Air Trampoline Business and such default is not cured within the time specified in such Lease, other franchise agreement or other agreement;

(e) Franchisee fails, refuses or neglects to submit a statement of monthly revenues accompanying the Royalty Fee or National Advertising and Promotions Fees or any other report required under the Agreement when due;

(f) Franchisee fails, refuses or neglects to accurately report Gross Revenues, sales information or other information required by Franchisor to be reported; or

(g) Franchisee fails to comply with any other provision of this Agreement or any specification, standard or operating procedure prescribed by Franchisor and does not correct such failure within 10 days (or 30 days if this is the first non-compliance or breach) after written notice from Franchisor (which shall describe the action that Franchisee must take) is delivered to Franchisee.

17.3 Notwithstanding the foregoing, if the breach is curable, but is of a nature which cannot be reasonably cured within such 30 day period and Franchisee has commenced and is continuing to make good faith efforts to cure the breach during such 30 day period, Franchisee shall be given an additional reasonable period of time to cure the same, but in no event longer than 30 additional days.

17.4 A termination of this Agreement by Franchisee shall be deemed to be a termination without cause, and a breach hereof, by Franchisee. Franchisee agrees that it shall not, on grounds of an alleged nonperformance by Franchisor of any of its obligations or any other reason, withhold payment of any amount due to Franchisor whatsoever or set off amounts owed to Franchisor under this Agreement, against any monies owed to Franchisee, which right of set off is hereby expressly waived by Franchisee.

17.5 No endorsement or statement on any check or payment of any sum less than the full sum due to Franchisor shall be construed as an acknowledgment of payment in full or an accord and satisfaction, and Franchisor may accept and cash such check or payment without prejudice to its right to recover the balance due or pursue any other remedy provided herein or by law. Franchisor may apply any payments made by Franchisee against any past due indebtedness of Franchisee as Franchisor may see fit. Franchisor may set off against any payment due to Franchisee hereunder any outstanding debts of Franchisee to Franchisor, and may, at Franchisor's option, pay Franchisee's trade creditors out of any sum otherwise due to Franchisee.

17.6 Franchisee agrees to pay within five days of the effective date of termination or expiration of the Franchise all amounts owed to Franchisor, the Lessor of the Big Air Trampoline

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Facility or other premises used in the Big Air Trampoline Business (if applicable) and Franchisee's trade and other creditors which are then unpaid.

17.7 All royalty and advertising contributions, all amounts due for goods purchased by Franchisee from time to time from Franchisor or its Affiliates, and any other amounts owed to Franchisor or its Affiliates by Franchisee pursuant to this Agreement or any other agreement shall bear interest after the due date at the rate of 18% per annum or the highest rate permitted by law, whichever is lower, both before and after default, with interest on overdue interest at the aforesaid rate. The acceptance of any interest payment shall not be construed as a waiver by Franchisor of its rights in respect of the default giving rise to such payment and shall be without prejudice to Franchisor's right to terminate this Agreement in respect of such default.

17.8 Should Franchisee, or any partnership or joint venture or corporation in which Franchisee has a controlling equity interest, be a franchisee pursuant to another Franchise Agreement with Franchisor, respecting another franchised Big Air Trampoline Business using the Marks, a default under this Agreement shall constitute a default under such other Franchise Agreement and vice versa, with like remedies available to Franchisor. Should such other Franchise Agreement cease to be valid, binding and in full force and effect for any reason then Franchisor may, at its option, terminate this Agreement and this Agreement shall be forthwith surrendered by Franchisee and terminated, and likewise should this Agreement cease to be valid binding and in full force and effect for any, reason, Franchisor may at its option terminate the other Franchise Agreement and the other Franchise Agreement shall be forthwith surrendered and terminated. In the event that there is more than one Franchisee, or if Franchisee should consist of more than one legal entity, Franchisee's liability hereunder shall be both joint and several. A breach hereof by one such entity or Franchisee shall be deemed to be a breach by both or all.

17.9 Franchisee agrees that upon termination or expiration of this Agreement, it shall take the following action:

(a) Immediately discontinue the use of all Marks, signs, structures, forms of advertising, telephone listings, facsimile numbers, e-mail addresses, the Operations Manual, and all materials, Products and Services of any kind which are identified or associated with the System and return all these materials and Products to Franchisor;

(b) Immediately turn over to Franchisor all materials, including the Operations Manual, customer lists, records, files, instructions, brochures, advertising materials, agreements, Confidential Information, Trade Secrets and any and all other materials provided by Franchisor to Franchisee or created by a third party for Franchisee relating to the operation of the Big Air Trampoline Business (all of which are acknowledged to be Franchisor's property). Under no circumstances shall Franchisee retain any printed or electronic copies of the Operations Manual, Confidential Information or Trade Secrets or portions thereof upon expiration or termination of this Agreement;

(c) Franchisee hereby acknowledges that all telephone numbers, facsimile numbers and Internet addresses used in the operation of the Big Air Trampoline Business

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constitute assets of Franchisor, and upon termination or expiration of this Agreement, Franchisee shall take such action within five days to cancel or assign to Franchisor or its designee as determined by Franchisor, all Franchisee's right, title and interest in and to Franchisee's telephone numbers, facsimile numbers and Internet addresses and shall notify the telephone company and all listing agencies of the termination or expiration of Franchisee's right to use any telephone number, facsimile number, and Internet and e-mail addresses, and any regular, classified or other telephone directory listing associated with the Marks and to authorize a transfer of same to or at the direction of Franchisor. Franchisee acknowledges as between Franchisor and Franchisee, Franchisor has the sole rights to, and interest in, all telephone numbers, facsimile numbers, directory listings and Internet addresses used by Franchisee to promote the Big Air Trampoline Business and/or associated with the Marks. Franchisee hereby irrevocably appoints Franchisor, with full power of substitution, as its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute such directions and authorizations as may be necessary or prudent to accomplish the foregoing. **Attachment E** evidences such appointment;

(d) Immediately take all steps necessary to amend or terminate any registration or filing of any d/b/a or business name or fictitious name or any other registration or filing containing the Marks so as to delete the Marks and all references to anything associated with the System;

(e) Franchisee shall, at Franchisor's option, immediately assign to Franchisor any interest in which Franchisee has in any Lease for the Big Air Trampoline Facility. In the event Franchisor does not elect to exercise its option to acquire the Lease for the Big Air Trampoline Facility, then, to the extent, if any, Franchisee is permitted to conduct any business at the Big Air Trampoline Facility pursuant to the terms of this Agreement or a separate written agreement with Franchisor, and acknowledging the distinctiveness of Franchisor's interior design and décor, Franchisee shall make such modifications or alterations to the premises immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of such premises from that of other Big Air Trampoline Facilities operating under the System and Marks, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose. In the event Franchisee fails or refuses to comply with the requirements of this Section 17.9(e), Franchisor shall have the right to enter the Big Air Trampoline Facility without being guilty of trespass or any other tort, for the purposes of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand;

(f) Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute Franchisor's rights in and to the Marks, and further agrees not to use any designation of origin, description, representation, trademark, or trade name which suggests or represents a past or present association or connection with Franchisor, the System , or the Marks;

(g) Provide Franchisor the option to purchase as set forth in Section 16; and

(h) Comply with the provisions of Sections 10.1(c) and (e) and Section 14.

17.10 If, within 30 days after termination or expiration of this Agreement by Franchisor, Franchisee fails to remove all displays of the Marks from the Big Air Trampoline Business, which are identified or associated with the System, Franchisor may enter the Big Air Trampoline Business to effect removal. In this event, Franchisor will not be charged with trespass nor be accountable or required to pay for any displays or materials.

17.11 If, within 30 days after termination or expiration of this Agreement Franchisee has not taken all steps necessary to amend or terminate any registration or filing of any business name or d/b/a or any other registration or filing containing the Marks, Franchisee hereby irrevocably appoints Franchisor as Franchisee's true and lawful attorney for Franchisee, and in Franchisee's name, place and stead and on Franchisee's behalf, to take action as may be necessary to amend or terminate all registrations and filings, this appointment being coupled with an interest to enable Franchisor to protect the System.

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

17.13 All obligations of the parties hereto which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect notwithstanding such expiration or termination. In particular, but without limiting the generality of the foregoing, the provisions of Articles 10, 12, 14 and 16, hereof shall survive termination or expiration of this Agreement.

17.14 In the event that this Agreement expires or is terminated for any reason whatsoever and Franchisor is the lender under any loan agreement ("**Loan**") or the holder of any promissory note ("**Note**") or the holder of any personal property, security interest, chattel mortgage, debenture or mortgage of any nature whatsoever ("**Security Interest**") from Franchisee concerning assets used at any time by Franchisee in the Big Air Trampoline Business or which are situated on the Big Air Trampoline Business premises, such Loan, Note or Security Interest shall, upon the effective date of termination or expiration, immediately become fully due and payable as to all principal and interest so loaned and secured.

17.15 If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder, the prior notice or other action required by such law or rule shall be substituted for the notice requirements hereof. Such modifications to this Agreement shall be effective only in such jurisdiction and shall be enforced as originally made and entered into in all other jurisdictions.

17.16 In the event of termination of the Agreement for any reason whatsoever the parties shall accept the default remedies contained herein as full and final satisfaction of all claims. The parties waive, to the extent permitted by law, any claim against the other for punitive or exemplary damages; except for such punitive or exemplary damages for violation of the

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Lanham Act, trademark infringement or dilution, unauthorized dissemination of the Confidential Information or Trade Secrets or arising under the indemnification set out in Section 12.

17.17 The rights of the parties hereto are cumulative and no exercise or enforcement by a party of any right or remedy hereunder shall preclude the exercise or enforcement by that party of any other right or remedy herein contained, or to which it is entitled by law.

17.18 Nothing herein shall prevent Franchisor or Franchisee from seeking injunctive relief to prevent irreparable harm, in addition to all other remedies. If it is necessary for Franchisor to seek preliminary or permanent injunctive relief, Franchisor may do so without a bond.

17.19 THE PARTIES ACKNOWLEDGE THAT IN THE EVENT THAT THE TERMS OF THIS AGREEMENT REGARDING TERMINATION OR EXPIRATION ARE INCONSISTENT WITH APPLICABLE STATE OR FEDERAL LAW, SUCH LAW SHALL GOVERN FRANCHISEE'S RIGHTS REGARDING TERMINATION OR EXPIRATION OF THIS AGREEMENT.

18. CONDEMNATION AND CASUALTY

18.1 Franchisee shall promptly advise Franchisor upon Franchisee's receipt of a notice of default or termination under Franchisee's Lease or mortgage, and shall promptly provide Franchisor a copy of the notice. Franchisee shall also give Franchisor notice of any proposed taking of the Big Air Trampoline Facility or any portion thereof through the exercise of the power of eminent domain at the earliest possible time. If the Big Air Trampoline Facility or a substantial part thereof is to be taken, the Big Air Trampoline Business may be relocated within the Territory specified in **Attachment A**, or elsewhere with Franchisor's written approval in accordance with Franchisor's relocation procedures set forth in the Operations Manual. If Franchisee opens a new business as provided above at another location in accordance with Franchisor's standards and general specifications within one year of the closing of the old Big Air Trampoline Facility, the new Big Air Trampoline Business shall be deemed to be the Big Air Trampoline Business licensed under this Agreement. If a condemnation, Lease termination or mortgage default takes place and a new Big Air Trampoline Business does not, for any reason, become the Big Air Trampoline Business as provided in this Section 18.1, then the License shall terminate upon notice by Franchisor.

18.2 If the Big Air Trampoline Facility is damaged for any reason, Franchisee shall expeditiously repair the damage. If the damage or repair requires closing the Big Air Trampoline Business, Franchisee shall immediately notify Franchisor in writing, and shall:

(a) Relocate the Big Air Trampoline Business as provided in Subsection 18.1; or

(b) Repair or rebuild the Big Air Trampoline Business at the Big Air Trampoline Facility in accordance with Franchisor's then existing standards and general specifications, and reopen the Big Air Trampoline Business for continuous business operations as soon as practicable (but in any event within 12 months after closing the Big Air Trampoline Business at the Big Air Trampoline Facility), giving Franchisor 30 days advance notice of the date of reopening;

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(c) If the Big Air Trampoline Business is not (or, in the opinion of Franchisor cannot be) reopened in accordance with this Section 18.2, or relocated pursuant to Subsection 18.1, the License shall terminate upon notice to Franchisee.

18.3 The Term will not be extended by any interruption in the Big Air Trampoline Business's operations, except for an act of God that results in the Big Air Trampoline Business being closed not less than 60 days nor more than 180 days. Franchisee must apply for any extension within thirty 30 days following the reopening of the Big Air Trampoline Business. No event during the Term will excuse Franchisee from paying Royalty Fees or National Marketing and Promotions Fees as provided in this Agreement.

19. NOTICES

19.1 Any notice of default under this Agreement shall be delivered personally or by courier to the appropriate location. Any other notice, request, demand, approval, consent or other communication which the parties hereto may be required or permitted to be given hereunder shall be in writing and may be given to the party for whom it is intended by personal delivery, facsimile transmission or delivering it to such party by mailing it by prepaid registered mail, or by recognized overnight delivery or courier services, in the case of Franchisor to:

To Franchisor:

BIG AIR FRANCHISING, LLC
999 Corporate Drive #215,
Ladera Ranch, CA 92694

with a copy (which shall not constitute Notice) to:

Kevin Hein
Faegre, Baker Daniels
1700 Lincoln St #3200
Denver, CO 80203

To Franchisee:

BA Greenville, LLC
11 Ridgewood Drive
Greenville, SC 2915
Attention:Dustin Pelletier
Phone: (864) 414-6300

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Any such notice or other document delivered personally or by facsimile transmission shall be deemed to have been received by and given to the addressee on the day of delivery and any such other notice or other document mailed as aforesaid, shall be deemed to have been received by and given to the addressee on the third business day following the date of mailing, and any delivery made by recognized overnight delivery or courier services shall be deemed to be delivered the next business day. Any party may at any time give notice in writing to any other party of any change of address.

20. DISPUTE RESOLUTION

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

20.2 To protect from violations that would cause immediate loss and damages or irreparable harm, Franchisor and Franchisee shall each have the right to seek from a state or federal court located in Ladera Ranch, California as more fully set forth in Section 20.1:

(a) injunctive relief and any related incidental damages;

(b) an action for disputes or claims related to or based on the Marks;

(c) enforcement of a covenant not to compete; and

(d) issues related to the disclosure of or misuse of Confidential Information or Trade Secrets.

20.3 **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY CONTROVERSY OR DISPUTE ARISING OUT OF, OR RELATING TO THE FRANCHISE OR THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, ANY CLAIM BY FRANCHISEE OR ANY PERSON IN PRIVITY WITH OR CLAIMING THROUGH, ON BEHALF OF OR IN THE RIGHT OF FRANCHISEE, CONCERNING THE ENTRY INTO, PERFORMANCE UNDER, OR TERMINATION OF, THIS AGREEMENT OR ANY OTHER AGREEMENT ENTERED INTO BY FRANCHISOR, OR ITS SUBSIDIARIES OR AFFILIATES, AND FRANCHISEE; ANY CLAIM AGAINST A PAST OR PRESENT EMPLOYEE, OFFICER, DIRECTOR, MEMBER, SHAREHOLDER OR AGENT OF FRANCHISOR; ANY CLAIM OF BREACH OF THIS AGREEMENT; AND ANY CLAIMS ARISING UNDER STATE OR FEDERAL LAWS, SHALL BE SUBMITTED TO FINAL AND BINDING ARBITRATION AS THE SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH CONTROVERSY OR DISPUTE. "PERSONS IN PRIVITY" WITH OR CLAIMING THROUGH, ON BEHALF OF OR IN THE RIGHT OF FRANCHISEE INCLUDE BUT ARE NOT LIMITED TO, SPOUSES AND OTHER FAMILY MEMBERS, DOMESTIC PARTNERS, HEIRS, EXECUTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS. SUBJECT TO THIS SECTION, THE RIGHT AND DUTY OF THE PARTIES TO THIS AGREEMENT TO RESOLVE ANY DISPUTES BY ARBITRATION SHALL BE GOVERNED EXCLUSIVELY BY THE FEDERAL ARBITRATION ACT, AS AMENDED, AND ARBITRATION SHALL**

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TAKE PLACE ACCORDING TO THE COMMERCIAL ARBITRATION RULES (IN EFFECT AS OF THE DATE THE DEMAND FOR ARBITRATION IS FILED) OF, AND UNDER THE AUSPICES OF, THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATION, WHICH SHALL BE HELD BEFORE A SINGLE ARBITRATOR, SHALL BE HELD IN THE LADERA RANCH, CALIFORNIA OFFICE OF THE AMERICAN ARBITRATION ASSOCIATION, OR AT SUCH OTHER LOCATION AS SHALL BE MUTUALLY AGREED UPON BY THE PARTIES IN WRITING. HOWEVER, ARBITRATION WILL NOT BE REQUIRED TO BE USED FOR ANY DISPUTE WHICH INVOLVES THE TYPE OF DISPUTES IDENTIFIED IN SECTION 20.2. THE PARTIES EXPRESSLY CONSENT TO PERSONAL JURISDICTION IN THE STATE OF CALIFORNIA AND AGREE THAT SUCH COURT (S) WILL HAVE EXCLUSIVE JURISDICTION OVER ANY DETERMINATION OF THE "PREVAILING PARTY" IN ACCORDANCE WITH SUCH ISSUES NOT SUBJECT TO ARBITRATION.

20.4 A single arbitrator shall be selected by the parties from a panel of neutral arbitrators provided by the American Arbitration Association and shall be chosen by the striking method. Subject to the provisions contained in Section 21.3, the parties each shall bear all of their own costs of arbitration; however, the fees of the arbitrator shall be divided equally between the parties. the arbitrator shall have no authority to amend or modify the terms of this Agreement. The award or decision by the arbitrator shall be final and binding on the parties and may be enforced by judgment or order of a court having subject matter jurisdiction in the state where the arbitration took place. The parties consent to the exercise of personal jurisdiction over them by such court and to the propriety of venue of such court for the purpose of carrying out this provision; and they waive any objections that they would otherwise have concerning such matters.

20.5 Parties to arbitration under this agreement shall not include, by consolidation, joinder or in any other manner, any person other than Franchisee and any person in privity with or claiming through, in the right of or on behalf of Franchisee or Franchisor, unless both parties consent in writing. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any arbitration hereunder, except to the extent such issue may have been determined in another proceeding between Franchisor and Franchisee or any Person in Privity with or claiming through, in the right of or on behalf of Franchisee or Franchisor.

20.6 The parties agree that any arbitration arising out of a dispute relating to this Agreement is only a matter between Franchisor and Franchisee and no other franchisees, multi-unit developers or area developers. Franchisee agrees not to join or attempt to join other franchisees, multi-unit developers, area developers, or other third-parties in any arbitration proceeding and to refrain from participating in any "class action" litigation or arbitration proposed or asserted by one or more other franchisees.

20.7 Except for payments owed by one party to the other, and unless prohibited by applicable law, any legal action or arbitration proceeding brought or instituted with respect to any dispute arising from or related to this Agreement or with respect to any breach of the terms

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of this Agreement must be brought or instituted within a period of two years from the date of discovery of the conduct or event that forms the basis of the legal action or proceeding.

21. MISCELLANEOUS

21.1 Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other applicable federal law, this Agreement shall be interpreted under the laws of the State of California, and any dispute between the parties shall be governed by and determined in accordance with the substantive laws of the State of California, which laws shall prevail in the event of any conflict of law; provided, however, the parties expressly agree that this Agreement is not intended to confer on any franchisee that is not a resident of the State of California the benefit of any California law providing specific protection to franchisees residing or operating in the State of California. **FRANCHISEE AND FRANCHISOR HAVE NEGOTIATED REGARDING A FORUM IN WHICH TO RESOLVE ANY DISPUTES THAT MAY ARISE BETWEEN THEM AND HAVE AGREED TO SELECT A FORUM IN ORDER TO PROMOTE STABILITY IN THEIR RELATIONSHIP. THEREFORE, IF A CLAIM IS ASSERTED IN ANY LEGAL PROCEEDING INVOLVING FRANCHISEE, ITS OFFICERS DIRECTORS, MANAGERS, MEMBERS, OR PARTNERS AND FRANCHISOR, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MANAGERS, MEMBERS, EMPLOYEES OR AFFILIATES OF BOTH PARTIES AGREE THAT THE EXCLUSIVE VENUE FOR DISPUTES BETWEEN THEM SHALL BE IN THE STATE OF CALIFORNIA AND EACH WAIVE ANY OBJECTION EITHER MAY HAVE TO THE PERSONAL JURISDICTION OF OR VENUE IN THE STATE OF CALIFORNIA. FRANCHISEE IRREVOCABLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY OBJECTION FRANCHISEE MAY HAVE TO EITHER THE JURISDICTION OR VENUE IN SUCH COURT. FRANCHISOR AND FRANCHISEE FURTHER WAIVE EACH OF THEIR RIGHTS TO A JURY TRIAL FOR ANY MATTER THAT IS TRIED BEFORE A COURT OF LAW.**

21.2 All provisions of this Agreement are severable and this Agreement shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein; all partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable.

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

21.4 No failure, forbearance, neglect or delay of any kind on the part of Franchisor in connection with the enforcement or exercise of any rights under this Agreement shall affect or diminish Franchisor's right to strictly enforce and take full benefit of each provision of this Agreement at any time, whether at law for damages, in equity for injunctive relief or specific performance, or otherwise. No custom, usage or practice with regard to this Agreement by Franchisee or Franchisor's other franchisees shall preclude the strict enforcement of this

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Agreement in accordance with its literal terms. No waiver by Franchisor of performance of any provision of this Agreement shall constitute or be implied as a waiver of Franchisor's right to enforce that provision at any future time. No interpretation, change, termination or waiver of any provision of this Agreement, and no consent or approval under this Agreement, shall be binding upon Franchisee or Franchisor or effective unless in writing signed by Franchisee and Franchisor's CEO, President or Vice President, except that a waiver need be signed only by the party waiving.

21.5 This Agreement, together with the Franchise Disclosure Document, Operations Manual, any written related agreements, all Exhibits, Attachments, and the State Addenda attached to the Disclosure Document as **Exhibit F**, constitutes the entire understanding and agreement between Franchisee and Franchisor and supersedes all prior understandings, whether oral or written, pertaining to this Agreement, the License, the System or the Big Air Trampoline Business. Nothing in the Franchise Agreement or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document.

21.6 The headings of the sections hereof are for convenience only and do not define, limit or construe the contents of the sections of such Sections or other Sections. The term "**Franchisee**" as used herein is applicable to one or more persons, a corporation, limited liability company, a partnership or other business entity, as the case may be, and the singular usage (where applicable) includes the plural and the masculine and neuter usages (where applicable) include the other and the feminine. The term "**Lease**" shall include a sublease, and a renewal or extension of a lease or sublease.

21.7 When calculating the date upon which or the time within which any act is to be done pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded; if the last day of such period is a non-business day, the period in question shall end on the next business day. Time shall be of the essence of this Agreement and of every part thereof.

21.8 Neither party hereto shall be liable for any loss or damage due to any delay in the due performance of the terms hereof (except for the payment of money) by reason of strikes, lockouts and other labor relations, fires, riots, wars, embargoes and civil commotion, or acts of God ("**Force Majeure Event**"). Any such delay shall extend performance only so long as such event is in progress except such Force Majeure Event will not affect or change Franchisee's obligation to pay Royalty Fees and National Marketing and Promotions Fees when due. Notwithstanding the foregoing, if there is a Force Majeure Event, Franchisor, may in its sole discretion, elect to waive the Royalty Fees and National Marketing and Promotions Fees during the period of delay caused by the Force Majeure Event or such shorter period.

21.9 Franchisee shall execute and deliver such further instruments, contracts, forms and other documents, and shall perform such further acts, as may be necessary or desirable, to carry out, complete and perform all terms, covenants and obligations herein contained. Franchisee hereby irrevocably appoints Franchisor as his attorney, which appointment is coupled with an interest, and hereby empowers it to execute such instruments regarding the Marks for and in Franchisee's name in order to give full effect to Sections 10, 12, 15, and 17 of this

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Agreement. Franchisee hereby declares that the power of attorney herein granted may be exercised during any subsequent legal incapacity on its part.

21.10 This Agreement shall be binding upon, and subject to Section 15 hereof, shall inure to the benefit of, Franchisor's and Franchisee's successors and permitted assigns.

21.11 This Agreement may only be modified or amended by a written document executed by Franchisee and Franchisor. Franchisee acknowledges that Franchisor may modify its standards and specifications and operating and marketing techniques set forth in the Operations Manual unilaterally under any conditions and to the extent in which Franchisor, in its sole discretion, deems necessary to protect, promote, or improve the Marks, and the quality of the System, but under no circumstances will such modifications be made arbitrarily without such determination. Notwithstanding anything herein to the contrary, Franchisor shall have the right unilaterally to reduce the scope of any covenants of Franchisee contained in this Agreement upon notice to Franchisee, whereupon Franchisee shall comply therewith as so modified.

21.12 From time to time, Franchisor shall have the right to delegate the performance of any portion or all of its obligations and duties hereunder to third parties, whether the same are agents of Franchisor or independent contractors which Franchisor has contracted with to provide such services. Franchisee agrees in advance to any such delegation by Franchisor of any portion or all of its obligations and duties hereunder.

22. ACKNOWLEDGEMENT

BEFORE SIGNING THIS AGREEMENT, FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL.

FRANCHISEE ACKNOWLEDGES AND AGREES THAT:

1. NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS AGREEMENT, IS BINDING ON FRANCHISOR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT; AND

2. FRANCHISEE HAD A COMPLETE COPY OF THIS AGREEMENT, WITH ALL BLANKS FILLED IN, IN ITS POSSESSION FOR A PERIOD OF TIME NOT LESS THAN SEVEN DAYS, DURING WHICH TIME FRANCHISEE HAD THE OPPORTUNITY TO SUBMIT THE SAME FOR PROFESSIONAL REVIEW AND ADVICE OF FRANCHISEE'S CHOOSING PRIOR TO FREELY EXECUTING THIS AGREEMENT. FRANCHISEE ACKNOWLEDGES THAT IT HAS HAD AMPLE TIME AND OPPORTUNITY TO INVESTIGATE FRANCHISOR'S BIG AIR TRAMPOLINE BUSINESS AND TO CONSULT WITH LEGAL AND FINANCIAL ADVISORS OF ITS CHOICE; AND

3. FRANCHISEE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE SYSTEM AND RECOGNIZES THAT THE BIG AIR TRAMPOLINE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT AND ITS SUCCESS INVOLVES SUBSTANTIAL BUSINESS RISK AND WILL BE LARGELY DEPENDENT UPON THE ABILITY OF FRANCHISEE AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BIG AIR TRAMPOLINE

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BUSINESS. FRANCHISEE HEREBY ASSUMES THE RESPONSIBILITY FOR ITS SUCCESS OR FAILURE OF THE BIG AIR TRAMPOLINE BUSINESS VENTURE; AND

4. FRANCHISOR HAS NOT PROVIDED ANY STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION OF ACTUAL, AVERAGE, PROJECTED, FORECASTED OR POTENTIAL PURCHASES, SALE, COST, EARNINGS, INCOME OR PROFITS TO FRANCHISEE OTHER THAN STATED IN THE FRANCHISE DISCLOSURE DOCUMENT; AND

5. FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND FRANCHISEE ACKNOWLEDGES THAT IT HAS NOT RECEIVED, ANY ASSURANCE, WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS, EARNINGS OR SUCCESS OF THE BIG AIR TRAMPOLINE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT.

[The remainder of this page has been intentionally left blank]

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This entire Agreement, including corrections, changes, and all attachments and addenda, will only be binding upon Franchisor when executed or initialed by Franchisor's authorized representative.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above set forth.

BIG AIR FRANCHISING, LLC

By: _____

Date: _____ Title: _____

FRANCHISEE:



Date: 11/3/17 Dustin Pelletier

Individually

OR:
(if a corporation or partnership)

_____

Company Name

By: _____

Date: _____ Title: _____

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ATTACHMENT A
TO FRANCHISE AGREEMENT

TERRITORY, INITIAL FRANCHISE FEE, AND TRAINING FEE

1. **Territory.**
The Territory set forth in Section 4.1 of the Agreement shall be:

29658, 29693, 29691, 29686, 29675, 29696, 29643, 29676, 29679,29672, 29678, 29665, 29689, 29685, 29633, 29632, 29682, 29631, 29634, 29630,29656, 29667, 29625, 29626, 29677, 29684, 29670, 29671, 29657, 29622, 29623,29659, 29655, 29635, 29624, 29628, 29621, 29641, 29640, 29642, 29697, 29661,29683, 29673, 29617, 29627, 29611, 29613, 29669, 29620, 29639, 29690, 29614, 29654, 29692, 29370, 29601, 29638 ,29644, 29384, 29616, 29607, 29351, 29602, 29687, 29647, 29360, 29603, 29662, 29648, 29325, 29604, 29680, 29606, 29615, 29646, 29608, 29650, 29610, 29612, 29695, 29645, 29609, 29651, 29605, 29652, 29332, 29688, 29653, 29636, 29681, 29649

2. **Initial Franchise Fee.** Franchisee shall pay to Franchisor an Initial Franchise Fee equal to

[X] Fifty Thousand Dollars ($50,000.00)

[ ] Thirty Five Thousand Dollars ($35,000.00)

plus, if applicable, all federal, state or municipal taxes due and payable at the time of execution of the Agreement.

3. **Projected Opening Date.** Franchisee anticipates that Franchisee will open the Big Air Trampoline Facility on or about **October 7, 2018.**

FRANCHISOR:

BIG AIR FRANCHISING, LLC

By: _____

Title: _____

FRANCHISEE:

BA GREENVILLE, LLC

By: _____

Title: _____

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ATTACHMENT B
TO FRANCHISE AGREEMENT

GUARANTY AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the Franchise Agreement executed between **BA, Greenville LLC** ("**Franchisee**") and BIG AIR FRANCHISING, LLC ("**Franchisor**") on October 7, 2017 ("**Agreement**") each of the undersigned hereby personally and unconditionally:

1. Guarantees to Franchisor and its successors and assigns, for the Term, including all Interim Periods and Successor Terms thereof, 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, the terms of Section 14.

Each of the undersigned waives the following:

1. Acceptance and notice of acceptance by Franchisor of the foregoing undertaking;

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 or she may have to require that any action be brought against Franchisee or any other person as a condition of liability; and

5. Any and all other notices and legal or equitable defenses to which he or she may be entitled.

Each of the undersigned consents and agrees that:

1. His or her direct and immediate liability under this guaranty shall be joint and several;

2. He or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so;

3. Such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and

4. 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, including renewals thereof.

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

WITNESS:

Kelly K Murphy

_____

_____

_____

GUARANTOR(S):

_____
Printed Name: Dustin Pelletier
Date: 11/3/17

_____
Printed Name: _____
Date: _____

_____
Printed Name: _____
Date: _____

_____
Printed Name: _____
Date: _____

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ACKNOWLEDGMENT

Franchisee, and its shareholders, members, or partners, as applicable, jointly and severally acknowledge that they have carefully read this Agreement and all other related documents to be executed concurrently or in conjunction with the execution hereof, that they have obtained the advice of counsel in connection with entering into this Agreement, that they understand the nature of this Agreement, and that they intend to comply herewith and be bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the first date set forth above.

ACCEPTED on this __ day of _____, 20__.

FRANCHISOR:

BIG AIR FRANCHISING, LLC

By: _____

Its _____

FRANCHISEE:

BA GREENVILLE, LLC

By: _____

Its President

_____
an Individual
Printed Name: Dustin Pelletier
Date: 11/3/17

_____
an Individual
Printed Name: _____
Date: _____

_____
an Individual
Printed Name: _____
Date: _____

_____
an Individual
Printed Name: _____
Date: _____

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ATTACHMENT C
TO FRANCHISE AGREEMENT

STATEMENT OF OWNERSHIP

Franchisee: BA Greenville, LLC

Trade Name (if different from above): _____

Form of Ownership
(Check One)

____ **Individual** ____ **Partnership** ____ **Corporation** ____ **Limited Liability Company**

If a **Partnership**, provide name and address of each partner showing percentage owned, whether active in management, and indicate the state in which the partnership was formed.

If a **Corporation**, give the state and date of incorporation, the names and addresses of each officer and director, and list the names and addresses of every shareholder showing what percentage of stock is owned by each.

If a **Limited Liability Company**, give the state and date of formation, the name and address of the manager(s), and list the names and addresses of every member and the percentage of membership interest held by each member.

_____
_____
_____
_____

Franchisee acknowledges that this Statement of Ownership applies to the Big Air Trampoline Business authorized under the Franchise Agreement.

Use additional sheets if necessary. Any and all changes to the above information must be reported to Franchisor in writing.

11/3/17
Date

Name

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ATTACHMENT D
TO FRANCHISE AGREEMENT

BY AND BETWEEN BIG AIR FRANCHISING, LLC
AND
BA GREENVILLE, LLC ("FRANCHISEE")

EFT AUTHORIZATION AGREEMENT
(DIRECT DEBITS)

The undersigned depositor ("**Depositor**") hereby authorizes BIG AIR FRANCHISING, LLC ("**Company**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**") to debit such account pursuant to Company's instructions.

_____	_____
Depository	Branch
_____	_____
Address	City, State, Zip Code
_____	_____
Bank Transit/ABA Number	Account Number

This authority is to remain in full force and effect until Depository has received joint written notification from Company and Depositor of the Depositor's termination of such authority in such time and in such manner as to afford Depository a reasonable opportunity on which to act. If an erroneous debit entry is initiated to Depositor's account, Depositor shall have the right to have the amount of such entry credited to such account by Depository, if (a) within fifteen (15) calendar days following the date on which Depository sent to Depositor a statement of account or a written notice pertaining to such entry or (b) forty-five (45) days after posting, whichever occurs first, Depositor shall have sent to Depository a written notice identifying such entry, stating that such entry was in error and requesting Depository to credit the amount thereof to such account. These rights are in addition to any rights Depositor may have under federal and state banking laws.

_____	_____
Depositor	**Depository**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

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ATTACHMENT E
TO FRANCHISE AGREEMENT

COLLATERAL ASSIGNMENT OF TELEPHONE NUMBERS AND TELEPHONE LISTINGS AND INTERNET ADDRESSES

THIS ASSIGNMENT is entered into this 7th day of October, 2017, in accordance with the terms of the Big Air Franchising, LLC Franchise Agreement ("**Franchise Agreement**") between **BA Greenville LLC** ("**Franchisee**") and BIG AIR FRANCHISING, LLC ("**Franchisor**"), executed concurrently with this Assignment, under which Franchisor granted Franchisee the right to own and operate a Big Air Trampoline Business ("**Franchise Business**") located at to be determined within authorized territory.

FOR VALUE RECEIVED, Franchisee hereby assigns to Franchisor (1) those certain telephone numbers and regular, classified or other telephone directory listings (collectively, the "**Telephone Numbers and Listings**") and (2) those certain Internet website addresses ("**URLs**") associated with Franchisor's trade and service marks and used from time to time in connection with the operation of the Franchise Business at the address provided above. This Assignment is for collateral purposes only and, except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment, unless Franchisor shall notify the telephone company and/or the listing agencies with which Franchisee has placed telephone directory listings (all such entities are collectively referred to herein as "**Telephone Company**") and/or Franchisee's Internet service provider ("**ISP**") to effectuate the assignment pursuant to the terms hereof.

Upon termination or expiration of the Franchise Agreement (without extension), Franchisor shall have the right and is hereby empowered to effectuate the assignment of the Telephone Numbers and Listings and the URLs, and, in such event, Franchisee shall have no further right, title or interest in the Telephone Numbers and Listings and the URLs, and shall remain liable to the Telephone Company and the ISP for all past due fees owing to the Telephone Company and the ISP on or before the effective date of the assignment hereunder.

Franchisee agrees and acknowledges that as between Franchisor and Franchisee, upon termination or expiration of the Franchise Agreement, Franchisor shall have the sole right to and interest in the Telephone Numbers and Listings and the URLs, and Franchisee irrevocably appoints Franchisor as Franchisee's true and lawful attorney-in-fact, which appointment is coupled with an interest, to direct the Telephone Company and the ISP to assign same to Franchisor, and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Franchisee shall immediately notify the Telephone Company and the ISP to assign the Telephone Numbers and Listings and the URLs to Franchisor. If Franchisee fails to promptly direct the Telephone Company and the ISP to assign the Telephone Numbers and Listings and the URLs to Franchisor, Franchisor shall direct the Telephone Company and the ISP to effectuate the assignment contemplated hereunder to Franchisor. The parties agree that the Telephone Company and the ISP may accept Franchisor's written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor's exclusive rights in and to the Telephone Numbers and Listings and the URLs upon such termination or expiration and that such assignment shall be made automatically and effective

immediately upon Telephone Company's and ISP's receipt of such notice from Franchisor or Franchisee. The parties further agree that if the Telephone Company or the ISP requires that the parties execute the Telephone Company's or the ISP's assignment forms or other documentation at the time of termination or expiration of the Franchise Agreement, Franchisor's execution of such forms or documentation on behalf of Franchisee shall effectuate Franchisee's consent and agreement to the assignment. The parties agree that at any time after the date hereof they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

ASSIGNEE:

BIG AIR FRANCHISING, LLC

By: _____

Its: _____

ASSIGNOR:

BA GREENVILLE, LLC

By: _____

Its: President

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EXHIBIT 4

Dustin Pelletier <dustin@bigairusa.com>

Anderson SC Big Air

Dustin Pelletier <dustin@bigairusa.com> Tue, Aug 18, 2020 at 3:16 PM
To: mohammadfarhan45@yahoo.com

I hope you are doing well. I have a banking contact that I would like to introduce you to. He is with a local bank in the Upstate area and he is very interested in working with Big Air on a project in Anderson. Do I have your permission to give your contact information to him and introduce you to him?

Also, I have been considering the partnership relationship for the Anderson territory. I have been thinking that this could be structured in several ways but mainly into two main categories.

First, we could set up a traditional partnership agreement where there are percentages of ownership that pay dividends based on profit/loss. We could structure an agreement based on this traditional model.

Or, we could set up an agreement where ownership stays 100% yours and we determine a percentage or "royalty" based on total sales instead of based on profits.

Each method would have their own benefits. I would be more inclined to work together based on the royalty model so that you can retain 100% ownership. This would be cleaner for liabilities and taxes also.

Let me know your thoughts about this and the introduction to the local banker. I hope your family is doing well. I look forward to hearing back from you.

--

Dustin Pelletier
Park Director
Big Air Trampoline Park
Spartanburg, SC - Greenville, SC - Branson, MO
m: 864-414-6300
w: www.bigairusa.com e: Dustin@bigairusa.com

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Dustin Pelletier <dustin@bigairusa.com>

Anderson Proposal

Dustin Pelletier <dustin@bigairusa.com> Wed, Sep 23, 2020 at 3:41 PM
To: mohammadfarhan45@yahoo.com

I know you have been waiting on me to work out a proposal for the Anderson location. It has taken me much longer than I anticipated. Mostly because I want to find the most equitable way to make this work for each of us.

As you know, the Anderson territory is already owned by the Greenville Big Air location. You and I discussed this. To keep things easy, I brought up other geographic territories that are completely available without having to carve our Anderson from the Greenville territory. After much discussion, you and your uncle made it clear that the Anderson territory is your preference and that other territories would not work for you. I completely understand.

If we are to divide the Greenville territory into a Greenville and an Anderson territory, this would have a sales impact on the Greenville location. Based on our sales data, the Anderson market consists of 10% of our total sales. Having a Big Air in Anderson would be fantastic for the Anderson area but it would reduce at least 10% of Greenville's sales. Because of this, I have always intended to build an Anderson location for myself because the loss of revenue would still be mine, just at a different location. Nevertheless, I am willing to work out an agreement with you so that you can open a Big Air location in Anderson and have that territory carded out of the Greenville existing territory.

I think it is easiest to accomplish this based on a percentage of sales (royalty) as opposed to a percentage of profits (ownership). This will allow you and your uncle to own the location completely and control the day-to-day operations without having a partner to consult. I propose that the Anderson Big Air pay a simple royalty to account for the loss of revenue. In addition to the Anderson location enjoying the benefits of the marketing and exposure that Big Air has already provided Anderson, the Anderson location would also benefit from the other resources Big Air has in the upstate with Big Air Greenville and Big Air Spartanburg. Included in the royalty you will receive access to our Director of Marketing. This will mean that all marketing resources can be shared and provided by the existing two Upstate locations. You will not need to hire a marketing manager, you would be able to use and opt-in to the existing and ongoing marketing campaigns. Our Director of Marketing manages our website, Youtube, Facebook, Instagram, and other online listings. She also directs all of our marketing efforts and promotions. For no additional expense, the Anderson location will be able to use this Director of Marketing. Also included in the royalty, the Anderson location will have access to our Director of Maintenance. This means, you will not need to hire a full time maintenance manager, you will be able to use our Director of Maintenance to help keep your park fully operational. You would still need to have maintenance helpers, but the more technical and the harder work would be done by our Maintenance Director for no additional labor expense.

For the access to the Maintenance Director, the Marketing Director, the existing exposure and the existing marketing in Anderson, I would propose a simple 10% royalty on gross monthly sales. Keep in mind, this 10% is also replacing the 10% in lost revenue that already comes to Greenville from Anderson. All other Big Air Franchising Royalties would still apply and this proposal would not replace or take away from any of the additional benefits you would receive from Big Air Franchising. As we discussed, any Big Air location within South Carolina, including Anderson, would also receive my guidance and experience included in the Big Air Franchising Royalty. In this way, you will receive all the support and assistance from Big Air Franchising and from me included in the Big Air Franchising Royalty.

Take some time to review the proposal and let me know what your thoughts are. If you have any questions, let me know.

--

Dustin Pelletier

Park Director
Big Air Trampoline Park
Spartanburg, SC - Greenville, SC - Branson, MO
m: 864-414-6300
w: www.bigairusa.com e: Dustin@bigairusa.com

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Dustin Pelletier <dustin@bigairusa.com>

Anderson

Dustin Pelletier <dustin@bigairusa.com> Thu, Nov 26, 2020 at 12:37 PM
To: Mohammad Farhan <mohammadfarhan45@yahoo.com>

Happy Thanksgiving to you and your family. I hope you are able to take some time off and enjoy spending time together with your family.

I'm grateful that we are able to come to an agreement that is mutually beneficial to us both. I really look forward to working with you on your location in Anderson.

I had a few comments that we spoke about on the phone, but here they are in an email for you to consider so we can come up with a solution.

- 5% profit sharing is acceptable however there are plenty of ways a business can erode and diminish profits, either intentionally or unintentionally, that would affect the profit sharing. Some examples are: paying large salaries or bonuses to owners and family members, using the business to pay for personal expenses or personal items, using profits to pay for large business upgrades and capital expenses, etc. To be honest with you, I do all of these things with my own businesses so I wouldn't blame you for wanting to do the same. I would just suggest that my 5% profit sharing be calculated prior to those expenses. For instance, if there is $100,000 in profit and you decide to give out $20,000 in bonuses and pay for a $50,000 family vacation, then the remaining profit is only $50,000. I would like the 5% to be calculated on the $100,000, before those personal expenses are paid out.
- Big Air Greenville and Spartanburg offer Gift cards, coupons and passes that are valid in both locations. I think it is very important that these gift cards, passes and coupons also be valid in the Anderson location and vice versa. We have built a regional presence in the upstate and it is very important that our customers feel like each location is operated and run the same. It is important that their families know that they will get the same service and quality at each location. I think it is very important that the locations operate and treat the customers as if all three locations are the same Big Air family of locations.
- Big Air Greenville and Spartanburg offer PLAYer passes. These are our annual (or 6 month) passes that allow the customer to jump all day long and the pass offers some very generous benefits to the customer. We sell these passes for $300. The best benefit of the passes is that we allow them to "park hop" between both the Greenville and Spartanburg locations. I think it would be in everyone's best interest to make sure that these passes allow "park hopping" between all three upstate locations. Passes purchased in Spartanburg should be allowed to jump in Anderson. Passes in Anderson should be allowed to jump in Greenville, etc. This means that the customer can have the benefit of using all three parks with their single pass. This is extremely important because it allows me to have different and unique attractions at each location. For instance, in Greenville there is a ropes course and rock climbing, the customers in Spartanburg that have the PLAYer pass can play in Spartanburg as much as they want but if they want to try the ropes course or rock climbing they can do that also. In Spartanburg we have a flight simulator. PLAYer pass holders in Greenville can travel to Spartanburg and try it out as part of the benefit on the pass. This means that I DON'T have to buy a flight simulator in both locations. I DON'T have to buy a ropes course in Spartanburg. I can try out new attractions and not worry about customers feeling like their home park is left out. Since the locations are all within close driving distance, it is important to me that the passes are accepted at all three locations. Related to this, I am working with the Myrtle Beach location to allow the exact same thing. Since many of our guests travel to Myrtle Beach it would be nice if our customers get to use that park included with their pass and vice versa.
- Pricing and Specials. It would be in your best interest to adopt our existing pricing and specials. This will continue to create the unity between the locations. This doesn't rule out the opportunity for you to create your own special or offer other menu items or different products. It just means that our CORE items and specials should be consistent. General admission prices, daily jumping specials, Birthday Party packages and prices, grip socks, etc. should be the same.

Sorry for the long email. If you have any comments or questions about it, I want us to be able to work them out. Have a great Thanksgiving weekend. When you're ready to discuss these items, let me know.

--

Dustin Pelletier

Park Director
Big Air Trampoline Park
Spartanburg, SC - Greenville, SC - Branson, MO
m: 864-414-6300
w: www.bigairusa.com e: Dustin@bigairusa.com

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Dustin Pelletier <dustin@bigairusa.com>

Agreement bullet points

Dustin Pelletier <dustin@bigairusa.com> Fri, Nov 27, 2020 at 11:43 AM
To: Mohammad Farhan <mohammadfarhan45@yahoo.com>

--

Dustin Pelletier

Park Director
Big Air Trampoline Park
Spartanburg, SC - Greenville, SC - Branson, MO
m: 864-414-6300
w: www.bigairusa.com e: Dustin@bigairusa.com

Big Air Anderson and Dustin Pelletier.pdf
20K

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Big Air Anderson and Dustin Pelletier

General Terms:

- Dustin Pelletier to receive 1% of gross sales, payable monthly by the 10th of the month for the previous month.
- Dustin Pelletier to receive 5% of net profit, payable monthly by the 10th of the month for the previous month. Profit will be calculated to include only normal operating expenses and should exclude personal expenses and salaries, major equipment expenses, and bonuses.
- Dustin Pelletier to receive a monthly management fee of $5,000, payable monthly by the 10th of the month for the previous month.
- Big Air Anderson will agree to accept coupons, gift cards, passes, annual passes, etc that originated from Big Air Greenville or Big Air Spartanburg.
- Big Air Greenville and Big Air Spartanburg will agree to accept coupons, gift cards, passes, annual passes, etc that originated from Big Air Anderson.
- Big Air Anderson will agree to mirror prices, daily specials, birthday packages, socks, etc that are offered at Big Air Greenville and Big Air Spartanburg.
- Big Air Greenville and Big Air Spartanburg will provide Big Air Anderson access to our Marketing Director to provide content and management of marketing for Big Air Anderson. Big Air Anderson will still be responsible for purchasing their own paid advertisements.
- Big Air Greenville and Big Air Spartanburg will provide Big Air Anderson access to our Maintenance Director to manage and direct the maintenance tasks for Big Air Anderson. Big Air Anderson will still be responsible for providing employees to perform most maintenance tasks and for purchasing replacement parts and material.
- Big Air Greenville will release exclusive zip code territory in and around Anderson for exclusive marketing access to Big Air Anderson.
- Duration of the agreement will be equal to the duration of the Franchise Agreement.

EXHIBIT 5

Dustin Pelletier <dustin@bigairusa.com>

Territory Assignment Agreement

Dustin Pelletier <dustin@bigairusa.com> Wed, Jan 20, 2021 at 2:27 PM
To: Mohammad Farhan <mohammadfarhan45@yahoo.com>

Mohammad, please see the attached Territory Assignment Agreement that I had drawn up. I think I included everything we discussed. Review them and let me know if you would like me to make any changes. I hate legal documents and I hate this part of the process. I promise to be fair and to work together to create a win/win agreement that we are both happy to put on a shelf and never have to look at ever again because we are doing what we said we would do.

If all is good, hang onto the documents. We will sign these at the same time you sign the Franchise documents that will come from Big Air Franchising.

--

Dustin Pelletier
Park Director
Big Air Trampoline Park
Spartanburg, SC - Greenville, SC - Branson, MO
m: 864-414-6300
w: www.bigairusa.com e: Dustin@bigairusa.com

4 attachments

Guaranty- Assignment and Assumption- Sharif Farhan (2).doc
80K

Guaranty- Assignment and Assumption- Mohammad Farhan.doc
80K

BA.Territory Assignment and Assumption AGR (rev).20210120.doc
107K

Territory Assignment and assumption Exhibit A.pdf
1500K

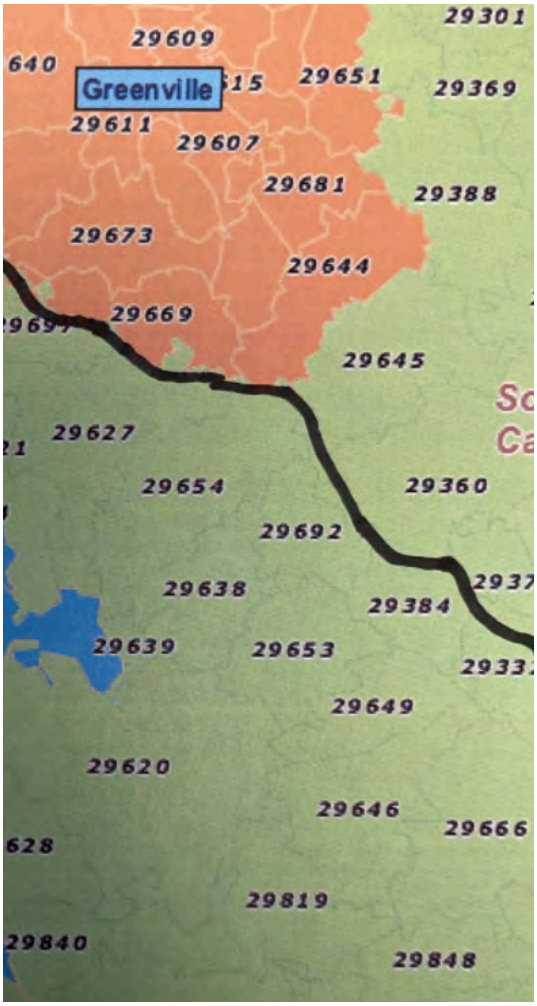
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Exhibit A: Anderson Zip Codes

In blue	up to dividing line
29672	29691
29693	29631
29678	29670
30577	29697
29643	29621
29625	29627
30553	29627
29626	29654
29624	29692
29684	29638
30520	29630
30521	29653
30662	29620
30634	29628
29655	
30635	
30538	
30557	
30553	
30662	
30516	
30643	



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Dustin Pelletier <dustin@bigairusa.com>

Final Docs

Dustin Pelletier <dustin@bigairusa.com> Fri, Jan 29, 2021 at 10:56 AM
To: Mohammad Farhan <mohammadfarhan45@yahoo.com>

Here are the documents with the edits we discussed. If you could print out at least two copies of each document and sign and return them to me, I will execute them and return your copy to you.

Let me know what you hear back about the spreadsheet.

--

Dustin Pelletier

Park Director
Big Air Trampoline Park
Spartanburg, SC - Greenville, SC - Branson, MO
m: 864-414-6300
w: www.bigairusa.com e: Dustin@bigairusa.com

3 attachments

BA.Mohammad Farhan Guaranty (final for execution).20210129.pdf
32K

BA.Sharif Farhan Guaranty (final for execution).20210129.pdf
32K

BA.Territory Assignment and Assumption AGR (final for execution).20210129.pdf
229K

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ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") dated as of January 29, 2021 ("Effective Date"), is entered into by and between BA HOLDINGS, INC., a South Carolina corporation ("Assigning Party") and ZAY N LIMO, LLC, a South Carolina limited liability company ("Assuming Party").

RECITALS

Assigning Party desires to assign to Assuming Party all its rights, including exclusive marketing rights, to the Anderson County, South Carolina territory (the "Anderson Territory") owned by Assigning Party pursuant to its franchise agreement with ©Big Air Franchising, LLC (the "Franchise Agreement"). The Anderson Territory is more fully described as zip codes. See, Exhibit A.

Sharif Farhan and Mohammad Farhan are the sole members of Assuming Party's limited liability company (each an "Owner" and, together, "Owners").

Assuming Party desires to accept such assignment of rights and delegation of obligations for the Anderson Territory.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys and transfers to Assuming Party all of Assigning Party's right, title and interest in and to the Anderson Territory.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party's duties and obligations related to the Anderson Territory on and after the Effective Date.

1.3 Term. The term of this Agreement is equal to the length of time that Assuming Party operates a Big Air franchise in Anderson County, South Carolina pursuant to a franchise agreement with ©Big Air Franchising, LLC (the "Term").

2. Consideration.

2.1 For the entire time Term, Assuming Party agrees to pay the following to Assigning Party as consideration for the assignment of the Anderson Territory:

(a) A sum equal to 1% of the monthly gross sales of Assuming Party. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Gross sales will be calculated for the monthly immediately preceding the payment date.

(b) A sum equal to 5% of the monthly net profits of Assuming Party. Net profits will be calculated by taking the gross revenue and subtracting expenses. Expenses include normal operating expenses and excludes Owner personal expenses, salaries of Owners greater

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than $45,000 in the aggregate, new major equipment expenses greater than $5,000 per purchase, and bonuses, if any. The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term. Net profits will be calculated for the monthly immediately preceding the payment date.

(c) A monthly management fee of Five Thousand and 00/100 ($5,000.00). The first payment will be made on the 10th day of the month immediately following the month of the Effective Date and will continue the 10th day of each successive month during the Term.

2.2 All payments will be made by WIRE TRANSFER WITH BACKUP PAYMENT delivered to PO BOX 171592, SPARTANBURG, SC 29301.

2.3 All late payments shall bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Assuming Party will also reimburse Assigning Party for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Assigning Party does not waive by the exercise of any rights hereunder), Assigning Party shall be entitled to suspend any of its obligations hereunder if the Assuming Party fails to pay any amount when due hereunder and such failure continues for fourteen (14) days following written notice thereof.

2.4 Audit Rights.

(a) Within seven (7) days after the end of each month during the Term, Assuming Party will provide Assigning Party with an accounting of its operating costs, expenses, sales, revenues, and related items from the immediately preceding month, along with any other information related thereto and reasonably requested by Assigning Party.

(b) Assigning Party shall have the right to examine and audit the books and records of Assuming Party upon three (3) days' advance written notice. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

3. Continuing Obligations.

3.1 Assuming Party.

(a) Assuming Party will accept, at its Anderson location ("Big Air Anderson"), coupons, gift cards, passes, annual passes, etc. that originated from Assigning Party's locations in Greenville and Spartanburg, South Carolina ("Big Air Greenville" and "Big Air Spartanburg," respectively).

(b) Assuming Party will offer the same prices at Big Air Anderson as are offered at Big Air Greenville and Big Air Spartanburg, including prices on daily specials, birthday packages, socks, etc.

3.2 Assigning Party.

(a) Assigning Party will accept, at Big Air Greenville and Big Air Spartanburg, coupons, gift cards, passes, annual passes, etc. that originated from Big Air Anderson.

(b) Assigning Party will provide Assuming Party with access to Assigning Party's marketing director to provide content and management of marketing for Big Air Anderson. However, Assuming Party will still be responsible for purchasing its own paid advertisements for Big Air Anderson.

(c) Assigning Party will provide Assuming Party with access to Assigning Party's maintenance director to manage and direct the maintenance tasks for Big Air Anderson. Assuming Party will still be responsible for providing employees to perform most maintenance tasks and for purchasing replacement parts and material at Big Air Anderson.

4. Representations and Warranties.

4.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the State of South Carolina.

(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.

(f) It is the sole legal and beneficial owner of the all the rights to the Anderson Territory on the Effective Date, free and clear of any lien, security interest, charge or encumbrance, except for the rights of ©Big Air Franchising, LLC to the Anderson Territory.

(g) The Franchise Agreement is in full force and effect on the Effective Date. No event or condition has occurred that is an event of default or termination under the Franchise Agreement. There are no material disputes pending or, to its knowledge, threatened related to any rights or obligations transferred by this Agreement.

(h) It has performed all of its obligations under the Franchise Agreement that are required to be performed on or before the Effective Date.

4.2 Assuming Party's Representations and Warranties. Assuming Party represents and warrants as follows:

(a) It is duly organized, validly existing and in good standing under the laws of South Carolina.

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(b) It is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement.

(c) It has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder.

(d) It has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set out at the end hereof.

(e) When executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of Assuming Party, enforceable against it in accordance with its terms.

(f) It has or will enter into a separate franchise agreement with ©Big Air Franchising, LLC on or before the Effective Date.

5. Indemnification; Insurance.

5.1 Assuming Party Indemnification. To the fullest extent permitted by applicable law and subject to the terms and conditions set out in Section 5.2, Assuming Party (as "Indemnifying Party") shall indemnify, defend, and hold harmless Assigning Party and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney's fees, that are incurred by Indemnified Party (collectively, "Losses") relating to, arising out of, or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise ("Claim") or any direct Claim against Indemnifying Party alleging:

(a) A material breach or non-fulfillment of any material representation, warranty, or covenant under this Agreement by Indemnifying Party or its representatives;

(b) any negligent or more culpable act or omission of Indemnifying Party or any of its representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;

(c) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party or its representatives (including any reckless or willful misconduct); or

(d) any failure by Indemnifying Party to materially comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.

5.2 Exceptions and Limitations on Indemnification. Despite anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify or defend Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from Indemnified Party's:

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(a) Sole negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) Bad faith failure to materially comply with any of its material obligations set out in this Agreement.

5.3 Assuming Party's Insurance. During the Term Assuming Party shall, at its own expense, maintain and carry in full force and effect commercial general liability insurance in a sum no less than $1,000,000 per occurrence with financially sound and reputable insurers, and upon Assigning Party's request, shall provide Assigning Party with a certificate of insurance evidencing the insurance coverage specified in this Section.

6. Events of Default; Remedies.

6.1 Assuming Party shall be in default under this Agreement if Assuming Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, Assuming Party does not cure such breach within fourteen (14) days after receipt of written notice of such breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within fourteen (140 days or is not dismissed or vacated within forty-five (45) days after filing.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(g) Has its franchise agreement with ©Big Air Franchising, LLC terminated.

6.2 In addition to any other remedy it may have at law or equity, Assigning Party may terminate this Agreement upon Assuming Party's default.

7. COVID Mandatory Shutdowns.

7.1 The parties acknowledge and agree that as of the effective date of this Agreement, the COVID-19 global pandemic ("COVID Pandemic") is impacting various industries. Considering the foregoing, Assuming Party will use best efforts to plan and execute its operations in a manner to minimize the impacts of the COVID-19 Pandemic on Big Air Anderson and its performance under this Agreement.

7.2 In the event of a mandatory shutdown imposed on Big Air Anderson by city, county, state, or federal governmental authorities due to the COVID-19 Pandemic, the monthly management

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fee provided in Section 2.1(c) will be prorated for a period of time equal to the length of the mandatory shutdown. No other performance of either Party under this Agreement will be excused.

8. Miscellaneous.

8.1 Relationship of Parties. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

8.2 Further Assurances. On the other party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

8.3 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties contained in this Agreement survive the expiration or earlier termination of this Agreement.

8.4 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at its address set out below (or to such other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to Assigning Party:	PO BOX 171592 SPARTANBURG, SC 29301 E-mail: dustin@bigairusa.com Attention: Dustin Pelletier
Notice to Assuming Party:	23 SANDUSKY LANE SIMSPONVILLE, SC 29680 E-mail: MohammahFarhan45@yahoo.com Attention: Mohammad Farhan

8.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" is deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, schedules and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The

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schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein.

8.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

8.7 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.8 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

8.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each party to this Agreement.

8.10 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement, and signed by an authorized representative of the party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(c) None of the following is a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission or course of dealing between the parties.

8.11 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

8.12 No Third-Party Beneficiaries. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.13 Choice of Law. This Agreement and exhibits and schedules attached hereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina, without regard to the conflict of laws provisions thereof

to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

8.14 Choice of Forum. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, and exhibits and schedules attached hereto, and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud and statutory claims, in any forum other than in Greenville County, South Carolina and any appellate court from any thereof.

8.15 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS AND SCHEDULES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY ABOUT ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS OR SCHEDULES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8.16 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together is deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BA HOLDINGS, INC.

By:_____
Name: Dustin Pelletier
Title: President

ZAY N LIMO, LLC

By:_____
Name: Mohammad Farhan
Title: Member

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Exhibit A: Anderson Zip Codes

In blue	up to dividing line
29672	29691
29693	29631
29678	29670
30577	29697
29643	29621
29625	29627
30553	29627
29626	29654
29624	29692
29684	29638
30520	29630
30521	29653
30662	29620
30634	29628
29655	
30635	
30538	
30557	
30553	
30662	
30516	
30643	



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EXHIBIT 6

GREENVILLE

$3,743,648.64 GROSS

$1,044,178.37 NET

10% FROM ANDERSON

-$374,369 GROSS -

-$104,418 NET —

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LOSING 10% GUILLE
(NET)

– $104,418

GAINING 4% ROYALTIES
5% NET (MIRRORING SBUK)

+ $120,789

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ANDERSON (PROJECTION -
(MATCHING SPARTANBURG)

$2,373,137.42 - GROSS

X 4% ROYALTIES

3%
$71,200
1%23,733

$94,925.48

$327,422.44 - NET

< 25%

X 5% NET PROFIT

$16,371.11 + 23733 = 40,104

25% Profit
$1,267

1% Gross
+ 23,733 = 105K

EXHIBIT 7

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From: **Kevin Odekirk** <kevin@bigairusa.com>
Date: Tue, Aug 29, 2023 at 12:50 PM
Subject: Re: Affidavit
To: Dustin Pelletier <dustin@bigairusa.com>

Dustin,

Please find the attached doc. I understand this to incorporate all the items we spoke about yesterday.

If anything is missing let me know. Otherwise, simply execute and return the release, and I will execute and send this for your use.

Thanks,

Kevin Odekirk
President
Big Air USA

(714) 348-4345 | bigairusa.com | kevin@bigairusa.com
999 Corporate Drive, Suite 215, Ladera Ranch, CA 9269

On Mon, Aug 28, 2023 at 12:14 PM Dustin Pelletier <dustin@bigairusa.com> wrote:
I'm available. Please call me when you have time.

On Mon, Aug 28, 2023 at 12:36 PM Kevin Odekirk <kevin@bigairusa.com> wrote:
Dustin,

Thanks for your quick reply. I'm open to discussing this further with you, of course. While Josh and my intention was never to "dismantle" anything, we have absolutely no issue with stating our understanding on this matter truthfully.

I can be available this afternoon between 12 and 3 PST to discuss specific points. What time works for you?

Kevin Odekirk
President
Big Air USA

(714) 348-4345 | bigairusa.com | kevin@bigairusa.com
999 Corporate Drive, Suite 215, Ladera Ranch, CA 9269

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On Mon, Aug 28, 2023 at 8:24 AM Dustin Pelletier <dustin@bigairusa.com> wrote:
I understand some of the legalese related to the added/removed text from the affidavit, but why are items 5, 11, 15, and 19 removed completely? Why are items 8, 9 and 13 fundamentally changed? These are still true and they are key to dismantling Mohammad's narrative like we discussed in our meeting. I need to be able to take away his arguments about these key details. Why are you removing them? I thought you were going to cooperate with this process?

Give me a call to discuss. I hope there is something I'm missing.

On Mon, Aug 28, 2023 at 10:29 AM Kevin Odekirk <kevin@bigairusa.com> wrote:
Dustin,

Thanks so much for your email below and for your patience while I awaited our teams' response.

Please find the attached two documents. The first is the language associated with our requested affidavit. This is the language my team feels accurately portrays our understanding of the situation.

The second document is a general release for you to sign. Upon your execution of this, I can immediately execute and return this affidavit for your use.

Thanks,

Kevin Odekirk
President
Big Air USA

(714) 348-4345 | bigairusa.com | kevin@bigairusa.com
999 Corporate Drive, Suite 215, Ladera Ranch, CA 9269

On Mon, Aug 28, 2023 at 4:20 AM Dustin Pelletier <dustin@bigairusa.com> wrote:
Kevin, I'm running up against a deadline to respond on Tuesday this week. Do you think you could provide the affidavit for me? I don't mean to rush you, I thought this would be a simple and straight forward request. You indicated that everything on the affidavit was accurate already. What else needs to be reviewed?--

Dustin Pelletier
Park Director
Big Air Trampoline Park
Spartanburg, SC - Greenville, SC - Branson, MO
Columbus, OH - Auburn, WA - Aurora, CO
m: 864-414-6300
w: www.bigairusa.com e: Dustin@bigairusa.com

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--

Dustin Pelletier

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BA HOLDINGS, INC., Plaintiff, vs. ZAY N LIMO, LLC, SHARIF FARHAN, and MOHAMMAD FARHAN, Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2022-CP-23-02302 **AFFIDAVIT OF KEVIN ODEKIRK**

I, Kevin Odekirk, being first duly sworn, depose and state as follows:

1. I am the President of Big Air Franchising, LLC ("Big Air").

2. BA Holdings, Inc. ("BAH") is the Regional Developer for Big Air for the State of South Carolina, pursuant to that certain Regional Developer Agreement ("Regional Developer Agreement") by and between BAH and Big Air dated April 1, 2018. It is my understanding that Dustin Pelletier is the principal in charge for BAH.

3. On July 14, 2020, Mohammad Farhan ("Mohammad") contacted Big Air regarding a franchise opportunity through Big Air's online inquiry process.

4. At the time Mohammad contacted Big Air, Tom Sampson ("Sampson") was a sales representative for Big Air in the State of South Carolina.

5. Big Air provided Mohammad with the required sales and disclosure requirements for a franchise opportunity (the "FDD").

6. Big Air, represented by Sampson as the sales representative for Big Air, worked with Mohammad to sell and assign a franchise territory to Mohammad, or an entity to be formed at a later date, which ultimately became Zay N Limo, LLC ("Zay N Limo"), pursuant to a

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franchise agreement with Big Air, and BAH acted as the Regional Developer for the State of South Carolina during such process.

7. Dustin Pelletier and BAH do not have the authority to award a Big Air franchise. Dustin Pelletier and BAH only have the authority to assist in the sales process according to the Regional Developer Agreement.

8. Mohammad was interested in opening a Big Air franchise in Anderson, South Carolina. At the time of the initial inquiry, BA Greenville, LLC ("BA Greenville") had exclusive rights to own and operate a Big Air franchise within its assigned territory, which included certain zip codes in Anderson, South Carolina ("Anderson Territory"). BA Greenville had the option to pursue an additional location within the existing BA Greenville assigned territory, provided BA Greenville entered into a new franchise agreement for the new location within the BA Greenville assigned territory and Big Air consented to such new franchised location.

9. Big Air could not have granted a territory to Mohammad or Zay N Limo that overlapped with the territory granted to BA Greenville, LLC, which included the Anderson Territory, without BA Greenville's consent and release of the applicable territory zip codes back to Big Air.

10. BA Greenville has the option to assign certain zip codes back to Big Air, and those zip codes are then available for Big Air to assign to a different franchisee under a new franchise agreement. The franchise agreement for BA Greenville does not prohibit the assignment of any zip codes back to Big Air.

11. Zay N Limo and/or Mohammad entered into an agreement or agreements with BAH and/or BA Greenville relating to the Anderson Territory.

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12. Big Air knew that BAH and/or BA Greenville reached an arrangement with Mohammad and/or Zay N Limo relating to the zip codes constituting the Anderson Territory being returned to BAF. However, neither Big Air nor I was ever aware of the terms or details of such arrangement or involved in any way with negotiating the terms or approving the terms of such arrangement.

13. BA Greenville consented to the release of the Anderson Territory back to Big Air and consented to the issuance of the Anderson Territory to Mohammad and/or Zay N Limo pursuant to a franchise agreement between Zay N Limo and Big Air.

14. Mohammad was provided with a list of the zip codes for the Anderson Territory prior to Zay N Limo executing a franchise agreement with Big Air. The list of zip codes for the Anderson Territory was created by Dustin Pelletier and was used by Big Air in the creation of the franchise agreement between Zay N Limo and Big Air.

15. On February 9, 2021, Big Air caused the franchise agreement between Zay N Limo and Big Air (the "Franchise Agreement") to be sent to Zay N Limo for execution. Zay N Limo executed the Franchise Agreement on or around February 11, 2021. However, due to clerical error, Zay N. Limo improperly backdated the Franchise Agreement signature pages to around the date Zay N. Limo was disclosed with the FDD.

16. Zay N Limo was officially awarded the Anderson Big Air franchise on or around February 21, 2021.

17. As of the date hereof, I have no knowledge that Dustin Pelletier's conduct as the Regional Developer in South Carolina in relation to Mohammad was not in accordance with the obligations set forth in the Regional Developer Agreement.

18. I am competent to testify, declare, depose, or certify to the truth of any or all of the foregoing.

I swear under penalty of perjury that the foregoing is true and correct.

_____
Kevin Odekirk
President – Big Air Franchising, LLC

Subscribed and sworn to before me on this _____ day of _____, 2023

_____
Notary Public for California
My Commission expires: _____

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GENERAL RELEASE AGREEMENT

This General Release Agreement ("**Agreement**") is made effective as of _____ ("**Effective Date**") by and among Big Air Franchising, LLC ("**Franchisor**"), BA Holdings, Inc. ("**Developer**"), and Dustin Pelletier ("**Owner**"). Franchisor, Developer, and Owner are collectively referred to herein as the "**Parties**" and each individually as a "**Party**."

WHEREAS, Franchisor and Developer are parties to that certain regional developer agreement ("**Regional Developer Agreement**") pursuant to which Developer obtained the right to act as the Regional Developer ("**Regional Developer**") for Franchisor in the State of South Carolina, pursuant to the terms and conditions set forth in the Regional Developer Agreement.

WHEREAS, Developer is currently a party to a lawsuit with Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan (collectively, "**Franchisee**") in the State of South Carolina, Case No. 2023-CP-2302302 ("**Lawsuit**").

WHEREAS, Developer has requested certain information from Franchisor relating to Developer's claims in the Lawsuit.

WHEREAS, Franchisor is willing to provide certain limited information requested by Developer provided Developer and Owner enter into this Agreement for the purpose of fully and finally resolving all legal and equitable claims existing that were or could have been asserted in any action, and any and all claims, known or unknown, against Franchisor, including, without limitation, any and all claims, known or unknown, in any way relating to the Regional Developer Agreement, any franchise agreement entered into between Franchisor and Owner or any entity owned in who or in part by Owner, or the franchise relationship created by any of the foregoing.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the Parties hereby covenant, promise, and agree as follows:

1. **Recitals**. The foregoing recitals are incorporated herein by this reference as though set forth in full and are acknowledged by the Parties to be true, correct, and material to this Agreement.

2. **Release of Claims**. Developer and Owner, on behalf of themselves and on behalf of any entity owned in whole or in part by Owner, and each of their respective assigns, heirs, representatives, agents, family members, and all other persons acting on their behalf or claiming under them (collectively, "**Developer Related Parties**") irrevocably and unconditionally release and forever discharge Franchisor, its predecessors, subsidiaries, and affiliates, and each of their respective owners, officers, directors, agents, independent contractors, servants, employees, representatives, attorneys, successors, and assigns, and all persons acting by, through, under or in concert with any of them (collectively, "**Releasees**"), from all actions, causes of action, suits, debts, liens, contracts, agreements, obligations, promises, liabilities, claims, rights, demands, damages, controversies, losses, costs, and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent (each a "**Claim**," and collectively "**Claims**"), which any of the Developer Related Parties now have or claim to have or at any time heretofore have had or claimed to have against each or any of the Releasees, including, without limitation, any and all such Claims arising from, based upon or related to the Regional Developer Agreement, Developer's actions as the Regional Developer, any franchise agreement entered into between Franchisor and any of the Developer Related Parties, or the franchise relationship created by any of the foregoing, or any event, act, or omission that occurred prior to the Effective Date. For the avoidance of doubt, Franchisee is not a "Releasee."

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3. **Unknown Claims**.

(a) Developer and Owner each acknowledges for itself and the Developer Related Parties that there is a risk that subsequent to the execution of this Agreement, they will discover, incur or suffer Claims which are unknown or unanticipated at the time this Agreement is executed, including, without limitation, unknown or unanticipated Claims which arose from, are based upon or are related to the Franchise Agreement or some part or aspect thereof, which if known by Developer or Owner on the date this Agreement is being executed may have materially affected their decision to execute this Agreement.

(b) Developer and Owner each acknowledges and agrees for themselves and the Developer Related Parties that by reason of the release contained in Section 2 above, they are assuming the risk of such unknown and unanticipated Claims and agree that their release of the Releasees contained in this Agreement applies thereto.

(c) If Developer or any Developer Related Party is domiciled or has his or her principal place of business in the State of California, then Developer or such Developer Related Party hereby expressly waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

4. **Covenant Not to Sue.** Developer and Owner each covenants and agrees for themselves and for the Developer Related Parties not to bring or allow to be brought on behalf of itself or any Developer Related Party, any action, cause of action, suit or other proceeding of any kind, which has accrued or which may ever accrue, whether based in the Constitution, common law or statute, contract, tort, or in equity, for actual or punitive damages or other relief, against Franchisor and/or the Releasees arising out of, resulting from, or in any manner related to the matters referenced in Sections 2 and 3.

5. **Covenant Not to Issue or Cause to be Issued any Subpoenas**. Developer and Owner each covenants and agrees for itself and for the Developer Related Parties not to, through its current or future counsel, issue or cause to be issued any subpoenas or other discovery requests relating to the Lawsuit or any future litigation or disputes relating to Developer and/or Owner and Zay N Limo, LLC, Sharif Farhan, and/or Mohammad Farhan (individually or collectively), or any affiliate of Franchisee.

6. **No Assignment of Claims.** Developer and Owner each represents and warrants for themselves and the Developer Related Parties that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any Claims released under Sections 2 and 3 of this Agreement and agree to indemnify, defend and hold the Releasees harmless from and against any and all Claims, based on or arising out of any such assignment or transfer, or purported assignment or transfer, of any Claims, or any portion thereof or interest therein. Developer and Owner each represents and warrants that since the date of the Regional Developer Agreement, there has been no assignment or transfer, and no purported assignment or transfer, to any person or entity of the Regional Developer Agreement, or any rights or interests therein or in the Developer.

7. **Full and Independent Knowledge**. Developer and Owner each represents that they have been represented by an attorney in connection with the preparation and review of this Agreement, that they have specifically discussed with their attorney the meaning and effect of this Agreement and that they have carefully read and understand the scope and effect of each provision contained herein. Developer and Owner each further represents that they do not rely and have not relied upon any

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representation or statement made by the Franchisor or, any of the Releasees or any of their representatives with regard to the subject matter, basis or effect of this Agreement.

8. **Compromise**. Developer and Owner each agrees for themselves and the Developer Related Parties that the releases contained herein are the result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of Franchisor or the Releasees regarding any matter.

9. **General Provisions**.

(a) Entire Agreement. This Agreement, when fully executed, supersedes all previous negotiations, representations, and discussions by the Parties hereto concerning the subject matter hereof and integrates the whole of all of their agreements and understandings concerning the subject matter hereof. No oral representations or undertakings concerning the subject matter hereof shall operate to amend, supersede, or replace any of the terms or conditions set forth herein.

(b) Authority. By their signatures below, the Parties represent and warrant to each other that they have all necessary authority to enter into this Agreement. Each Party represents and warrants that the Party is entering into this Agreement solely for the purposes and consideration set forth herein.

(c) Counterpart Execution. This Agreement may be executed by electronic means and in multiple counterparts, each of which shall be fully effective as an original.

(d) Survival. All covenants, representations, warranties, and agreements of the Parties shall survive execution and delivery of this Agreement and shall continue until such time as all the obligations of the Parties hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

(e) Further Assurance. The Parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

(f) Complete Defense. Developer and Owner each acknowledges that this Agreement shall be a complete defense to any claim released under the terms of Sections 2 and 3 of this Agreement and hereby consent to the entry of a temporary or permanent injunction to end the assertion of any such claim.

(g) No Coercion. Developer and Owner each acknowledges that they are freely and voluntarily entering into this Agreement, uncoerced by any person, and that they have been advised and afforded the opportunity to seek the advice of legal counsel of their choice with regard to this Agreement.

(h) Attorneys' Fees. In the event that Franchisor or any Releasee institutes legal proceedings of any kind to enforce this Agreement, Developer and Owner each agrees to pay all costs and expenses associated therewith, including, but not limited to, all attorneys' fees.

[***Signature Page Follows***]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the date indicated below.

FRANCHISOR:

BIG AIR FRANCHISING, LLC

By: _____
Name: _____
Title: _____

DEVELOPER:

BA HOLDINGS, INC.

By: _____
Name: Dustin Pelletier
Title: _____

OWNER:

DUSTIN PELLETIER

_____

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EXHIBIT 8

ASSIGNMENT OF CONTRACT

THIS ASSIGNMENT OF CONTRACT (this "Assignment") is made and entered into as of August 14, 2023, by and between BA Holdings, Inc. ("Assignor") and BA Greenville, LLC ("Assignee").

RECITALS

1. Assignor is the sole member of Assignee and holds 100% of the outstanding membership interests in Assignee.

2. Assignee entered into that certain franchise agreement with Big Air Franchising, LLC, dated October 7, 2017 (the "Franchise Agreement")

3. Assignor entered into that certain Regional Director Agreement with Big Air Franchising, LLC, dated April 1, 2018 (the "RD Agreement").

4. Assignor entered into that certain Assignment and Assumption Agreement with Zay N Limo, LLC ("Zay N Limo"), dated January 29, 2021 (the "Territory Release Agreement"), pursuant to which Assignor intended to release certain rights of Assignee, including exclusive marketing rights, to the Anderson County, South Carolina territory conferred to Assignee by Big Air Franchising, LLC under the Franchise Agreement.

5. Assignor inadvertently included itself as the contracting party in the Territory Release Agreement. Assignor now desires to assign to Assignee all its right, title, and interest in and to the Territory Release Agreement (the "Assigned Interests").

6. Assignee desires to become the substitute counterparty to the Territory Release Agreement with Zay N Limo and to assume and perform all the debts, liabilities, and obligations of Assignor in respect of the Assigned Interests under the Territory Release Agreement, and the other agreements, documents and materials that govern the rights and obligations of Assignor under the Territory Release Agreement, from and after the date hereof (collectively, the "Assumed Obligations").

7. Assignor now wishes to transfer and assign, beneficially and of record, all the Assigned Interests to Assignee, and Assignee wishes accepts such assignment and assumes all the Assumed Obligations.

AGREEMENT

For the payment of One Hundred and 00/100 Dollars ($100.00) from Assignee to Assignor and other good and valid consideration, the receipt of which is acknowledged, the parties agree as follows:

Section 1. Assignment of Assigned Interests. Assignor hereby transfers and assigns, beneficially and of record, to Assignee, and Assignee hereby accepts the assignment of all the Assigned Interests as set forth in the Territory Release Agreement, together with all rights,

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powers, authority, duties, liabilities, and obligations appurtenant thereto and agrees to be bound by the Territory Release Agreement as the holder of the Assigned Interests.

Section 2. Assumption of Obligations. The Assignee hereby assumes the Assumed Obligations and agrees to pay, perform, and discharge such Assumed Obligations, whether known or unknown, absolute or contingent, determined or speculative or otherwise, from and after the date of execution of the effective date of the .

Section 3. Record and Beneficial Ownership. From and after the date hereof, Assignor shall cease to be a holder, beneficially and of record, of the Assigned Interests and, in its place and stead, Assignee shall be the holder, beneficially and of record, of the Assigned Interests. Assignor, from and after the date hereof, disclaims any and all interests in the Assigned Interests, whether of record or beneficially, and agrees and attests that all such interests are owned by Assignee.

Section 4. Representations and Warranties. Assignee hereby affirms that the representations and warranties set forth in the Territory Release Agreement are true and correct in all material respects as to Assignee on and as of the date hereof with the same effect as if made on the effective date of the Territory Release Agreement.

Section 6. Binding. This instrument shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina applicable to contracts made and to be wholly performed within such State, without reference to principles of conflicts of laws that would require the applicability of the laws of any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

BA HOLDINGS, INC.

Dustin Pelletier
President

BA GREENVILLE, LLC

Dustin Pelletier
Member

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2023-CP-23-02303
	)	
	)	
	)	
	)	
	)	
BA HOLDINGS, INC.,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ZAY N LIMO, LLC, SHARIF	)	
FARHAN AND MOHAMMAD FARHAN,	)	
DEFENDANTS.	)	
_____	)	

October 10, 2023
Greenville, South Carolina

B E F O R E:

THE HONORABLE G. D. MORGAN, JR., JUDGE.

A P P E A R A N C E S:

BRIAN AUTRY, ESQ.
Attorney for the Plaintiff

JASON S. SMITH, ESQ.
Attorney for the Defendants

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called)

E X H I B I T S

(There were no exhibits submitted)

P R O C E E D I N G S

THE COURT: BA Holdings, Inc. vs. Limo, et al, 2023-CP-23-02302. Looks like we've got two motions, motion to amend the Complaint, motion for partial summary judgment.

If each of you would identify yourself since we're on WebEx, starting with the Plaintiff first, if you would identify yourself, then to the Defendant's attorneys.

MR. AUTRY: Thank you, Your Honor. Plaintiff is BA Holdings, Inc. I am Brian Autry at the law firm of Kenison, Dudley and Crawford, LLC, representing Plaintiff. With me is Dustin Pellitier (ph), who is the shareholder of the Plaintiff.

THE COURT: All right.

Yes, sir.

MR. SMITH: Good morning, Your Honor, Jason Smith with Hellman Yates. I represent all three Defendants, Zay & Limo, LLC, Sharif Farhan and Mohammad Farhan, who is sitting next to me.

THE COURT: All right. I've read the file. I see we've got a motion for partial summary judgment and a motion to amend the Complaint. What I want to do, because they are interrelated and I've read everything, I want to hear the motion to amend first because that could, potentially, decide the motion to dismiss. I haven't decided, but I want to hear the motion to amend first.

MR. AUTRY: Thank you, Your Honor. We appreciate that. And I agree with you that if -- depending on how you rule on the motion to amend is going to greatly affect Mr. Smith's argument and my argument.

I want to try to simplify this as much as I can without oversimplifying because there are a lot of moving parts related to this lawsuit and how we got here. The high level view is that there's a company named Big Air Franchising, LLC. Big Air Franchising is a California franchisor. They sell Big Air Franchise businesses nationwide. Their principle place of business and their, I think, official residence is in California. These are indoor trampolines, indoor adventure parks where you can go and jump in the ball pit and swing on the ropes and all of that. There are a couple here locally.

The named Plaintiff in the original Complaint in this matter, BA Holdings, Inc. is the regional director for Big Air for the State of South Carolina by virtue of a regional director agreement between Plaintiff and Big Air. Big Air Holdings is the sole member of a company called BA Greenville, LLC.

So I've got Big Air Holdings regional director agreement with Big Air Franchising. It is the sole member of another entity wholly-owned subsidiary, BA Greenville, LLC. BA Greenville, LLC, also, has an agreement with Big

Air. And it's a franchise agreement where BA Greenville became a franchisee for Big Air in the Greenville Spartanburg -- well, there's a BA Spartanburg, too, so I don't want to confuse that. But BA Greenville, LLC's franchise agreement with Big Air is in the Greenville Anderson area.

In that agreement, there's a territory defined as the exclusive territory for BA Greenville, LLC to operate in. Included in that territory are a number of zip codes. I have a copy of that agreement with me today for the Court's benefit. This is the same copy that's been exchanged in discovery. I'd like to pass it up. I'll do that however you want to. I can hold it till the end.

THE COURT: No, you can pass it up.

MR. AUTRY: What I've handed you is the BA Greenville franchise agreement. On the first page of this agreement are the zip codes for the territory defined later in the agreement as the exclusive territory for BA Greenville, LLC. The zip codes include Anderson, South Carolina. So under the terms of this agreement, BA Greenville has the exclusive rights to operate a Big Air Franchise in Greenville, Anderson related to these zip codes.

Dustin Pellitier, who is here with me today, is the sole shareholder of the Plaintiff, Big Air Holdings, and BA Holdings is the sole member of BA Greenville, LLC.

Hopefully, that will help with, at least, the players on the Plaintiff's side.

The lawsuit is related to the alleged breach of contract related to an agreement between the Plaintiff and the Defendant, Zay N Limo, LLC. Zay N Limo, LLC contacted Big Air through it's online portal about opening a Big Air Franchise in South Carolina. At the time of that contact, Big Air had its own people who managed enforcing franchisees, but Big Air, also, had the agreement with Plaintiff, BA Holdings, Inc. to be their regional director. Big Air informed the Defendants that Dustin Pellitier was their contact because BA Holdings, Inc. is the regional director for South Carolina.

As part of those negotiations, Dustin had conversations -- and this is included in his affidavit that's on file with the Court. Dustin had multiple conversations with the individual Defendants, particularly, Mohammad Farhan. During those conversations, Dustin let them know what territories in South Carolina were available for them to have a Big Air Franchise.

The territory that they wanted to be in, which was the Anderson, South Carolina, territory was not available because BA Greenville, LLC had the exclusive rights to operate in that territory. Mr. Pellitier let Mr. Farhan know that there were other territories that were not tied up

with an exclusive, you could go there. Mr. Farhan was very interested in being in Anderson.

Big Air Franchising could not -- and I want to make this as clear as I can. Big Air Franchising could not sell a franchise to Zay N Limo to operate in the Anderson territory without BA Greenville, LLC's consent. Mr. Pellitier made it very clear that he was unwilling to consent to release that territory without being paid for it.

Now, you're going to hear a lot today about the regional director agreement and how BA Holdings is already making money off this deal, which is absolutely true. BA Holdings, the Plaintiff, gets a cut of the franchise fee that Zay N Limo pays to Big Air by virtue of that regional director agreement. That has absolutely nothing to do with the fact that BA Greenville, LLC had exclusive rights to operate in the Anderson territory. In order to give up those rights, they asked to be paid for it.

Now, here's where it gets messy and, in my opinion, will later eliminate any discussion that this is up for summary judgment. The parties negotiated the terms by which Zay N Limo was going to pay to have the territory released so that Big Air Franchising could give them a franchise agreement to operate in the Anderson territory. They signed an agreement, negotiated and signed an agreement called an Assignment and Assumptions Agreement.

THE COURT: With BA Greenville?

MR. AUTRY: With BA Holdings.

THE COURT: I mean, BA Holdings.

MR. AUTRY: Yes, sir. Which was incorrect. Mr. Pellitier in his affidavit and standing here today made a mistake, put the wrong entity as the counter-party to the agreement. He should have put BA Greenville, LLC. It's an absolutely admitted mistake. We've admitted it in our pleadings. We've admitted it in our discovery. We've admitted it in Mr. Pellitier's affidavit. It's not a secret.

It doesn't change the fact that the parties intended to and, in fact, did agree that there would be payment from Zay N Limo guaranteed by Mr. Farhan so that that territory could be released so that they could operate in the Anderson territory.

Now, again, they have every right to counterclaim and have defenses and argue that that was violative of the franchising laws, the Business Opportunities Act, the Unfair Trade Practices Act and they've claimed all of that in their pleadings. We're not here arguing today that they don't have ever right to try that case. What we're saying is there was a mistake made in the actual agreement that the parties fully intended to execute. The Defendants had ever opportunity to have a lawyer look at that agreement. They

could have had Mr. Smith look at that agreement before signing it. They signed it.

They moved forward, signed the franchise agreement with Big Air. And if you look at their Big Air Franchising agreement, which I'd, also, like to hand up to the Court, it had zip codes on the very first page just like BA Greenville's agreement. These zip codes are the same zip codes that are included in BA Greenville's exclusive territory. If BA Greenville did not give up these zip codes, Zay N Limo could not have gotten a franchise agreement from Big Air.

But, lo and behold, here's the franchise agreement with Big Air and the Defendants are currently operating a Big Air franchise in Anderson. And people are coming and paying money and money is being made. That business is, also, taking business away from BA Greenville, which everybody knew was going to happen, which is why Mr. Pellitier asked for compensation to give up that territory. It is not a secret.

The motion to amend the Complaint is to add BA Greenville as a Plaintiff because of the mistake that Mr. Pellitier made in including the wrong business entity name in his agreement with Zay N Limo. Again, there's all kinds of arguments on the other side about whether or not BA Greenville had the right to release that territory, whether

the agreement was properly executed, whether it has the right phraseology in the agreement. We understand all those arguments. All we're simply asking the Court to do is allow us to amend the pleading to add to BA Greenville as a Plaintiff.

I think it's pretty clear, everybody understands that BA Greenville had the exclusive rights to the territory that the Defendants now operate in free and clear, having paid nothing for it. All they've paid is their franchise fee to Big Air, as they're required to do under their franchise agreement.

In an attempt to, to use my own words, which have been quoted against me, clean up this issue, BA Holdings assigned unilaterally its agreement with Zay N Limo to BA Greenville, LLC. There is no anti-assignment provision in the agreement between BA Holdings and Zay N Limo either way. It is not an amendment to the terms of the agreement between BA Holdings and Zay N Limo. BA Greenville is simply stepping into the shoes of BA Holdings for all intents and purposes --

THE COURT: Per the assignment.

MR. AUTRY: Per the assignment, that's correct, Your Honor.

So, again, we are asking the Court to get that party as a Plaintiff into this agreement. It doesn't prejudice the other side in any way. They've pled, they've

counterclaimed, they were participating in discovery. You can plead and counterclaim to the amended Complaint. He's going to have some of the same arguments related to motions and all that. There is no prejudice to the other side for getting BA Greenville in this case because everybody understood from the beginning that BA Greenville had to participate in this transaction in order for Jay N Limo to operate in the Anderson territory.

So we've attached to our motion the proposed amended Complaint. And the one we filed is highlighted so the Court can see every change that we made.

THE COURT: I read it. I saw it.

MR. AUTRY: I'll be happy to answer any of the Court's questions around that, Your Honor, but we would ask respectfully that we be allowed to amend based on our motion.

THE COURT: All right. Mr. Smith.

MR. SMITH: Thank you, Your Honor.

Let me start by saying the Plaintiff in this case sued my clients based on the contract that the Plaintiff drafted and the Plaintiff entered into with my clients and attached as Exhibit 1 to the Complaint and attaches it again as Exhibit 1 to the proposed amended Complaint. Which let me say this, Your Honor, our contention is the proposed amended Complaint is futile. We're ready to have that dismissed

summarily as well.

After they sue my client and bring them into this litigation, my three clients, we have some discovery. And we have a lot of suspicions that this whole thing is a sham. And, lo and behold, it turns out it is. And they admit that BA Holdings, the Plaintiff, that filed this lawsuit based on the contract should have never entered into the contract to begin with. They admit that. Great. Their case should be over at that point.

But, instead, what they do in the middle of this litigation is create a new document. They create a new document and Mr. Pellitier signs it twice. He owns both entities in this new document. The new document is titled as an assignment. And we don't contend that he can't assign, but it's not really an assignment. If you look at its terms, if you look at the body of it, it talks about putting this BA Greenville as a substitute counter-party, which I've never heard of. Basically, using a time machine to go back and say oh, no, it was this other entity that actually entered into the contract.

It, also, purports to change the name of the contract, changing it from assignment and assumption agreement to territory release agreement. It, also, talks about changing the intent of the agreement, saying oh, no, we didn't mean to assign any rights, franchise rights under here, we meant

to release somebody else. Then it purports to change who made the representations and warranties and what is the effect of those when they're made. So BA Greenville now is standing in and saying oh, no, those representations and warranties were mine. So they mean something entirely different.

Under black letter law, Your Honor, they just can't do this. The agreement has clear terms they drafted that say it's the entire agreement, also known as merger, integration clause. It prohibits parole evidence. There's a clear clause in there as well that requires amendment to be signed by the actual parties to the agreement. So this agreement cannot be amended. Sure, it can be assigned, but it can't be amended by way of this new document. So the case cannot be saved. Black letter law, again, case closed as the Plaintiff's Complaint and the proposed futile amended Complaint.

Additionally, and I stress additionally, even giving the Plaintiff the benefit of a time machine, to go back and say oh, no, it wasn't me, it was this other entity that entered into the contract, the case still fails. This contract purports to sell rights, title, duties, convey and transfer to the rights to operate a new franchise business in Anderson.

The Plaintiff is the one who orchestrates the

franchisor to sell those rights, actually, sell those rights to my clients for a lot of money. They pay a huge initial franchise fee. This is, at least, a ten-year endeavor, so they've got a huge initial franchise fee, plus ten years of ongoing royalty payments. They've got millions of dollars tied up in building this place. And the Plaintiff as well as this new assignee, both commonly owned by Mr. Pellitier, gets half of that. Got half of the franchise fees to start with and got half of it going forward.

And what happens here -- and, Your Honor, we don't need fact finding on this issue for purposes of this motion, but what happens here is -- my clients don't know that. And he's in this role where he's wearing all these hats telling my guys what to do. He doesn't tell them oh, by the way, I already get half of everything you have to pay.

So he comes up with this second agreement. And he drafts it and he, on behalf of BA Holdings, Inc., gets my clients to sign this thing and, in effect, it is a double sale and extra charges on top of franchise fees. And, again, I won't get into all of the franchise regulations, but there's that, too, and counterclaims. So that's what this is.

So even, again, giving them the benefit of the time machine and so BA Greenville now is substituted in as the party, it did not have the right to sell franchise rights.

It did not. What it had was the right to operate one business, one franchise business location, which it has always done in the City of Greenville. And that is clear in the document that Mr. Autry handed up to you. I'd point you to what's labeled as B6 on it and it's talking about the grant of license. And it says, Operate, quote, one business. And they admit that that one business is operated in Greenville.

So furthermore, this agreement that he handed up to you requires the franchisors prior written approval to any sort of assignment of right. So they don't have the right to assign to divvy up parts of their territory. I mean, maybe he could have sold his entire Greenville operation, but that's not what he tried to do. He's trying to divide out and say oh, well, the surrounding buffered territory is mine, so I've got the right to open up a second one in Anderson. No, you don't. And he says this in his affidavit, too. He talks about if I entered into another franchise agreement, I would have the right to open in Anderson. Well, there isn't one.

What he's representing here, again, even assuming that he's a party, which he's not, is that he had the right to sell this and he did not. And the representations and warranties are not true. They're still false. Again, Your Honor, what this amounts to is a double sale.

Additionally, so now to the third layer. In discovery thus far, the Plaintiff has admitted that it has provided no services and nothing of value that it owns to support the demand letters that they're sending on a monthly basis for fees. They did not timely respond the request to admit on that issue nor did they give me any sort of response to corresponding interrogatories and discovery requests. So they're admitting again that they've done nothing. All they did was take advantage of the opportunity to be this regional director, to get 50 percent of the fees, which is a handsome payment, and then to get my guys confused enough to sign this contract, which they want to reinvent now.

Your Honor, you've read my brief. I go into much greater detail and lay out, walk you through all the agreements.

As to their issue of oh, well, we had to -- we amended our franchise agreement with the franchisor, that's an issue between them and the franchisor. I don't know what the consideration is in that amendment. That's not a party to our agreement. What we were sold is -- we purchased the rights and they're talking about amending some other agreement.

Again, Your Honor, you know, to the extent this is well, we're not getting paid, but they are getting paid. And that's what I would like to close with. Thank you, Your

Honor.

THE COURT: Mr. Autry, response?

MR. AUTRY: I thought we were arguing the motion to amend.

THE COURT: Well, that's why I wanted to hear the motion to amend first, but it's interrelated -- I, also, said it was interrelated with the motion for summary judgment, so Mr. Smith argued. I'll give him an opportunity if he wanted to add, but he argued both, in essence, the motion for summary judgment and the motion to amend. They are interrelated.

Patton vs. Miller, you know, is a recent Supreme Court case on the issue of amending the pleadings. And it talks about you cannot -- I mean, relieve is to be freely given and it notes that the Foman (ph) case is a U.S. Supreme Court says that it's a mandate. However, Patton vs. Miller, also, says that -- and it goes into discussion about not necessarily to decide a case on a motion to amend or 15 based on the merits of the case, however, it does note that if the merits of the case under the proposed amended complaint are futile or could be futile, then it came be considered.

So that's why I wanted to hear the motion to amend and I knew that it would delve somewhat into the motion for summary judgement in Mr. Smith's argument because it -- he

hit the buzz word of futile that the amended complaint even if I granted the motion to allow you to amend that that shouldn't be done because it would be futile based on his argument.

Like I say, I've read both of y'all submissions, so I've got it. I'll give you the opportunity to respond both to the motion to amend and the arguments as to the motion for summary judgment.

MR. AUTRY: Your Honor, I'd just like to point out a couple of things. One, again, Big Air Franchising could not -- if Zay N Limo had gone to Big Air Franchising and said we want to open a Big Air Franchise in Anderson, South Carolina and Big Air Franchising never contacted BA Holdings or BA Greenville or Mr. Pellitier, Big Air could not under any circumstances allow Zay N Limo operate a Big Air Franchise in that territory, which is clearly spelled out in all of the agreements that we've handed up, without BA Greenville, LLC's consent. That fact alone makes BA Greenville a proper Plaintiff in the lawsuit.

Again, BA Holdings -- there was no attempt by BA Holdings to defraud or trick anyone, but that's, also, something that they had every right to prove through the evidence presented at trial. He put the wrong entity on the agreement. Now, I'm unaware of any case law that says that that error is fatal and the agreement is now totally

invalid, especially when consideration and performance has been exchanged.

If we walk this out from a procedural or policy standpoint, if you decide that we can't amend the Complaint to add BA Greenville, BA Greenville does have a complaint and a claim, but if we can't amend this Complaint to do it, we're going to go file a lawsuit on behalf of BA Greenville against the same Defendant on the same issue, which is you took my territory without paying me for it.

The other issue is here, though, we've already engaged in discovery. They've still got to respond to discovery. We've got subpoenas outstanding to Big Air because a lot of what has been said here is well, I don't know what Big Air thinks. Well, I'd like to find out. And the discovery rules allow us to find out.

And one of the big issues is we're not even close to being done with discovery. I haven't been able to get Big Air in a room. I don't have an affidavit from Big Air. They don't have an affidavit from Big Air. We're trying to get their subpoenas domesticated in California, which is taking an inordinate amount of time that keeps being apologized for, but not done. But until I understand what Big Air understood and we've got them on the record -- again, it's very clear that BA Greenville is a proper party. If you don't allow --

THE COURT: What about his argument that it's futile, that BA Greenville is not -- and they don't have the rights to sell the franchise, wouldn't that certainly be an argument of futility under Patton vs. Miller and Rule 15?

MR. AUTRY: That is absolutely true, Your Honor. BA Greenville does not have the right to sell a franchise and that's not what they were doing. Big Air sold the franchise to Zay N Limo under the franchise agreement that they signed. What BA Greenville is selling or asking for compensation for is the release of its exclusive territory. That is not a franchise. That is not a franchise agreement. That is not anything other than you can't operate in this territory without my consent and I am asking to be paid for my consent for you to operate in territory that I own and will take away business from my existing location.

And something that's been totally lost here is that the Big Air Anderson location, because it is the second Big Air in the area of those zip codes necessarily takes business away from BA Greenville, which is documented. They asked to be paid for the loss of that business as part of this agreement.

So, again, I understand all his arguments and his right to make them, but if we're moving from the motion to amend down to the motion for summary judgment, there are so many issues of fact and understanding around the intents of the

parties, the execution of these agreements, how they were executed, what was discussed with Big Air, what was discussed among the litigants, how it all played out, how they opened a Big Air franchise in Anderson and decided not to pay anything related to an agreement. They had every opportunity to review.

Mr. Farhan is not a stupid person. He is a very good businessman who has worked his way to a spot to be able to run a business like this. He, obviously, understands how to hire a lawyer because he hired one who's with him today. He absolutely could have had a lawyer to review that agreement and go wait, this agreement is invalid. And what would have resulted in that is that they would have refused to sign the agreement, but they would be able to open a Big Air in Anderson because BA Greenville wouldn't have given it up. It's very -- it's that simple.

Now, again, whether or not that transaction violates some kind of Business Opportunities Act provision or whether it violates Unfair Trade Practices, they have every right to prove that through the evidence at trial. All we're asking is that all the parties that have something to do with this transaction are in this case, find amendment to our pleading, which they will have the opportunity to answer and, again, assert counterclaims. And I'm sure there will be much more counterclaims coming. They have every right to

do that.

If we don't, we're going to have two separate lawsuits. And even if you dismiss this one on summary judgment because BA Holdings was put on the agreement and was the wrong party, we're going to have a separate lawsuit that has to start all over between BA Greenville and the Defendants for taking their stuff without paying for it.

Again, obviously, the scintilla rule is gone as far as I understand it with the recent ruling. You've got to have a preponderance of the evidence -- I mean, you've got to show material issue of fact. Your Honor, among these agreements and the arguments today and the fact that Big Air isn't here to testify and we don't have them on the record, we haven't completed discovery, which, as you know, is a lynchpin for getting summary judgment in these circumstances, it's not complete.

In my opinion, the fact that discovery hasn't been completed kills the motion for summary judgment out of hand. There are too many issues and too many things that have been done -- and if we're going to go on technicalities, the Defendant, Jay N Limo, signed their agreement with Big Air Franchising in the wrong places. So is that agreement not valid because the people put their name on the wrong line?

I mean, all of that is an attempt to avoid what is the real dispute here. And we agree, it's a dispute. I'm

interested to see how the other side attacks it. We're prepared to attack it from our side. But it is a dispute. There are multiple issues of material fact that preclude summary judgment.

And, again, if we can't amend the Complaint, we're going to waste a bunch of court time and resources by going and filing another lawsuit on behalf of BA Greenville. And they'll either be running parallel or consolidated and we just feel like that's a waste of everybody's time. There's no prejudice to the other side for us adding BA Greenville as a Plaintiff because they know that BA Greenville controlled that territory and had to give it up in order for them to operate in Anderson.

THE COURT: All right.

Anything else, Mr. Smith?

MR. SMITH: Yes, Your Honor, I'd just like to state again we took their newly created document head on. I think that we have fully addressed the proposed pleading that BA Greenville made to the Court is before Your Honor. I hear him talking about filing another lawsuit and spending more time and money. I don't think that's necessary. Our position is the proposed pleading is futile or let's just -- or if Your Honor wants to grant it, then I think it should immediately be summarily dismissed instead of everybody coming back here to make the same arguments.

This contract -- they're just changing the terms of the contract. They're changing who entered into, changing its terms and what it was supposed to do. And all I'm hearing is oh, well, you know, we had to amend -- or we amended our franchise agreement with the franchisor. That's not us and that's not what this contract purports to do and that's not what the reps and warranties said and that's not why my clients agreed to pay extra money.

And, again, this doesn't go to the grounds for summary judgment, but for context, my clients paid $60,000 in initial franchise fees and they're paying between 10 and $20,000 a month in royalties, which will continue for, at least, the next ten years. And Mr. Pellitier, through the Plaintiff in this action, BA Holdings, gets half of that. It's millions of dollars. So when he complains about well, I had the Greenville store and I wouldn't have let the Anderson store go in, you know, but for this second agreement, he would be throwing away millions of dollars potentially. He's being rewarded richly in this. And my clients didn't know that and that's how we got here. That's all I have to say, Your Honor.

Thank you.

THE COURT: Anything else?

MR. AUTRY: No, Your Honor.

THE COURT: All right. I've read the file, but I'm

going to take a look at it again based on your arguments and I'll take it under advisement. I tend to rule fairly quickly, so you'll probably have something this week. Thank you both for your arguments.

MR. AUTRY: Thank you.

MR. SMITH: Thank you, Your Honor.

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording and supporting information**; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

February 23, 2024

Penny M. Johnson

Penny M. Johnson
Transcriber

Greenville County
13th Judicial Circuit
Public Index



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Switch View

BA Holdings Inc vs. Zay N Limo LLC , defendant, et al

Case Number:	2023CP2302302	Court Agency:	Greenville County Common Pleas	Filed Date:	05/09/2023
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
BA Holdings Inc	NEF(02-09-2024 12:32:32 PM) Notice/Notice of Appearance	Filing		02/09/2024-12:39		
BA Holdings Inc	Notice/Notice of Appearance	Filing		02/09/2024-12:32		
BA Holdings Inc	Appeal/Notice of Appeal to Court of Appeals	Filing		02/09/2024-12:32		
Autry, Brian A.	3/11/2024_NJ_Roster/Notice of Case Roster Publication Sent	Action		02/08/2024-16:13		
Thibault, Ashley Crawley	3/11/2024_NJ_Roster/Notice of Case Roster Publication Sent	Action		02/08/2024-16:13		
Smith, Jason S.	3/11/2024_NJ_Roster/Notice of Case Roster Publication Sent	Action		02/08/2024-16:13		
BA Holdings Inc	ADR/Alternative Dispute Resolution (Workflow)	Action		12/05/2023-09:41	04/11/2024-09:41	
Zay N Limo LLC	NEF(11-21-2023 09:40:24 AM) Order/Electronic Form 4	Filing		11/21/2023-09:40		
Zay N Limo LLC	Order/Electronic Form 4-Plt's Motion/Reconsider Denied	Order		11/21/2023-09:40		
BA Holdings Inc	NEF(11-17-2023 04:54:56 PM) Motion/Reconsider	Filing		11/20/2023-09:06		
BA Holdings Inc	Plt/BA Holdings/Motion to Reconsider	Motion		11/17/2023-16:54		
Zay N Limo LLC	NEF(11-07-2023 06:19:05 PM) Letter/Letter	Filing		11/08/2023-08:31		
Zay N Limo LLC	Letter/Letter	Filing		11/07/2023-18:19		
Zay N Limo	NEF(11-07-2023 09:24:34 AM)	Filing		11/07/2023-		

LLC	Order/Summary Judgment			09:24		
Zay N Limo LLC	Order/Summary Judgment-Partial Granted	Order		11/07/2023-09:24		
Zay N Limo LLC	NEF(10-27-2023 04:28:01 PM) Proposed Order/Summary Judgm...	Filing		10/30/2023-08:58		
Zay N Limo LLC	Order/Order Cover Sheet $25.00	Filing		10/27/2023-16:28		
BA Holdings Inc	NEF(10-26-2023 06:19:33 PM) Motion/Reconsider	Filing		10/27/2023-10:33		
BA Holdings Inc	Plt/BA Holdings/Motion to Reconsider	Motion		10/26/2023-18:19		
Zay N Limo LLC	NEF(10-16-2023 09:03:44 AM) Order/Electronic Form 4	Filing		10/16/2023-09:03		
Zay N Limo LLC	Order/Electronic Form 4	Order		10/16/2023-09:03		
Zay N Limo LLC	NEF(10-09-2023 08:12:32 PM) Memo/Memo	Filing		10/10/2023-10:09		
BA Holdings Inc	NEF(10-10-2023 09:35:26 AM) Letter/Letter	Filing		10/10/2023-10:04		
BA Holdings Inc	Letter/Exhibits A-B to Affidavit of Dustin Pelletier	Filing		10/10/2023-09:35		
Zay N Limo LLC	Defs' Memo in Support of Partial Summary Judgment, etc.	Filing		10/09/2023-20:12		
BA Holdings Inc	NEF(10-06-2023 09:45:09 AM) Affidavit/Affidavit of	Filing		10/06/2023-09:49		
BA Holdings Inc	Affidavit/Affidavit of Dustin Pelletier	Filing		10/06/2023-09:45		
Autry, Brian A.	10/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		09/26/2023-14:29		
Thibault, Ashley Crawley	10/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		09/26/2023-14:29		
Smith, Jason S.	10/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		09/26/2023-14:29		
BA Holdings Inc	NEF(09-25-2023 05:31:52 PM) Motion/Alter and/or Amend	Filing		09/26/2023-09:26		
BA Holdings Inc	Plt/BA Holdings/Motion to Amend Complaint	Motion		09/25/2023-17:31	10/10/2023-17:31	
Autry, Brian A.	10/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/16/2023-16:24		
Thibault, Ashley Crawley	10/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/16/2023-16:24		
Smith, Jason S.	10/9/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		08/16/2023-16:24		
Zay N Limo LLC	NEF(08-14-2023 11:59:12 PM) Motion/Summary Judgment	Filing		08/15/2023-08:50		
Zay N Limo LLC	Def's/Motion for Partial Summary Judgment	Motion		08/14/2023-23:59	10/10/2023-23:59	
BA Holdings Inc	NEF(08-07-2023 03:26:10 PM) Reply/Reply to Counterclaim	Filing		08/07/2023-15:56		
BA Holdings Inc	Reply/Reply To Counterclaims	Filing		08/07/2023-15:26		
Zay N Limo LLC	NEF(06-08-2023 06:24:07 PM) Notice/Notice of Appearance	Filing		06/09/2023-09:19		
Zay N Limo LLC	Notice/Notice of Appearance	Filing		06/08/2023-18:24		

Zay N Limo LLC	Answer/Answer & Counterclaim	Filing		06/08/2023-18:24		
BA Holdings Inc	NEF(05-15-2023 08:43:27 AM) Service/Acceptance Of Servic...	Filing		05/15/2023-08:48		
BA Holdings Inc	Service/Acceptance Of Service on Zay N Limo Llc	Filing		05/15/2023-08:43		
BA Holdings Inc	Service/Acceptance Of Service on Mohammad Farhan	Filing		05/15/2023-08:43		
BA Holdings Inc	Service/Acceptance Of Service on Sharif Farhan	Filing		05/15/2023-08:43		
BA Holdings Inc	NEF(05-11-2023 11:36:42 AM) Letter/Letter	Filing		05/11/2023-12:01		
BA Holdings Inc	Letter/Redacted Exhibits to Complaint	Filing		05/11/2023-11:36		
Zay N Limo LLC	Letter/Redaction Request	Filing		05/11/2023-10:46		
BA Holdings Inc	Summons & Complaint	Filing		05/09/2023-09:41		

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Motion "MSUMJM-Def's/Motion for Partial Summary Judgment" for Case "2023CP2302302- BA Holdings Inc vs. Zay N Limo LLC , defendant, et al" was added to a Motions Roster for 10/10/2023 at 10:30 AM

roster@greenvillecounty.org <roster@greenvillecounty.org>
Wed 8/16/2023 4:24 PM
To:Angelia Shaw <shaw@conlaw.com>
Cc:kwatford@greenvillecounty.org <kwatford@greenvillecounty.org>

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An in-person hearing in this case is SCHEDULED - DATE & TIME on Subject line above-
Location: Greenville County Courthouse, 305 East North Street, Greenville SC 29601

NO COURT REPORTER WILL BE PRESENT. PLEASE NOTE THAT THE WEBEX SYSTEM WILL BE RECORDING IN PLACE OF THE COURT REPORTER.

MOVANT IS RESPONSIBLE TO NOTIFY OPPOSING COUNSEL AND PRO SE PARTIES.
Check the online roster at https://nam02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.greenvillecounty.org%2Fscjd%2Fcourtrosters%2F&data=05%7C01%7C%7C23d2942aacd44aad93b708db9e96cf4d%7Cd77f7b7315774640a11b04b39feb0c53%7C0%7C0%7C638278142809880276%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=3NTfOfUti8RSCnhRSfAmt23mwxM5MbVfF8n0RoyeoUw%3D&reserved=0
CONTINUANCE, RESOLVED, WITHDRAWN - send detailed e-mail (copying opposing counsel/party) to Non-Jury Coordinator at: kwatford@greenvillecounty.org.
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Motion "MAMNMO-Plt/BA Holdings/Motion to Amend Complaint" for Case "2023CP2302302- BA Holdings Inc vs. Zay N Limo LLC , defendant, et al" was added to a Motions Roster for 10/10/2023 at 10:30 AM

roster@greenvillecounty.org <roster@greenvillecounty.org>

Tue 9/26/2023 2:30 PM

To:Angelia Shaw <shaw@conlaw.com>
Cc:kwatford@greenvillecounty.org <kwatford@greenvillecounty.org>

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Location: Greenville County Courthouse, 305 East North Street, Greenville, SC 29601

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MOVANT IS RESPONSIBLE TO NOTIFY OPPOSING COUNSEL AND PRO SE PARTIES.
CONTINUANCE, RESOLVED, WITHDRAWN - send detailed e-mail (copy opposing counsel/party) to Non-Jury Coordinator at: kwatford@greenvillecounty.org

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable G.D. Morgan, Jr.

Case No. 2023-CP-23-02302

BA Holdings, Inc.,

Appellant,

v.

Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan,

Respondents.

NOTICE OF APPEAL

BA Holdings, Inc. appeals the Honorable G.D. Morgan, Jr.'s Order Granting Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Motion to Amend Complaint, entered by Form 4 dated October 16, 2023, attached as **Exhibit 1**. This order did not end the case. (Ex. 1). Appellant received notice of entry of the order on October 16, 2023, and filed a Motion for Reconsideration of Court's Order Granting Defendants' Motion for Partial Summary Judgment and Denying Plaintiff's Motion to Amend the Complaint on October 26, 2023. The court subsequently entered findings of fact and law in an Order dated November 7, 2023, attached as **Exhibit 2**. Appellant timely moved to Reconsider Order Granting Partial Summary Judgment and Denying Plaintiff's Motion to Amend the Complaint on November 17, 2023. Appellant's Motion

to Reconsider Order Granting Partial Summary Judgment and Denying Plaintiff's Motion to Amend the Complaint was denied by order dated November 21, 2023, attached as **Exhibit 3**.

/s/ David L. Paavola
Brian A. Autry, SC Bar No.: 69401
David L. Paavola, SC Bar No.: 100714
KENISON, DUDLEY & CRAWFORD, LLC
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Attorneys for Appellant

December 20, 2023

Other counsel of record:

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Attorney for Respondent

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Dec 20 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable G.D. Morgan, Jr.

Case No. 2023-CP-23-02302

BA Holdings, Inc.,

Appellant,

v.

Zay N Limo, LLC, Sharif Farhan, and Mohammad Farhan,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Jason S. Smith., counsel for Respondents Zay N Limo, Sharif Farhan, and Mohammad Farhan, by email sent to his primary e-mail address listed in the Attorney Information System, js@hellmanyates.com, on December 20, 2023. See attached email.

/s/ David L. Paavola
Brian A. Autry, SC Bar No.: 69401
David L. Paavola, SC Bar No.: 100714
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Attorneys for Appellant

December 20, 2023

BA Holdings, Inc. v. Zay N Limo, LLC, et al - Notice of Appeal

David Paavola <paavola@conlaw.com>

Wed 12/20/2023 10:46 AM

To:js@hellmanyates.com <js@hellmanyates.com>
Cc:Brian Autry <autry@conlaw.com>;Angelia Shaw <shaw@conlaw.com>;David Paavola <paavola@conlaw.com>

1 attachments (3 MB)

20231220_BA Holdings Notice of Appeal_w_Exhibits 1-3_FINAL.pdf;

Jason,

Attached is BA Holdings, Inc.'s Notice of Appeal and Exhibits for service in accordance with Rule 203, SCACR. This notice will be filed in the Court shortly.

Sincerely,

David L. Paavola
Attorney
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Email: paavola@conlaw.com
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